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THE CRIMINAL COURT MANUAL
(IMPERIAL ACTS)

THE CRIMINAL COURT MANUAL (IMPERIAL ACTS)

FIFTH EDITION

MINOR ACTS

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THE CRIMINAL COURT MANUAL

MINOR ACTS.

THE GOVERNMENT OF INDIA (ADAPTATION OF ACTS OF PARLIAMENT) ORDER, 1937.

AT THE COURT AT BUCKINGHAM PALACE.

[18th March, 1937.]

PRESENT :—THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by sub-section (5) of section three hundred and eleven of the Government of India Act, 1935 (hereafter in the recitals to this Order referred to as "the Act") it is provided that any Act of Parliament containing references to India or any part thereof, to countries other than or situate outside India or other than or situate outside British India, to His Majesty's dominions, to a British possession, to the Secretary of State in Council, to the Governor-General in Council, to a Governor in Council or to Legislatures, courts or authorities in, or to matters relating to the Government or administration of, India or British India shall have effect subject to such adaptations and modifications as His Majesty in Council may direct, being adaptations and modifications which appear to His Majesty in Council to be necessary or expedient in consequence of the provisions of the Act or of the Government of Burma Act, 1935 :

AND WHEREAS by sub-section (2) of section one hundred and seventy-eight of the Act it is provided that all enactments relating to any such loans, guarantees and other financial obligations of the Secretary of State in Council as are referred to in sub-section (1) of that section shall in relation to those loans, guarantees and obligations continue to have effect with certain substitutions and with such other modifications and such adaptations as His Majesty in Council may deem necessary :

AND WHEREAS under section three hundred and twenty of the Act His Majesty by Order in Council has appointed the first day of April, nineteen hundred and thirty-seven, as the date on which the provisions of the Act, other than the provisions of Part II thereof, are, subject to any exceptions mentioned in the Order, to come into force :

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of sub-section (1) of section three hundred and nine of the Act and an address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order :

NOW, THEREFORE, His Majesty, in the exercise of the said powers and of all other powers enabling him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows :—

1. This Order may be cited as THE GOVERNMENT OF INDIA (ADAPTATION OF ACTS OF PARLIAMENT) ORDER, 1937, and shall come into operation on the first day of April, nineteen hundred and thirty-seven.

2. The Acts of Parliament referred to in the Schedule to this Order shall have effect subject to the adaptations and modifications specified in the said schedule.

3. In any Act of Parliament passed before the commencement of this Order and not referred to in the Schedule thereto references to the revenues of India shall be construed, in relation to the period after the establishment of the Federation of India, as references to the revenues of the Federation and, in relation to the period between the commencement of Part III of the Government of India Act, 1935, and the establishment of the Federation, as references to the revenues of the Governor-General in Council.

4. The provisions of this Order which adapt or modify any Act by transferring functions to another authority shall not render invalid any order, bye-law, rule or regulation duly made, or anything duly done, before the commencement of this Order and any such order, bye-law, rule, regulation or thing may be revoked, varied or undone in like manner, to the like extent and in the like circumstances as orders, bye-laws, rules, regulations or things made or done by the authority to which the functions are transferred.

5. Nothing in the Aden Colony Order, 1936, shall be construed as requiring that references in Acts of Parliament to India or British India shall continue to be construed as including references to Aden.

M. P. A. Hankey.

THE SCHEDULE.

PART I.

[Omitted as Acts of Parliament are not included in this Manual.]

THE GOVERNMENT OF INDIA (ADAPTATION OF INDIAN LAWS) ORDER, 1937.

N.B.—*The Acts and Regulations contained in these volumes are to be taken as subject to the amendments made by the Government of India (Adaptation of Indian Laws) Order, 1937.*

AT THE COURT AT BUCKINGHAM PALACE.

[18th March, 1937.]

PRESENT :—THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by section two hundred and ninety-three of the Government of India Act, 1935 (hereafter in the recitals to this Order referred to as "the Act"), His Majesty is empowered by Order in Council to provide that as from such date as may be specified in the order any law in force in British India or in any part of British India shall, until repealed or amended by a competent legislature or other competent authority, have effect subject to such adaptations and modifications as appear to His Majesty to be necessary or expedient for bringing the provisions of that law into accord with the provisions of the Act :

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of sub-section (1) of section three hundred and nine of the Act and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order :

NOW, THEREFORE, His Majesty, in the exercise of the said powers and of all other powers enabling him in that behalf, is pleased by and with the advice of His Privy Council to order, and it is hereby ordered as follows :—

1. This Order may be cited as THE GOVERNMENT OF INDIA (ADAPTATION OF INDIAN LAWS) ORDER, 1937, and shall come into operation on the first day of April, nineteen hundred and thirty-seven.

2. (1) In this Order the expression "Indian law" means a law as defined in section two hundred and ninety-three of the Act.

(2) The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the Interpretation of an Act of Parliament.

3. The Indian Laws mentioned in the Schedules to this Order shall, until repealed or amended by a competent Legislature or other competent authority, have effect subject to the adaptations and modifications directed by those schedules to be made therein or, if it is so directed, shall cease to have effect.

4. (1) Whenever an expression mentioned in the first column of the table hereunder printed occurs (otherwise than in a title or preamble or in a citation or description of an enactment) in a Central or Provincial Act or Regulation, whether an Act or Regulation mentioned in the Schedules to this Order or not, then unless that expression is by this Order expressly directed to be otherwise adapted or modified, or to stand unmodified, or to be omitted, there shall be substituted therefor the expression set opposite to it in column two of the said table.

Table of General Adaptations.

(1)	(2)
Governor-General of India in Council : Governor-General of India : Governor-General in Council : Governor-General : Government of India.	Central Government.
Governor in Council : Governor (except in the expression "Governor's Province") : Lieutenant Governor in Council : Lieutenant Governor : Chief Commissioner (except in the expression "Chief Commissioner's Province") : Local Government : Local Administration.	Provincial Government.
Gazette of India : Local Official Gazette : Local Gazette : any other expression denoting a gazette in which official notices of a government are published, not being the gazette of a district or other sub-division of a Province.	Official Gazette.

Any reference to the Governor (*or* Lieutenant Governor) of a named Province in Council shall be treated for the purposes of this paragraph as if it were a reference to the Governor (*or* Lieutenant Governor) in Council of that Province.

(2) A direction in the Schedules to this Order that a specified Indian law or section or portion of an Indian law shall stand unmodified shall be construed merely as a direction that it is not to be modified or adapted in accordance with the foregoing provisions of this paragraph.

5. (1) Where this Order requires that in any specified Indian law, or in any section or other portion of an Indian law, certain words shall be substituted for certain other words or that certain words shall be omitted, that substitution or omission, as the case may be, shall, except where it is otherwise expressly provided, be made wherever the words referred to occur in that law, or, as the case may be, in that section or portion.

(2) Where this Order requires that in any Indian law a plural noun shall be substituted for a singular noun or *vice versa*, or a masculine noun for a neuter noun or *vice versa*, there shall be made also in any verb or pronoun in the sentence in question such consequential amendment as the rules of grammar may require.

6. (1) The following provisions shall have effect where any Indian law which under this Order is to be adapted or modified has before the commencement of this Order been amended, either generally or in relation to any particular area, by the insertion or omission of words, or the substitution of words for other words :—

(a) Effect shall first be given in the amending law to any adaptation or modification required by paragraphs three and five of this Order to be made therein ;

(b) the original law shall then be amended, either generally or, as the case may be, in its application to the particular area, so as to give effect to the directions contained in the amending law or, where any adaptation or modification has fallen to be made under sub-paragraph (a), in that law as so adapted or modified ; and

(c) all adaptations or modifications required by this Order to be made in the original law shall then be made in that law as so amended, except so far as in the case of any particular area they may be inapplicable.

(2) In this paragraph references to the amendment of a law by the insertion or omission of words or the substitution of words do not include references to an amendment which is effected merely by directing that certain words shall be construed in a particular manner.

7. Subject to the foregoing provisions of this Order, any reference by whatever form of words in any Indian law in force immediately before the commencement of this Order to an authority competent that the date of the passing of that law to exercise any powers or authorities, or discharge any functions, in any part of British India shall, where a corresponding new authority has been constituted by or under any Part of the Government of India Act, 1935, for the time being in force, have effect until duly repealed or amended as if it were a reference to that new authority.

8. In any Indian law in force immediately before the commencement of this Order any reference by name or description to any territory shall, unless the contrary intention appears or unless it has been, or is by this Order, otherwise expressly provided, be construed as a reference to the territory which bore that name or answered to that description at the date when the enactment containing that name or description came into operation :

Provided that in the application of any enactment to Madras, Bombay, Bihar or the Central Provinces, references in that enactment to Madras, Bombay, Bihar or the Central Provinces, as the case may be, shall be construed as exclusive of so much of those Provinces respectively as was separated therefrom on the constitution of the Provinces of Orissa and Sind.

9. The provisions of this Order which adapt or modify Indian laws so as to alter the manner in which, the authority by which, or the law under or in accordance with which, any powers are exercisable shall not render invalid any notification, order, commitment, attachment, bye-law, rule or regulation duly made or issued, or anything duly done, before the commencement of this Order ; and any such notification, order, commitment, attachment, bye-law, rule, regulation or thing may be revoked, varied or undone in the like manner, to the like extent and in the like circumstances as if it had been made, issued or done after the commencement of this Order by the competent authority and under and in accordance with the provisions then applicable to such a case.

10. Save as provided by this Order, all powers which under any law in force in British India, or in any part of British India, were immediately before the commencement of Part III of the Government of India Act, 1935, vested in, or exercisable by, any person or authority shall continue to be so vested or exercisable until other provision is made by some legislature or authority empowered to regulate the matter in question.

11. Nothing in this Order shall affect the previous operation of, or anything duly done or suffered under, any Indian law, or any right, privilege, obligation

or liability already acquired, accrued or incurred under any such law, or any penalty, forfeiture or punishment incurred in respect of any offence already committed against any such law.

12. For the avoidance of doubt it is hereby declared that—

(a) nothing in this Order transferring or assigning any functions to the Central Government shall be construed as excluding those functions from the operation of section one hundred and twenty-three or section one hundred and twenty-four of the Government of India Act, 1935 ;

(b) the transfer by this Order to a Provincial Government of any jurisdiction therefore exercisable by the Local Government of the Province shall not be construed as excluding that jurisdiction from the operation of sub-section (2) of section two hundred and ninety-six of the said Act ;

(c) nothing in this Order shall affect the provisions of any Order in Council for the time being in force made under section one hundred and fifty-eight, section one hundred and fifty-nine or section one hundred and sixty of the said Act (which empower Orders to be made regulating the relations of India and Burma as to their monetary systems, relief from double taxation, customs, and ancillary and related matters), or under any corresponding provisions in the Government of Burma Act, 1935 ; and

(d) no repeal effected by this Order shall affect the operation of sub-paragraph (2) of paragraph fifteen of the Government of India (Commencement and Transitory Provisions) Order, 1936.

[Schedule omitted as the amendments have been carried out in the main Acts.]

THE GOVERNMENT OF INDIA (ADAPTATION OF INDIAN LAWS) SUPPLEMENTARY ORDER, 1937.

AT THE COURT AT BUCKINGHAM PALACE.

[29th July, 1937.]

PRESENT :—THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by section two hundred and ninety-three of the Government of India Act, 1935 (hereafter in the recitals to this Order referred to as "the Act"), His Majesty is empowered by Order in Council to provide that as from such date as may be specified in the Order any law in force in British India or in any part of British India shall, until repealed or amended by a competent legislature or other competent authority, have effect subject to such adaptations and modifications as appear to His Majesty to be necessary or expedient for bringing the provisions of that law into accord with the provisions of the Act :

AND WHEREAS in exercise of the said powers an Order in Council called the Government of India (Adaptation of Indian Laws) Order, 1937 (hereafter in this Order referred to as "the principal Order") has been made :

AND WHEREAS by sub-section (2) of section three hundred and nine of the Act His Majesty in Council is empowered to vary any Order in Council previously made under the Act :

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of sub-section (1) of section three hundred and nine of the Act and an address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order :

NOW, THEREFORE, His Majesty, in the exercise of the said powers, and of all other powers enabling him in that behalf, is pleased by and with the advice of His Privy Council to order, and it is hereby ordered, as follows :—

1. This Order may be cited as THE GOVERNMENT OF INDIA (ADAPTATION OF INDIAN LAWS) SUPPLEMENTARY ORDER, 1937.

2. The Schedules to the principal Order shall be modified as directed in the Schedule to this Order, and shall have effect, and be deemed always to have had effect, as so modified.

THE SCHEDULE.

Modifications of Schedule I to the principal Order.

[Omitted as the amendments have been carried out in the main Acts.]

THE AGRICULTURAL [AND OTHER]¹ PRODUCE (GRADING AND MARKING) ACT (I OF 1937).

[Amended by Act XIII of 1942 and Act XX of 1943.]

[24th February, 1937.]

An Act to provide for the grading and marking of agricultural produce.

WHEREAS it is expedient to provide for the grading and marking of agricultural [and other]¹ produce; It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called THE AGRICULTURAL PRODUCE (GRADING AND MARKING) ACT, 1937.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas but excluding Burma.

Explanations.

2. In this Act, unless the contrary appears from the subject or context,—

(a) "agricultural produce" includes all produce of agriculture or horticulture and all articles of food or drink wholly or partly manufactured from any such produce, and fleeces and the skins of animals;

(b) "counterfeit" has the meaning assigned to that word by S. 28 of the Indian Penal Code;

(c) "covering" includes any vessel, box, crate, wrapper, tray or other container;

(d) "grade designation" means a designation prescribed as indicative of the quality of any scheduled article;

(e) "grade designation mark" means a mark prescribed as representing a particular grade designation;

(f) "quality", in relation to any article, includes the state and condition of the article;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "scheduled article" means an article included in the Schedule; and

(i) an article is said to be marked with a grade designation mark, if the article itself is marked with a grade designation mark or any covering containing or label attached to such article is so marked.

Prescription of grade designations.

3. The Central Government may, after previous publication by notification in the Official Gazette, make rules—

(a) fixing grade designations to indicate the quality of any scheduled article;

(b) defining the quality indicated by every grade designation;

(c) specifying grade designation marks to represent particular grade designations;

(d) authorising a person or a body of persons, subject to any prescribed conditions, to mark with a grade designation mark any article in respect of which such mark has been prescribed or any covering containing or label attached to any such article;

(e) specifying the conditions referred to in clause (d) including in respect of any article conditions as to the manner of marking, the manner in which the

LEG. REF.

¹ In the long title and in the Preamble after

the word "agricultural" the words "and other" inserted by Act XIII of 1942.

article shall be packed, the type of covering to be used, and the quantity by weight, number or otherwise to be included in each covering ;

(f) providing for the payment of any expenses incurred in connection with the manufacture or use of any implement necessary for the production of a grade designation mark or with the manufacture or use of any covering or label marked with a grade designation mark [or with measures for the control of the quality of articles marked with grade designation marks including testing of samples and inspection of such articles or with any publicity work carried out to promote the sale of any class of such articles]¹ and

(g) providing for the confiscation and disposal of produce marked otherwise than in accordance with the prescribed conditions with a grade designation mark.

Penalty for unauthorised marking with grade designation mark.

4. Whoever marks any scheduled article with a grade designation mark, not being authorised to do so by rule made under S. 3, shall be punishable with fine which may extend to Rs. 500.

5. Whoever counterfeits any grade designation mark or has in his possession any die, plate or other instrument for the purpose of counterfeiting a grade designation mark shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

Penalty for counterfeiting grade designation mark.

6. The Central Government after such consultation as he thinks fit of the interests likely to be affected, may by notification in the Official Gazette declare that the provisions of this Act shall apply to an article of agricultural produce not included in the Schedule [or to an article other than an article of agricultural produce]² and on the publication of such notification such article shall be deemed to be included in the Schedule.

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THE SCHEDULE.

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THE INDIAN AIRCRAFT ACT (XXII OF 1934).

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Year.	No.	Short title.	Rep. or otherwise how affected by Legislation.
1934	XXII	The Indian Aircraft Act, 1934.	Rep. in part by Act I of 1938. Am., by Acts VII of 1936; XXII of 1938; XXXVII of 1939 and V of 1944. Am., by Government of India (Adaptation of Indian Laws) Order, 1937. <i>See also</i> Act XXXV of 1939.

[19th August, 1934.]

An Act to make better provision for the control of the manufacture, possession, use, operation, sale, import and export of aircraft.

WHEREAS it is expedient to make better provision for the control of the manufacture, possession, use, operation, sale, import and export of aircraft; It is hereby enacted as follows :—

Short title and extent.

1. (1) This Act may be called THE INDIAN AIRCRAFT ACT, 1934.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas, [and applies also—

(a) to British subjects and servants of the Crown in any part of India ;

(b) to British subjects who are domiciled in any part of India wherever they may be;

(c) to, and to persons on, aircraft registered in British India wherever they may be.]¹

Definitions.†

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "aircraft" means any machine which can derive support in the atmosphere from reactions of the air, and includes balloons whether fixed or free, airships, kites, gliders and flying machines ;

(2) "aerodrome" means any definite or limited ground or water area intended to be used, either wholly or in part, for the landing or departure of aircraft, and includes all buildings, sheds, vessels, piers, and other structures thereon or appertaining thereto ;

(3) "import" means bringing into British India ; and

(4) "export" means taking out of British India.

3. The Central Government may, by notification in the Official Gazette, exempt from [all or any of the provisions of this Act]² any aircraft or class of aircraft and any person or class of persons, or may direct that such provisions shall apply to such aircraft or persons subject to such modifications as may be specified in the notification.

Power of Central Government to exempt certain aircraft.

4. The Central Government may, by notification in the Official Gazette, make such rules as appear to him to be necessary for carrying out the Convention relating to the regulation of Aerial Navigation signed at Paris, October 13, 1919, with Additional Protocol, signed at Paris, May 1, 1920, and any amendment which may be made thereto under the provisions of Article 34 thereof.

Power of Central Government to make rules to implement the Convention of 1919.

Power of Central Government to make rules.

5. (1) The Central Government may, by notification in the Official Gazette, make rules regulating the manufacture, possession, use, operation, sale, import or export of any aircraft or class of aircraft.

LEG. REF.

¹ Added by Act XXXVII of 1939.

² Substituted by Act XXXVII of 1939.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the authorities by which any of the powers conferred by or under this Act are to be exercised ;

[(aa) the regulation of air transport services, and the prohibition of the use of aircraft in such services except under the authority of and in accordance with a licence authorising the establishment of the service ;

(ab) the information to be furnished by an applicant for, or the holder of, a licence authorising the establishment of an air transport service to such authorities as may be specified in the rules ;]¹

(b) the licensing, inspection and regulation of aerodromes the conditions under which aerodromes may be maintained and the fees which may be charged thereat, and the prohibition or regulation of the use of unlicensed aerodromes ;

(c) the inspection and control of the manufacture, repair and maintenance of aircraft and of places where aircraft are being manufactured, required or kept ;

(d) the registration and marking of aircraft ;

(e) the conditions under which aircraft may be flown, or may carry passengers, mails, or goods; or may be used for industrial purposes and the certificates, licences or documents to be carried by aircraft ;

(f) the inspection of aircraft for the purpose of enforcing the provisions of this Act and the rules thereunder, and the facilities to be provided for such inspection ;

(g) the licensing of persons employed in the operation, manufacture, repair or maintenance of aircraft ;

(h) the air-routes by which and the conditions under which aircraft may enter or leave British India, or may fly over British India, and the places at which aircraft shall land ;

(i) the prohibition of flight by aircraft over any specified area, either absolutely or at specified times or subject to specified conditions and exceptions ;

(j) the supply, supervision and control of air-route beacons, aerodrome lights, and lights at or in the neighbourhood of aerodromes or on or in the neighbourhood of air-routes ;

[(jj) the installation and maintenance of lights on private property in the neighbourhood of aerodromes or on or in the neighbourhood of air-routes, by the owners or occupiers of such property, the payment by the Central-Government for such installation and maintenance, and the supervision and control of such installation and maintenance, including the right of access to the property for such purposes ;]²

(k) the signals to be used for purposes of communication by or to aircraft and the apparatus to be employed in signalling ;

(l) the prohibition and regulation of the carriage in aircraft of any specified article or substance ;

(m) the measures to be taken and the equipment to be carried for the purpose of ensuring the safety of life ;

(n) the issue and maintenance of log-books ;

(o) the manner and conditions of the issue or renewal of any licence or certificate under the Act or the rules, the examinations and tests to be undergone in connection therewith, the form, custody, production, endorsement, cancellation, suspension or surrender of such licence or certificate, or of any log-books ;

(p) the fees to be charged in connection with any inspection, examination, test, certificate, or licence made, issued or renewed under this Act ;

(q) the recognition for the purposes of this Act of licences and certificates issued elsewhere than in British India relating to aircraft or to the qualifications of persons employed in the operation, manufacture, repair or maintenance of aircraft ; and

LEG. REF.

² Cl. (jj) inserted by Act XXXVII of 1939.

¹ Sec. 5, cls. (aa) and (ab) inserted by Act V of 1944.

(7) any matter subsidiary or incidental to the matters referred to in this sub-section.

[(3) Every rule made under this section shall be laid as soon as may be after it is made before each of the Chambers of the Central Legislature, while it is in session, for a total period of one month which may be comprised in one session or in two or more sessions, and if before the expiry of that period, or where the period for which the rule is so laid, before one Chamber does not coincide with that for which it is so laid before the other, before the expiry of the later of these periods, both Chambers agree in making any modification in the rule or both Chambers agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be.]¹

Power of Central Government to make orders in emergency.

6. (1) If the Central Government is of opinion that in the interests of the public safety or tranquillity the issue of all or any of the following orders is expedient, it may, by notification in the Official Gazette—

(a) cancel or suspend, either absolutely or subject to such conditions as it may think fit to specify in the order all or any licences or certificates issued under this Act ;

(b) prohibit either absolutely or subject to such conditions as it may think fit to specify in the order, or regulate in such manner, as may be contained in the order, the flight of all or any aircraft or class of aircraft over the whole or any portion of British India ;

(c) prohibit, either absolutely or conditionally, or regulate the erection, maintenance or use of any aerodrome, aircraft, factory, flying-school or club or place where aircraft are manufactured, repaired or kept, or any class or description thereof ; and

(d) direct that any aircraft or class of aircraft or any aerodrome, aircraft factory, flying-school or club, or place where aircraft are manufactured, repaired or kept, together with any machinery, plant, material or things used for the operation, manufacture, repair or maintenance of aircraft shall be delivered, either forthwith or within a specified time, to such authority and in such manner as it may specify in the order, to be at the disposal of His Majesty for the public service.

(2) Any person who suffers direct injury or loss by reason of any order made under clause (c) or clause (d) of sub-section (1) shall be paid such compensation as may be determined by such authority as the Central Government may appoint in this behalf.

(3) The Central Government may authorize such steps to be taken to secure compliance with any order made under sub-section (1) as appear to it to be necessary.

(4) Whoever knowingly disobeys, or fails to comply with, or does any act in contravention of, an order made under sub-section (1) shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both, and the Court by which he is convicted may direct that the aircraft or thing (if any) in respect of which the offence has been committed, or any part of such thing, shall be forfeited to His Majesty.

Power of Central Government to make rules for investigation of accident.

7. (1) The Central Government may, by notification in the Official Gazette, make rules providing for the investigation of any accident arising out of or in the course of [the navigation—

(a) in or over British India of any aircraft, or

(b) anywhere of aircraft registered in British India.]²

(2) Without prejudice to the generality of the foregoing power, such rules may—

(a) require notice to be given of any accident in such manner and by such person as may be prescribed ;

(b) apply for the purposes of such investigation, either with or without modification, the provisions of any law for the time being in force relating to the investigation of accidents ;

(c) prohibit pending investigation access to or interference with aircraft to which an accident has occurred, and authorize any person so far as may be necessary for the purposes of an investigation to have access to, examine, remove, take measures for the preservation of, or otherwise deal with any such aircraft ; and

(d) authorize or require the cancellation, suspension, endorsement or surrender of any licence or certificate granted or recognized under this Act when it appears on an investigation that the licence ought to be so dealt with, and provide for the production of any such licence for such purpose.

8. (1) Any authority authorized in this behalf by the Central Government

Power to detain aircraft.

may detain any aircraft if in the opinion of such authority—

(a) having regard to the nature of an intended flight, the flight of such aircraft would involve danger to persons in the aircraft or to any other persons or property ; or

(b) such detention is necessary to secure compliance with any of the provisions of this Act or the rules applicable to such aircraft ; or such detention is necessary to prevent a contravention of any rule made under clause (h) or clause (i) of sub-section (2) of section 5.

(2) The Central Government may, by notification in the Official Gazette, make rules regulating all matters incidental or subsidiary to the exercise of this power.

[8-A. The Central Government may, by notification in the Official Gazette,

Power of Central Government to make rules for protecting the public health.

make rules for the prevention of danger arising to the public health by the introduction or spread of any infectious or contagious disease from aircraft arriving at or being at any aerodrome and for the prevention of the conveyance of infection or contagion by means of any aircraft leaving an aerodrome and in particular and without prejudice to the generality of this provision may make, with respect to aircraft and aerodromes or any specified aerodrome, rules providing for any of the matters for which rules under sub-clauses (i) to (viii) of clause (p) of sub-section (1) of section 6 of the Indian Ports Act, 1908, may be made with respect to vessels and ports.]¹

[8-B. (1) If the Central Government is satisfied that India or any part

Emergency powers for protecting the public health.

thereof is visited by or threatened with an outbreak of any dangerous epidemic disease, and that the ordinary provisions of the law for the time being in force are insufficient for the prevention of danger arising to the public health through the introduction or spread of the disease by the Agency of aircraft, the Central Government may take such measures as it deems necessary to prevent such danger.

(2) In any such case the Central Government may without prejudice to the powers conferred by section 8-A, by notification in the Official Gazette, make such temporary rules with respect to aircraft and persons travelling or things carried therein and aerodromes as it deems necessary in the circumstances.

(3) Notwithstanding anything contained in section 14, the power to make rules under sub-section (2) shall not be subject to the condition of the rules being made after previous publication, but such rules shall not remain in force for more than three months from the date of notification :

Provided that the Central Government may by special order continue them in force for a further period or periods of not more than three months in all.]²

9. (1) The provisions of Part VII of the Indian Merchant Shipping Act, 1923, relating to Wreck and Salvage shall apply to aircraft on or over the sea or tidal waters as they apply to ships, and the owner of an aircraft shall be entitled to a reasonable reward for salvage services rendered by the aircraft in like manner as the owner of a ship.

(2) The Central Government may, by notification in the Official Gazette make such modifications of the said provisions in their application to aircraft as appear necessary or expedient.

10. In making any rule under section 5, section 7, [*]¹ section 8 or [section 8-A]² the Central Government may direct that a breach of it shall be punishable with imprisonment for any term not exceeding three months, or with fine of any amount not exceeding one thousand rupees, or with both.

11. Whoever wilfully flies any aircraft in such a manner as to cause danger to any person or to any property on land or water or in the air shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

12. Whoever abets the commission of any offence under this Act or the rules, or attempts to commit such offence, and in such attempt does any act towards the commission of the offence, shall be liable to the punishment provided for the offence.

13. Where any person is convicted of an offence punishable under any rule made under clause (i) or clause (l) of sub-section (2) of section 5, the Court by which he is convicted may direct that the aircraft or article or substance as the case may be, in respect of which the offence has been committed, shall be forfeited to His Majesty.

14. Any power to make rules conferred by this Act is subject to the condition of the rules being made after previous publication for a period of not less than three months.

15. The provisions of section 42 of the Indian Patents and Designs Act, 1911, shall apply to the use of an invention on any aircraft not registered in British India in like manner as they apply to the use of an invention in a foreign vessel.

16. The Central Government may, by notification in the Official Gazette, declare that any or all of the provisions of the Sea Customs Act, 1878, shall, with such modifications and adaptations as may be specified in the notification, apply to the import and export of goods by air.

17. No suit shall be brought in any Civil Court in respect of trespass or in respect of nuisance by reason only of the flight of aircraft over any property at a height above the ground which having regard to wind, weather and all the circumstances of the case is reasonable, or by reason only of the ordinary incidents of such flight.

18. No suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act.

LEG. REF.

¹ Word 'or' omitted by Act VII of 1936.

² Inserted by *ibid.*

19. (1) Nothing in this Act or in any order or rule made thereunder shall apply to or in respect of any aircraft belonging to or exclusively employed in His Majesty's naval, military or air forces, or to any person in such forces employed in connection with such aircraft.

(2) Nothing in this Act or in any order or rule made thereunder shall apply to or in respect of any lighthouse to which the Indian Lighthouse Act, 1927, applies or prejudice or affect any right or power exercisable by any authority under that Act.

Repeals.

20. (*Repealed by Act I of 1938.*)

THE INDIAN AIR FORCE ACT (XIV OF 1932).

[Rep. in part Act I of 1938; amended Act XXXV of 1934; Ordinance No. 58 of 1942; Acts. IV of 1943; XXI of 1943; see Act XXXV of 1939; VIII of 1945.]

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[8th April, 1932.

An Act to provide for the administration and discipline of the Indian Air Force.

WHEREAS it is intended to establish an Indian Air Force ;

AND WHEREAS it is expedient to provide for the administration and discipline of that Force and for purposes connected therewith ;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title and commencement.

1. (1) This Act may be called THE INDIAN AIR FORCE ACT, 1932.

(2) It shall come into force on such date as the Central Government may, by notification in the (Official Gazette) appoint.

Persons subject to this Act. 2. (1) The following persons shall be subject to this Act, namely :—

(a) officers and warrant officers of the Indian Air Force ;

(b) persons enrolled under this Act ;

(c) persons not otherwise subject to military [naval]¹ or air force law, who, on active service, in camp, on the march, or at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, the Indian Air Force.

(2) Every person who has become subject to this Act under sub-section (1), clause (a) or (b), shall remain so subject until duly discharged or dismissed.

3. (1) The Central Government may, by notification, direct that any persons or class of persons subject to this Act under section 2, sub-section (1), clause (c), shall be so subject as officers, warrant officers or non-commissioned officers, and may authorise any officer to give a like direction with respect to any such person and to cancel such direction.

(2) All persons subject to this Act other than officers, warrant officers and non-commissioned officers shall, if they are not persons in respect of whom a notification or direction under sub-section (1) is in force, be deemed to be of a rank inferior to that of a non-commissioned officer.

4. Every person subject to this Act under section 2, sub-section (1), clause (c), shall, for the purposes of this Act, be deemed to be under the commanding officer of the corps, unit or detachment (if any) to which he is attached, and if he is not attached to any corps, unit or detachment, under the command of any officer who may for the time being be named as his commanding officer by the officer commanding the force with which such person may for the time being be serving, or of any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said officer commanding the force :

Provided that an officer commanding a force shall not place a person under the command of an officer of official rank inferior to that of such person if there is present at the place where such person is any officer of higher rank under whose command he can be placed.

5. (1) Whenever persons subject to this Act are serving whether within or without India under an officer not subject to this Act, the Central Government may prescribe the officer by whom the powers which, under this Act, may be exercised by officers commanding units, shall, as regards such persons, be exercised.

(2) The Central Government may confer such powers either absolutely or subject to such restrictions, reservations, exceptions and conditions as he may think fit.

Definitions.

6. In this Act, unless there is something repugnant in the subject or context,—

(1) "officer of the Indian Air Force" means a person commissioned, gazetted or in pay as an officer of the Indian Air Force ;

(2) "warrant officer" means a person appointed, gazetted or in pay as a warrant officer in the Indian Air Force ;

(3) "non-commissioned officer" means a person attested under this Act holding a non-commissioned rank in the Indian Air Force, and includes an acting non-commissioned officer ;

(4) "officer" means an officer of any of His Majesty's naval, military or air forces, but does not include a warrant officer or non-commissioned officer.

(5) "airman" means any person subject to this Act other than an officer ;

(6) "commanding officer," used in relation to a person subject to this Act, means the officer for the time being in command of the unit or detachment to which such person belongs or is attached ;

(7) "superior officer," when used in relation to a person subject to this Act, includes a warrant officer and a non-commissioned officer ; and, as regards persons placed under his orders, an officer, a warrant officer or non-commissioned officer of any of His Majesty's naval, military or air forces ;

(8) "corps" means any body of the Indian Air Force which is prescribed as a corps for the purposes of all or any of the provisions of this Act ;

(9) "unit" means any body of the Indian Air Force which is prescribed as a unit for the purposes of all or any of the provisions of this Act ;

(10) "enemy" includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of a person subject to naval, military or air force law to act ;

(11) "active service," as applied to a person subject to this Act, means the time during which such person is attached to, or forms part of, a force which is engaged in operations against an enemy, or is engaged in warlike operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country, and includes, in respect of a person subject to this Act attached to or forming part of a force which is about to be or has recently been on such active service, such time as the Central Government may, by notification in the [Official Gazette] declare to be active service in respect of such force ;

(12) "air force custody" means the arrest or confinement of a person according to the usages of His Majesty's military and air forces, and includes military custody ;

(13) "air force reward" includes any gratuity or annuity for long service or good conduct, any good conduct pay, good service pay or pension, and any other air force pecuniary reward ;

(14) "court-martial" means a court-martial held under this Act ;

(15) "criminal court" means a court of ordinary criminal justice in British India, or established elsewhere by the authority of the Central Government or the Crown Representative ;

(16) "offence" means any act or omission made punishable by any law for the time being in force ;

(17) "air force offence" means any act or omission made punishable by this Act ;

(18) "civil offence" means an offence which, if committed in British India, would be triable by a criminal Court ;

[(19) "His Majesty's naval forces" include the Indian Marine Service ;
omitted by Act XXXV of 1934.]

- (20) "notification" means a notification published in the [Official Gazette]
 (21) "prescribed" means prescribed by rules made under this Act; and
 (22) all words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code.

CHAPTER II.

ENROLMENT, ATTESTATION, DISMISSAL, DISCHARGE AND REDUCTION.

7. Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled, the enrolling officer shall read and explain to him, or cause to be read and explained to him in his presence, the conditions of service for which he is to be enrolled; and shall put to him the question set forth in the prescribed form of enrolment, and shall, after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under this Act, record or cause to be recorded his answer to each such question.

8. If, after complying with the provisions of section 7, the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put to him and consents to the conditions of service and if he perceives no impediment, he shall sign and shall cause the person to sign the enrolment paper, and the person shall be then deemed to be enrolled.

9. The enrolling officer shall not cause any person to sign the enrolment paper unless he is satisfied that such person is a subject of His Majesty or of a Prince or Chief in India, and—

- Conditions for enrolment.
- (a) is of unmixed Indian descent, or
 - (b) if he is of mixed Indian and non-Indian descent, is domiciled in India, or
 - (c) if he is of unmixed non-Indian Asiatic descent, is domiciled in India and his father and grandfather were domiciled in India.

[10. Every person who has for the space of three months been in the receipt of air force pay and been borne on the rolls of any unit shall be deemed to have been duly enrolled and shall not be entitled to claim his discharge on the ground of any irregularity or illegality in the enrolment or on any other ground whatsoever; and if within the said three months such person claims his discharge any such irregularity or illegality or other ground shall not, until such person is discharged in pursuance of his claim, affect his position as a person enrolled under this Act or invalidate any proceedings, act or thing taken or done prior to his discharge.]¹

11. The following persons shall be attested, namely:—

- Persons to be attested.
- (a) all persons enrolled as combatants;
 - (b) all other enrolled persons prescribed by the [Central Government].

12. (1) When a person who is to be attested is reported fit for duty, or has completed the prescribed period of probation, an oath or affirmation shall be administered to him in the prescribed form by his commanding officer in front of his unit or such portion thereof as may be present, or by any other prescribed person.

(2) The form of oath or affirmation prescribed under this section shall contain a promise that the person to be attested will be faithful to His Majesty, his heirs and successors, and that he will serve in the Indian Air Force and go wherever he is ordered by air, land, or sea, and that he will obey all commands of any officer set over him, even to the peril of his life.

(3) The fact of an enrolled person having taken the oath or affirmation directed by this section to be taken shall be entered on his enrolment paper, and

LEG. REF.

¹ Substituted by Ordinance LVIII of 1942.

authenticated by his signature and by the signature of the officer administering the oath or affirmation.

Dismissal by Central Government. 13. The Central Government may at any time dismiss from the service any person subject to this Act.

Dismissal by the Air Officer Commanding or prescribed officer. 14. The Air Officer Commanding His Majesty's Air Forces in India, or any prescribed officer, may at any time dismiss from the service any person subject to this Act other than an officer.

15. The prescribed authority may, in conformity with any rules prescribed in this behalf, discharge from service any person subject to this Act.

16. Any enrolled person who is dismissed or discharged from the service shall be furnished by his commanding officer with a certificate setting forth—

- (a) the authority dismissing or discharging him ;
- (b) the cause of his dismissal or discharge ; and
- (c) the full period of his service in the Indian Air Force.

Discharge and dismissal out of India. 17. (1) Any enrolled person who is entitled under the conditions of his enrolment to be discharged, or whose discharge is ordered by competent authority, and who, when he is so entitled or ordered to be discharged, is serving out of India, and requests to be sent to India, shall, before being discharged, be sent to India with all convenient speed.

(2) Any person subject to this Act who is dismissed from the service and who, when he is so dismissed, is serving out of India, shall be sent to India with all convenient speed :

Provided that, where any such person is sentenced to dismissal combined with any other punishment, such other punishment, or, in the case of a sentence of imprisonment, a portion of such other punishment, may be inflicted before he is sent to India.

Reduction. 18. (1) The Air Officer Commanding His Majesty's Air Forces in India, or any prescribed officer, may at any time reduce any warrant officer or any non-commissioned officer to a lower grade or to a lower rank or to the ranks, or any airman other than a warrant officer or non-commissioned officer to a lower class in the ranks.

(2) The commanding officer of an acting non-commissioned officer may order him to revert to his permanent grade as a non-commissioned officer, or, if he has no permanent grade above the ranks, to the ranks.

CHAPTER III.

PUNISHMENTS AND PENAL DEDUCTIONS.

Punishments. 19. Punishments may be inflicted in respect of offences committed by persons subject to this Act, and convicted by court-martial, according to the scale following, that is to say,—

- (a) death ;
- (b) imprisonment, which shall be of two degrees, namely :—
 - (i) long imprisonment, which shall be rigorous and for a term not less than three years and not exceeding fourteen years, and
 - (ii) short imprisonment, which may be rigorous or simple, for a term not exceeding two years ;
- (c) in the case of airmen, detention for a term not exceeding two years ;
- (d) dismissal from the service ;
- (e) in the case of officers and warrant officers, suspension from rank, pay and allowances for a period not exceeding two months ;
- (f) reduction, in the case of a warrant officer, or a non-commissioned officer, to a lower grade, or to a lower rank or to the ranks ;

(g) in the case of officers, warrant officers and non-commissioned officers, forfeiture of seniority of rank;

(h) in the case of officers, warrant officers and non-commissioned officers, reprimand or severe reprimand ;

(i) forfeitures and stoppages as follows, namely:—

(i) forfeiture of service for the purpose of promotion, increased pay, pension or any other prescribed purpose ;

(ii) forfeiture of any military [naval]¹ or air force decoration or military [naval]¹ or air force reward ;

(iii) forfeiture, in the case of a person sentenced to dismissal from the service, of all arrears of pay and allowances due to him at the time of such dismissal ;

(iv) stoppages of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good ;

(v) on active service, forfeiture of pay and allowances for a period not exceeding three months.

20. Where in respect of any offence under this Act there is specified a particular punishment, there may be awarded in respect of

Power to award lower punishments.

that offence instead of such particular punishment (but subject to the other provisions of this Act as to punishments and regard being had to the nature and degree of the offence) any one punishment lower in the above scale than the particular punishment.

21. (1) Where any person, subject to this Act and under the rank of warrant

Field punishment.

officer, on active service is guilty of any offence, it shall be lawful for a court-martial to award for that offence any such punishment as may be prescribed as a field punishment. Field punishment shall be of the character of personal restraint or of hard labour but shall not be of a nature to cause injury to life or limb.

(2) Field punishment shall, for the purpose of commutation, be deemed to stand in the scale of punishments next below dismissal.

22. A sentence of a court-martial may award, in addition to or without

Combination of punishments.

any one other punishment, any one or more of the punishments specified in clauses (d), (f), (h) and (i) of section 19.

Reduction of non-commissioned officers and warrant officers to ranks.

23. A warrant officer or non-commissioned officer sentenced by court-martial to imprisonment, detention, field punishment or dismissal from the service, shall be deemed to be reduced to the ranks.

24. When any enrolled person on active service has been sentenced by court-

Retention in the ranks of person convicted on active service.

martial to dismissal or to imprisonment, whether combined with dismissal or not, the prescribed officer may direct that such person may be retained to serve in the ranks, and where such person has been sentenced to imprisonment, such service shall be reckoned as part of his term of imprisonment.

25. (1) The [Central Government] may prescribe the minor punishments

Minor punishments.

to which persons subject to this Act shall be liable without the intervention of a court-martial, and the officer or officers by whom, and the extent to which, such minor punishments may be awarded.

(2) Detention and, in the case of persons subject to this Act on active service, any prescribed field punishment may be specified as minor punishments :

Provided that—

(a) the term of such detention or field punishment shall not exceed twenty-eight days ; and

(b) detention or field punishment shall not be awarded to any person of

or above the rank of non-commissioned officer, or who, when he committed the offence in respect of which it is awarded, was of or above such rank.

(3) The provisions of sections 77, 78, and 79 shall apply to the proceedings of officers empowered to award minor punishments under this section as if such officers were courts-martial.

26. (1) The following penal deductions may be made from the pay and allowances of an officer of the Indian Air Force, that is to say,—

(a) all pay and allowances due to an officer who absents himself without leave or overstays the period for which leave of absence has been granted to him, unless a satisfactory explanation has been given to his commanding officer and has been approved by the [Central Government];

(b) any sum required to make good such compensation for any expenses, loss, damage or destruction occasioned by the commission of any offence as may be determined by the court-martial by whom he is convicted of such offence [or by any officer exercising authority under section 25]¹;

(c) any sum required to make good the pay of any officer or airman which he has unlawfully retained or unlawfully refused to pay;

(d) any sum required to make good any loss, damage or destruction of public or service property which, after due investigation, appears to the [Central Government] to have been occasioned by any wrongful act or negligence on the part of the officer.

(2) The following penal deductions may be made from the pay and allowances of an airman, that is to say,—

(a) all pay and allowances for every day of absence either on desertion or without leave or as a prisoner of war, and for every day of imprisonment or detention awarded by a criminal court, a court-martial or an officer exercising authority under section 25, or of field punishment, awarded by a court-martial or such officer;

(b) all pay and allowances for every day whilst he is in custody on a charge for an offence of which he is afterwards convicted by a criminal court or court-martial, or on a charge of absence without leave for which he is afterwards awarded imprisonment, detention or field punishment by an officer exercising authority under section 25;

(c) all pay and allowances for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by an offence under this Act committed by him;

(d) for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by his own misconduct or imprudence, such sum as may be prescribed;

(e) all pay and allowances ordered by a court-martial to be suspended or forfeited;

(f) any sum ordered by a court-martial to be stopped;

(g) any sum required to make good such compensation for any expenses caused by him, or for any loss of or damage or destruction done by him to any arms, ammunition, equipment, clothing, instruments, service necessaries, or military decoration, or to any buildings or property, as may be awarded by his commanding officer;

(h) any sum required to pay a fine awarded by a criminal Court, a court-martial exercising jurisdiction under section 58 or an officer exercising authority under section 25;

Provided that the total deductions from the pay and allowances of a person subject to this Act made under clauses (e) to (g) both inclusive, shall not (except in the case of a person sentenced to dismissal) exceed in any one month one-half of his pay and allowances for that month.

Explanation.—For the purposes of clauses (a) and (b)—

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¹ Inserted by Act XXI of 1943.

(i) no person shall be treated as absent, imprisoned, or detained, unless the absence, imprisonment, or detention has lasted six hours or upwards, except where the absence prevented the absentee from fulfilling any air force duty which was thereby thrown on some other person ;

(ii) a period of absence, imprisonment, or detention which commences before and ends after midnight may be reckoned as a day ;

(iii) the number of days shall be reckoned as from the time when the absence, imprisonment, or detention commences ; and

(iv) no period of less than twenty-four hours shall be reckoned as more than one day.

27. Any sum authorised by this Act to be deducted from the pay and allow-

Deductions from public money other than pay.

ances of any person may, without prejudice to any other mode of recovering the same, be deducted from any public money due to him other than a pension.

28. Any deduction from pay and allowances authorised by this Act may be

Remission of deductions.

remitted in such manner and to such extent and by such authority as may from time to time be prescribed.

29. In the case of all persons subject to this Act being prisoners of war, whose

Provision for dependants of prisoners of war.

pay and allowances have been forfeited under section 26, but in respect of whom a remission has been made under section 28, it shall be lawful, notwithstanding any provision in any enactment or any rule of law to the contrary, for proper provision to be made by the prescribed authorities out of such pay and allowances for any dependants of such persons, and any such remission shall in that case be deemed to apply only to the balance thereafter remaining of such pay and allowances.

30. The pay of an officer or airman of the Indian Air Force shall be paid

Unauthorised deductions forbidden.

without any deduction other than the deductions authorised by this Act or by any other enactment for the time being in force or prescribed by the [Central

Government.]

CHAPTER IV.

AIR FORCE OFFENCES.

Service offences punishable with death.

31. Any person subject to this Act who—

(a) shamefully abandons or delivers up any garrison, fortress, post, or guard committed to his charge, or which it is his duty to defend, or

(b) shamefully casts away his arms, ammunition or tools in the presence of the enemy, or

(c) treacherously holds corresponds with or gives intelligence to the enemy, or treacherously or through cowardice sends a flag of truce to the enemy, or

(d) assists the enemy with arms, ammunition, or supplies, or knowingly harbours or protects an enemy not being a prisoner, or

(e) having been made a prisoner of war, voluntarily serves with or voluntarily aids the enemy, or

(f) voluntarily does when on active service any act calculated to imperil the success of His Majesty's Forces or any part thereof, or

(g) treacherously or shamefully causes the capture or destruction by the enemy of any of His Majesty's aircraft, or

(h) treacherously gives any false air signal or alters or interferes with any air signal, or

(i) when ordered by his superior officer or otherwise under orders to carry out any warlike operation in the air, treacherously or shamefully fails to use his utmost exertions to carry such orders into effect, shall be punishable with death.

Service offences punishable
with long imprisonment.

32. Any person subject to this Act, who, on active service,—

(a) without orders from his superior officer leaves the ranks in order to secure prisoners or horses, or on pretence of taking wounded men to the rear, or

(b) without orders from his superior officer wilfully destroys or damages any property, or

(c) is taken prisoner by want of due precaution or through disobedience of orders or wilful neglect of duty, or, having been taken prisoner, fails to rejoin His Majesty's service when able to do so, or

(d) without due authority either holds correspondence with, or gives intelligence, or sends a flag of truce to the enemy, or

(e) by word of mouth, or in writing, or by signals, or otherwise spreads reports calculated to create unnecessary alarm or despondency, or

(f) in action, or previously to going into action, uses words calculated to create alarm or despondency, or

(g) negligently causes the capture or destruction by the enemy of any of His Majesty's aircraft, or

(h) when ordered by his superior officer or otherwise under orders to carry out any warlike operation in the air, negligently or through other default fails to use his utmost exertions to carry such orders into effect, or

(i) misbehaves before the enemy in such manner as to show cowardice, shall be punishable with long imprisonment.

33. (1) Any person subject to this Act who treacherously makes known the

Service offences punishable
more severely if committed
on active service.

watchword to any person not entitled to receive it, or treacherously gives a watchword different from what he received, shall, if he commits the offence on active

service, be punishable with death, and, if he commits the offence not on active service, with short imprisonment.

(2) Any person subject to this Act who—

(a) without due authority alters or interferes with any air signal, or

(b) forces a safeguard, or

(c) forces or strikes a sentinel, or

(d) breaks into any house or other place in search of plunder, or

(e) being an airman acting as sentinel, sleeps or is intoxicated, or

(f) without orders from his superior officer leaves his guard, piquet, patrol or post, or

(g) by discharging fire arms, making signals, using words, or by any means whatever, intentionally occasions false alarms, or

(h) being an airman acting as sentinel, leaves his post before he is regularly relieved,

shall, if he commits the offence on active service, be punishable with long imprisonment, and, if he commits the offence not on active service, with short imprisonment.

Service offences punishable
with short imprisonment.

34. Any person subject to this Act who,—

(a) by discharging fire arms, making signals, using words, or by any means whatever, negligently occasions false alarms, or

(b) makes known the watchword to any person not entitled to receive it, or, without good and sufficient cause, gives a watchword different from what he received, or

(c) impedes the provost-marshal or any assistant provost-marshal or any officer or non-commissioned officer or other person legally exercising authority under or on behalf of the provost-marshal, or, when called on, refuses to assist in the execution of his duty the provost-marshal, the assistant provost-marshal, or any such officer, non-commissioned officer or other person, or

(d) uses criminal force to or commits an assault on any person bringing provisions or supplies to the forces, or commits any offence against the property or person of any inhabitant of or resident in the country in which he is serving, or

(e) irregularly detains or appropriates to his own unit or detachment any provisions or supplies proceeding to the forces, contrary to orders issued in that respect, shall be punishable with short imprisonment.

Mutiny.

35. Any person subject to this Act who—

(a) begins, incites, causes or conspires with any other persons to cause any mutiny in any of His Majesty's naval, military or air forces or

(b) joins in, or, being present, does not use his utmost endeavours to suppress any such mutiny, - or

(c) knowing or having reason to believe in the existence of any such mutiny, or of any intention to commit such mutiny, or of any such conspiracy, does not without delay give information thereof to his commanding or other superior officer,

shall be punishable with death.

Insubordination punishable with long imprisonment.

36. Any person subject to this Act who,—

(a) uses criminal force to or assaults his superior officer, being in the execution of his office, or

(b) disobeys in such manner as to show a wilful defiance of authority any lawful command given personally by his superior officer in the execution of his office, shall be punishable with long imprisonment.

Insubordination punishable more severely if committed on active service.

37. Any person subject to this Act who—

(a) uses criminal force to or assaults his superior officer, or

(b) uses threatening or insubordinate language to his superior officer, or

(c) disobeys any lawful command given by his superior officer, shall, if he commits the offence on active service, be punishable with long imprisonment, and, if he commits the offence not on active service, with short imprisonment.

Insubordination punishable with short imprisonment.

38. Any person subject to this Act who,—

(a) being concerned in any quarrel, affray or disorder, refuses to obey any officer (though of inferior rank) who orders him into arrest, or uses criminal force to or assaults any such officer, or

(b) uses criminal force to or assaults any person, whether subject to this Act or not, in whose custody he is placed, whether he is or is not his superior officer, or

(c) resists an escort whose duty it is to apprehend him or to have him in charge, or

(d) being an airman, breaks out of barracks, camp or quarters, or

(e) neglects to obey any general, local or other orders (not being orders in the nature of a rule or regulation published for the general information and guidance of the Indian Air Force), shall be punishable with short imprisonment.

39. Any person subject to this Act who deserts or attempts to desert the service

Desertion.

shall, if he commits the offence when on active service or under orders for active service, be punishable with long imprisonment and, if he commits the offence under any other circumstances, with short imprisonment.

40. Any person subject to this Act who, when belonging to the Indian Air

Fraudulent enlistment.

Force, without having obtained a regular discharge therefrom, or otherwise fulfilled the conditions enabling him to enlist, enrol or enter, enrolls himself, or enlists in or enters any other of His Majesty's air forces, or any of His Majesty's military or naval forces, or re-enrolls himself in the Indian Air Force, shall be deemed to be guilty of fraudulent enlistment, and shall be punishable with short imprisonment.

41. Any person subject to this Act who, being cognisant of any desertion or

Connivance at desertion.

intended desertion of a person subject to this Act, does not forthwith give notice to his commanding

officer, or take any steps in his power to cause the deserter or intending deserter to be apprehended, shall be punishable with short imprisonment.

Absence from duty without leave.

42. Any person subject to this Act who—

- (a) absents himself without leave, or
- (b) fails to appear at the time fixed at a parade or place appointed for exercise or duty, or goes from thence without leave before he is relieved, or without necessity quits his duty or duties, or
- (c) being an airman, when in camp or garrison or elsewhere, is found beyond any limits fixed or in any place prohibited by any general, local or other order, without a pass or written leave from his superior officer, or
- (d) being an airman, without leave from his superior officer, or without due cause, absents himself from any school when duly ordered to attend there, shall be punishable with short imprisonment.

43. Any officer or warrant officer subject to this Act who behaves in a manner unbecoming his position and character shall, notwithstanding anything contained in section 20, be dismissed from the service.

Scandalous conduct of officer.

Scandalous conduct punishable with long imprisonment.

44. Any person subject to this Act who,—

- (a) steals any property of [the Crown] or dishonestly misappropriates or converts to his own use any property of [the Crown] entrusted to him, or
- (b) dishonestly receives or retains any property in respect of which an offence under clause (a) has been committed, knowing or having reason to believe it to have been stolen or dishonestly misappropriated or converted, or
- (c) wilfully destroys or damages any property of [the Crown] entrusted to him, or
- (d) steals any property of any air force mess, band or institution, or of any person subject to this Act or serving with or attached to the Indian Air Force, or dishonestly misappropriates or converts to his own use any such property entrusted to him, or
- (e) dishonestly receives or retains any property in respect of which an offence under clause (d) has been committed, knowing or having reason to believe it to have been stolen or dishonestly misappropriated or converted, shall be punishable with long imprisonment.

Scandalous conduct punishable with short imprisonment.

45. Any person subject to this Act who—

- (a) does any act, not otherwise specified in this Act, with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person, or
- (b) malingers or feigns or produces disease or infirmity himself, or intentionally delays his cure or aggravates his disease or infirmity, or
- (c) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or any other person, or
- (d) commits any offence of a cruel, indecent or unnatural kind, or attempts to commit any such offence and does any act towards its commission, shall be punishable with short imprisonment.

46. Any person subject to this Act who is found in a state of intoxication,

Intoxication.

whether on duty or not on duty, shall be punishable, if an officer, with dismissal from the service, and, if an

airman, with short imprisonment :

Provided that where the offence of being intoxicated is committed by an airman not on active service or on duty, the sentence imposed shall not exceed detention for a period of six months.

Permitting escape of prisoner.

47. Any person subject to this Act who—

- (a) when in command of a guard, piquet, patrol or post, releases without proper authority, whether voluntarily or otherwise, any person committed to his charge, or

(b) voluntarily or negligently allows to escape any person who is committed to his charge, or whom it is his duty to keep or guard, shall be punishable, if he has acted voluntarily, with long imprisonment, and, if he has not acted voluntarily, with short imprisonment.

Irregular keeping in custody 48. Any person subject to this Act who—

(a) unnecessarily detains a person in arrest or confinement without bringing him to trial or fails to bring his case before the proper authority for investigation, or

(b) having committed a person to the custody of any officer, non-commissioned officer, provost-marshal, or assistant provost-marshal, fails without reasonable cause to deliver at the time of such committal, or as soon as practicable, and in any case within twenty-four hours thereafter, to the officer, non-commissioned officer, provost-marshal, or assistant provost-marshal, into whose custody the person is committed, an account in writing signed by himself of the offences with which the person so committed is charged, or

(c) being in command of the guard, does not as soon as he is relieved from his guard or duty, or if he is not sooner relieved, within twenty-four hours after a person is committed to his charge, give in writing to the officer to whom he may be ordered to report that person's name and offence so far as known to him, and the name and rank of the officer or other person by whom he was charged, accompanied, if he has received the account as above in this section mentioned, by that account, shall be punishable with short imprisonment.

Escape from custody. 49. Any person subject to this Act, who, being in lawful custody, escapes or attempts to escape, shall be punishable with short imprisonment.

Offences relating to property. 50. Any person subject to this Act who—

(a) commits extortion, or without proper authority exacts from any person carriage, portage or provisions, or

(b) in time of peace, commits house-breaking for the purpose of plundering, or plunders, destroys or damages any field, garden or other property, or

(c) voluntarily or negligently kills, injures, makes away with, ill-treats or loses any animal used in the public service, or

(d) makes away with, or is concerned in making away with, any arms, ammunition, equipments, instruments, tools, clothing or service necessaries issued to him or required to be maintained by him, or

(e) loses by neglect anything mentioned in clause (d), or

(f) wilfully damages anything mentioned in clause (d) or any property belonging to [the Crown], or to any air force mess, band or institution, or to any person subject to air force law, or serving with, or attached to the Indian Air Force, or

(g) sells, pawns, destroys or defaces any medal or decoration granted to him, shall be punishable with short imprisonment.

False accusations and offences relating to documents. 51. Any person subject to this Act who—

(a) makes a false accusation against any person subject to this Act, knowing such accusation to be false, or

(b) in making any complaint under section 120, knowingly makes any false statement affecting the character of any person subject to this Act, or knowingly and wilfully suppresses any material fact, or

(c) obtains or attempts to obtain for himself or for any other person any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any document or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement, or

(d) knowingly furnishes a false return or report of the number or state of any men under his command or charge, or of any money, arms, ammunition,

clothing, equipments, stores or other property in his charge, whether belonging to such men or to [the Crown] or to any person in or attached to the Indian Air Force, or who, wilfully or negligently, omits or refuses to make or send any return or report of the matters aforesaid, shall be punishable with short imprisonment.

52. Any person having become subject to this Act who is discovered to have made a wilfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer shall be punishable with short imprisonment.

False answers on enrolment.
Offences relating to Courts-martial.

53. Any person subject to this Act who,—
(a) when duly summoned to attend as a witness before a court-martial, intentionally omits to attend or refuses to be sworn or affirmed or to answer any question, or to produce or deliver up any document or other thing which he may have been duly warned and called upon to produce or deliver up, or

(b) intentionally offers any insult or causes any interruption or disturbance to, or uses any menacing or disrespectful word, sign or gesture, or is insubordinate or violent in the presence of, a court-martial while sitting, or

(c) having been duly sworn or affirmed before any court-martial or other court or officer authorised by this Act to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true,

shall be punishable with short imprisonment.

Offences relating to aircraft.

54. Any person subject to this Act who,—
(a) voluntarily or negligently damages, destroys or loses any of His Majesty's aircraft or aircraft material, or

(b) is guilty of any act or omission likely to cause such damage, destruction or loss, or

(c) is guilty of any act or omission (whether voluntary or otherwise) which causes damage to or destruction of any public property by fire, or

(d) without lawful authority disposes of any of His Majesty's aircraft or aircraft material, or

(e) is guilty of any act or omission in flying or in the use of any aircraft, or in relation to any aircraft or aircraft material which causes or is likely to cause loss of life or bodily injury to any person, or

(f) during a state of war voluntarily and without proper occasion or negligently causes the sequestration, by or under the authority of a neutral State, or the destruction in a neutral State of any of His Majesty's aircraft, shall be punishable, if he has acted voluntarily, with long imprisonment, and if he has not acted voluntarily, with short imprisonment.

Miscellaneous air force offences.

55. Any person subject to this Act who,—
(a) strikes or otherwise ill-treats any person subject to this Act being his subordinate in rank or position, or

(b) being in command at any post or on the march and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person or to report the case to the proper authority, or

(c) by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person, or

(d) attempts to commit suicide and does any act towards the commission of such offence, or

(e) being below the rank of warrant officer, when off duty, appears, without proper authority, in or about camp or cantonments, or in or about, or when going to or returning from, any town or bazar, carrying a sword, bludgeon or other offensive weapon, or

(f) directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service, or

(g) is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and air force discipline, shall be punishable with short imprisonment.

56. Any person subject to this Act who attempts to commit an air force offence or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence may, where no express provision is made by this Act for the punishment of such attempt, be punished with the punishment provided in this Act for such offence.

57. Any person subject to this Act who abets the commission of any air force offence, or of any offence punishable under the Army Act [the Naval Discipline Act or that Act as modified by the Indian Navy (Discipline) Act, 1934,¹ the Air Force Act or the Indian Army Act, 1911, such offence being of the same nature as any air force offence, shall be punishable with the punishment provided in this Act for such air force offence.

58. (1) Any person subject to this Act who at any place in or beyond British India commits any civil offence shall be deemed to be guilty of an air force offence, and, if charged there-with under this section, shall be liable to be tried by court-martial and to be punished as follows, that is to say :—

(a) if the offence is one which would be punishable under the law of British India with death or with transportation, he shall be liable to suffer any punishment other than whipping, assigned for the offence by the law of British India ; and

(b) in other cases, he shall be liable to suffer any punishment, other than whipping, assigned for the offence by the law of British India, or such punishment as might be awarded to him in pursuance of this Act in respect of an act prejudicial to good order and air force discipline :

Provided that a person subject to this Act who, at any place in British India or at any place in which [the Central Government or the Crown Representative] exercises powers and jurisdiction by virtue of [the Government of India Act, 1935, or of any Order in Council made under the Foreign Jurisdiction Act, 1890] and while not on active service, commits an offence of murder or culpable homicide against a person not subject to this Act or an offence of rape, shall not be deemed to be guilty of an air force offence and shall not be tried by court-martial.

(2) The powers of a court-martial to charge and to punish any person under this section shall not be affected by reason of the civil offence with which such person is charged being also an air force offence.

CHAPTER V.

ARREST AND PROCEEDINGS BEFORE TRIAL.

59. (1) Any person subject to this Act who is charged with an offence may be taken into air force custody.

(2) Any such person may be ordered into air force custody by any superior officer.

(3) The charge against every person taken into air force custody shall, without unnecessary delay, be investigated by the proper authority, and as soon as may be, either proceedings shall be taken for punishing the offence, or such person shall be discharged from custody.

60. Whenever any person subject to this Act, who is accused of any offence under this Act, is within the jurisdiction of any Magistrate or police-officer such Magistrate or officer shall

Arrest by civil authorities. aid in the apprehension and delivery to air force custody of such person upon receipt of a written application to that effect signed by his commanding officer.

61. (1) Whenever any person subject to this Act deserts, his commanding officer shall give written information of the desertion

Capture of deserters. to such civil authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a Magistrate and shall deliver the deserter, when apprehended, to air force custody.

(2) Any police-officer may arrest without warrant any person reasonably believed to be subject to this Act and to be travelling without authority, and shall bring him without delay before the nearest Magistrate, to be dealt with according to law.

62. (1) When any person subject to this Act has been absent without due authority from his duty for a period of twenty-one

Inquiry on absence without leave. days, a court of inquiry shall, as soon as practicable, be assembled and, upon oath or affirmation administered in the prescribed manner, shall inquire respecting the absence of the person, and the deficiency, if any, of property of [the Crown] entrusted to his care, or of his arms, ammunition, equipments, instruments, clothing or necessities; and, if satisfied of the fact of such absence without due authority or other sufficient cause, the Court shall declare such absence and the period thereof, and the said deficiency, if any; and the commanding officer of the unit to which the person belongs shall enter in the court-martial book of the unit a record of the declaration.

(2) If the person declared absent does not afterwards surrender, or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter.

63. For the prompt and instant repression of irregularities and offences

Provost-marshal. committed in the field or on the march, provost-marshals may be appointed by the Air Officer Commanding His Majesty's Air Forces in India; and the powers and duties of such provost-marshals shall be regulated according to the established custom of war and the rules of the service.

64. The duties of a provost-marshal so appointed are to take charge of persons

Duties and powers. in air force custody, to preserve good Order and discipline and to prevent breaches thereof by persons subject to this Act.

He may at any time arrest and detain for trial any person subject to this Act who commits an offence and may also carry into effect any punishments to be inflicted in pursuance of the sentence of a court-martial.

CHAPTER VI.

CONSTITUTION, JURISDICTION AND POWERS OF COURTS-MARTIAL.

Kinds of courts-martial.

65. For the purposes of this Act there shall be three kinds of courts-martial, that is to say,—

- (1) general courts-martial;
- (2) district courts-martial; and
- (3) field general courts-martial.

Power to convene general courts-martial. 66. A general court-martial may be convened by the [Central Government] or by any officer empowered in this behalf by warrant of the [Central Government].

Power to convene district courts-martial. 67. A district court-martial may be convened by any authority having power to convene a general court-martial, or by any officer empowered in this behalf by warrant of any such authority.

Limitation of powers of convening authorities. 68. A warrant issued under section 66 or section 67 may contain such restrictions, reservations or conditions as the authority issuing it may think fit.

Convening of field general courts-martial. 69. The following authorities shall have power to convene a field general court-martial, that is to say,—

(a) an authority empowered in this behalf by an order of the [Central Government];

(b) on active service, the commanding officer of the forces in the field, or any officer empowered by him in this behalf ;—

(c) the commanding officer of any detached portion of the Indian Air Force on active service, when, in his opinion, it is not practicable, with due regard to discipline or the exigencies of the service, that an offence should be tried by a general court-martial, and circumstances prevent a reference to higher authority.

70. A general court-martial shall consist of not less than five officers each of whom must have held a commission during not less than three whole years and of whom not less than four must be of a rank not below that of a flight lieutenant.

Composition of district courts-martial. 71. A district court-martial shall consist of not less than three officers.

Composition of field general courts-martial. 72. A field general court-martial shall consist of not less than three officers.

Dissolution of courts-martial. 73. (i) If a court-martial after the commencement of a trial is reduced below the smallest number of officers of which it is by this Act required to consist, it shall be dissolved.

(2) If, on account of the illness of the accused before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

(3) Where a court-martial is dissolved under this section, the accused may be tried again.

Jurisdiction and powers of courts-martial generally. 74. Save as otherwise provided by or under this Act, courts-martial shall have—

(a) jurisdiction to try and to punish all air force offences, and all civil offences committed by persons subject to this Act ;

(b) exclusive jurisdiction to try all air force offences which are not also civil offences ; and

(c) exclusive power to award the punishments specified in this Act.

Jurisdiction and powers of general and field general courts-martial. 75. A general or field general court-martial shall have power to try any person subject to this Act for any offence made punishable therein, and to pass any sentence authorised by this Act.

76. A district court-martial shall have power to try any person subject to this Act other than an officer for any offence made punishable therein, and to pass any sentence authorised by this Act other than a sentence of death or imprisonment for a term exceeding two years.

77. When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been summarily dealt with for an offence under section 25, he shall not be liable to be tried again for the same offence by a court-martial.

78. No trial by court-martial of any person subject to this Act for any offence (other than an offence of mutiny, desertion or fraudulent enlistment) shall be commenced after the expiration of three years from the date of such offence, and no such trial for an offence of desertion (other than desertion on active service) or of fraudulent enlistment shall be commenced if the person in question has, subsequently to the commission of the

offence, served continuously in an exemplary manner for not less than three years with any portion of His Majesty's regular forces.

Explanation.—For the purposes of this section “mutiny” means any of the offences specified in section 35.

79. Any person subject to this Act who commits any offence against it may be tried and punished for such offence in any place
Place of trial. whatever.

80. When a criminal Court and a court-martial have each jurisdiction in respect of a civil offence, it shall be in the discretion of the prescribed air force authority to decide before which court the proceedings shall be instituted, and, if that authority decides that they shall be instituted before a court-martial, to direct that the accused person shall be detained in air force custody.

81. (1) When a criminal Court having jurisdiction is of opinion that proceedings ought to be instituted before itself in respect of any civil offence, it may, by written notice, require the prescribed air force authority at the option of such authority either to deliver over the offender to the nearest Magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the [Central Government].

(2) In every such case the said authority shall either deliver over the offender in compliance with the requisition or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the [Central Government], whose order upon such reference shall be final.

82. (1) Notwithstanding anything contained in section 26 of the General Clauses Act, 1897, or in section 403 of the Code of Criminal Procedure, 1898, a person convicted or acquitted by a court-martial may be afterwards tried by a criminal Court for the same offence or on the same facts.

(2) If a person sentenced by a court-martial in pursuance of this Act to punishment for an offence is afterwards tried by a criminal Court for the same offence or on the same facts that Court shall, in awarding punishment, have regard to the air force punishment he may already have undergone.

CHAPTER VII.

PROCEDURE OF COURTS-MARTIAL.

President.

83. At every court-martial the senior member shall sit as president.

84. Every general court-martial shall, and every district court-martial may, be attended by a judge advocate, who shall be either

Judge Advocate. an officer belonging to the department of the Judge Advocate-General in India, or, if no such officer is available, a fit person appointed by the convening officer.

85. (1) At all trials by courts-martial, as soon as the Court is assembled, the names of the president and members shall be read over to the accused, who shall thereupon be asked whether

Challenges. he objects to being tried by any officer sitting on the Court.

(2) If the accused objects to any such officer, his objection, and also the reply thereto of the officer objected to, shall be heard and recorded, and the remaining officers of the Court shall, in the absence of the challenged officer, decide on the objection.

(3) If the objection is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.

(4) When no challenge is made, or when challenge has been made and disallowed, or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or allowed, the Court shall proceed with the trial.

86. (1) Every decision of a court-martial shall be passed by an absolute majority of votes; and where there is an equality of votes, as to either finding or sentence, the decision shall be in favour of the accused:

Provided that no sentence of death shall be passed without the concurrence of two-thirds at the least of the members of the Court.

(2) In matters other than a challenge or the finding or sentence, the president shall have a casting vote.

87. An oath or affirmation in the prescribed form shall be administered to every member of every court-martial and to the judge advocate at the beginning of the trial.

88. Every person giving evidence at a court-martial shall be examined on oath or affirmation, and shall be duly sworn or affirmed in the prescribed form.

89. (1) The convening officer, the president of the Court, the judge advocate, or the commanding officer of the accused person, may, by summons under his hand, require the attendance before the Court, at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing.

(2) In the case of a witness amenable to air force [, naval]¹ or military authority, the summons shall be sent to the officer commanding the corps, [ship,]¹ unit, department or detachment to which he belongs, and such officer shall serve it upon him accordingly.

(3) In the case of any other witness, the summons shall be sent to the Magistrate within whose jurisdiction he may be or reside, and such Magistrate shall give effect to the summons as if the witness were required in the Court of such Magistrate.

(4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with reasonable precision.

(5) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to any document in the custody of the postal or telegraph authorities.

(6) If any document in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any court-martial, such Magistrate or Court may require the postal or telegraph authorities, as the case may be, to deliver such document to such person as such Magistrate or Court may direct.

(7) If any such document is, in the opinion of any other Magistrate or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the postal or telegraph authorities, as the case may be, to cause search to be made for and to detain such document pending the orders of any such District Magistrate, Chief Presidency Magistrate or Court.

90. (1) Whenever, in the course of a trial by court-martial, it appears to the Court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable, such Court may address the Judge Advocate-General in order that a commission to take the evidence of such witness may be issued.

(2) The Judge Advocate-General may then, if he thinks necessary, issue a commission to any Presidency Magistrate, District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(3) When the witness resides in [any Indian State or tribal area] in which there is an official representing [the Central Government or the Crown Representative] the commission may be issued to such official.

(4) The Magistrate or official to whom the commission is issued, or if he is the District Magistrate, he or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under the Code of Criminal Procedure, 1898.

(5) Where the commission is issued to such official as is mentioned in sub-section (3), he may delegate his powers and duties under the commission to any official subordinate to him whose powers are not less than those of a Magistrate of the first class in British India.

(6) When the witness resides out of India, the commission may be issued to any British Consular officer, British Magistrate or other British official competent to administer an oath or affirmation in the place where such witness resides.

(7) The prosecutor and the accused person in any case in which a commission is issued may respectively forward any interrogatories in writing which the Court may think relevant to the issue, and the Magistrate or official to whom the commission is issued shall examine the witness upon such interrogatories.

(8) The prosecutor and the accused person may appear before such Magistrate or official by pleader or, except in the case of an accused person in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

(9) After any commission issued under this section has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Judge Advocate-General.

(10) On receipt of a commission and deposition returned under sub-section (9), the Judge Advocate-General shall forward the same to the Court at whose instance the commission was issued or, if such Court has been dissolved, to any other court convened for the trial of the accused person; and the commission, the return thereto and the deposition shall be open to the inspection of the prosecutor and the accused person, and may, subject to all just exceptions, be read in evidence in the case by either the prosecutor or the accused, and shall form part of the proceedings of the Court.

(11) In every case in which a commission is issued under this section the trial may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

Explanation.—In this section, the expression “Judge Advocate-General” means the Judge Advocate-General in India and includes a Deputy Judge Advocate-General.

Conviction of one offence permissible on charge of another.

91. (1) A person charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(2) A person charged before a court-martial with attempting to desert may be found guilty [* *]¹ of being absent without leave.

(3) A person charged before a court-martial with using criminal force may be found guilty of assault.

(4) A person charged before a court-martial with using threatening language may be found guilty of using insubordinate language.

(5) A person charged before a court-martial with any of the offences specified

LEG. REF.

Act XXI of 1943.

¹ The words “of desertion or” omitted by

clause (a), clause (b), clause (d) or clause (e) of section 44 may be found guilty of any other of these offences with which he might have been charged.

(6) A person charged before a court-martial with an offence punishable under section 58 may be found guilty of any other offence of which he might have been found guilty if the provisions of the Code of Criminal Procedure, 1898, were applicable.

(7) A person charged before a court-martial with any other offence under this Act may, on failure of proof of an offence having been committed in circumstances involving a more severe punishment, be found guilty of the same offence as having been committed in circumstances involving a less severe punishment.

(8) A person charged before a court-martial with any offence under this Act may be found guilty of having attempted to commit or of abetment of that offence although the attempt or abetment is not separately charged.

General rule as to evidence. 92. The Indian Evidence Act, 1872, shall, subject to the provisions of this Act, apply to all proceedings before a court-martial.

Judicial notice. 93. A court-martial may take judicial notice of any matter within the general, naval, military or air force knowledge of the members.

94. In any proceeding under this Act, any application, certificate, warrant reply or other document purporting to be signed by an officer in [the service of the Crown] shall, on production, be presumed to have been duly signed by the person and in the character by whom and in which it purports to have been signed, until the contrary is shown.

Enrolment paper as evidence. 95. Any enrolment paper purporting to be signed by an enrolling officer shall, in proceedings under this Act, be evidence of the person enrolled having given the answers to questions which he is therein represented as having given. The enrolment of such person may be proved by the production of a copy of his enrolment paper purporting to be certified to be a true copy by the officer having the custody of the enrolment paper.

Presumption as to certain documents. 96. (1) A letter, return or other document respecting the service of any person in, or the dismissal or discharge of any person from, any portion of His Majesty's Forces, or respecting the circumstance of any person not having served in, or belonged to, any portion of His Majesty's Forces, if purporting to be signed by or on behalf of the [Central Government] or the Commander-in-Chief in India or by any prescribed officer, shall be evidence of the facts stated in such letter, return or other document.

(2) An Army List, [Navy List,]¹ Air Force List or Gazette purporting to be published by authority shall be evidence of the status and rank of the officers or warrant officers therein mentioned, and of any appointment held by such officers or warrant officers and of the corps, [ship,]¹ unit, battalion, arm, branch or department of the service to which such officers or warrant officers belong.

(3) Where a record is made in any service book in pursuance of this Act or of any rules made thereunder or otherwise in pursuance of air force duty, and purports to be signed by the commanding officer or by the officer whose duty it is to make such record, such record shall be evidence of the facts thereby stated.

(4) A copy of any record in any service book purporting to be certified to be a true copy by the officer having the custody of such book shall be evidence of such record.

(5) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of, or has been apprehended by, a provost-marshal, assistant provost-marshal or other officer, or any portion of His Majesty's Forces, a certificate

LEG. REF.

¹ Inserted by Act XXXV of 1934.

purporting to be signed by such provost-marshal, assistant provost-marshal or other officer, or by the commanding officer of that portion of His Majesty's Forces and stating the fact, date and place of such surrender or apprehension, shall be evidence of the matters so stated.

(6) When any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of, or has been apprehended by, a police-officer not below the rank of an officer in charge of a police-station, a certificate purporting to be signed by such police-officer and stating the fact, date and place of such surrender or apprehension, shall be evidence of the matters stated.

(7) Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report may be used as evidence in any proceeding under this Act.

97. (1) If at any trial for desertion, absence without leave, overstaying leave or not rejoining when warned for service, the person tried states in his defence any sufficient or reasonable excuse for his unauthorised absence, and refers in support thereof to any officer in [the service of the Crown], or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the Court shall address such officer and adjourn until his reply is received.

(2) The written reply of any officer so referred to shall, if signed by him, be received in evidence and have the same effect as if made on oath before the Court.

(3) If the Court is dissolved before the receipt of such reply, or if the Court omits to comply with the provisions of this section, the convening officer may, at his discretion, annul the proceedings and order a fresh trial by the same or another court-martial.

98. (1) When any person subject to this Act has been convicted by a Court-martial of any offence such court-martial may inquire into and receive and record evidence of, any previous convictions of such person, either by a court-martial established under this Act or any other enactment or by a criminal court, and may further inquire into and record the service character of such person.

(2) Evidence received under this section may be either oral or in the shape of entries in, or certified extracts from, court-martial books or other official records; and it shall not be necessary to give notice before trial to the person tried that evidence as to his previous convictions or service character will be received.

99. When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before a court-martial during a trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the trial, and if the property is subject to speedy or natural decay may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

CHAPTER VIII.

CONFIRMATION, REVISION, PARDON AND REMISSION OF SENTENCES.

Finding and sentence invalid without confirmation.

100. No finding or sentence of a general or district court-martial shall be valid except so far as it may be confirmed as provided by this Act.

Power to confirm finding and sentence of general court-martial.

101. The findings and sentences of general courts-martial may be confirmed by the [Central Government] or by any officer empowered in this behalf by warrant of the [Central Government].

Power to confirm finding and sentence of district court-martial.

102. The findings and sentences of district courts-martial may be confirmed by any authority having power to convene a general court-martial, or by any officer empowered in this behalf by warrant of any such authority.

Limitation of powers of confirming authorities.

103. A warrant issued under section 101 or section 102 may contain such restrictions, reservations or conditions as the authority issuing it may think fit.

Confirmation of finding and sentence of field general court-martial.

104. (1) Save as provided in sub-sections (2) and (3), a finding and sentence of a field general court-martial shall not require to be confirmed, and may be carried out forthwith.

(2) The finding and sentence of a field general court-martial shall require to be confirmed—

(a) in the case of the trial of an officer,

(b) in the case of a sentence of death or of imprisonment for a term exceeding two years, and

(c) in any other case if so ordered by the convening authority.

(3) Such finding and sentence may be confirmed by the convening authority or, if the convening authority so directs, by an authority superior to the convening authority.

105. Subject to such restrictions as may be contained in any warrant issued under section 101 or section 102, a confirming authority may, if it confirms the sentence of a court-martial, mitigate or remit the punishment thereby awarded, or commute that punishment for any punishment or punishments lower in the scale laid down in section 19.

Power of confirming authority to mitigate, remit or commute sentences.

106. When any person subject to this Act is tried and sentenced by court-martial while on board ship, the finding and sentence so far as not confirmed and executed on board ship may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation.

Confirmation of finding and sentence on board ship.

107. (1) Any finding or sentence of a court-martial which requires confirmation may be once revised by order of the confirming authority; and on such revision, the Court, if so directed by the confirming authority, may take additional evidence.

Revision of finding or sentence.

(2) The Court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent.

(3) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the Court shall proceed with the revision, provided that if a general court-martial, it still consists of five officers, or, if a district court-martial, of three officers.

[108. (1) Where a finding guilty by a court-martial, which has been confirmed, or which does not require confirmation, is found for any reason to be invalid or cannot be supported by the evidence, the authority which would have had power under section 110, to commute the punishment awarded by the sentence, if the finding had been valid, may substitute a new finding, if the new finding could have been validly made by the court-martial on the charge and if it appears that the court-martial must have been satisfied of the facts establishing the offence specified or involved in the new finding, and may pass a sentence for the said offence.

Substitution of a valid finding or sentence for an invalid finding or sentence.

(2) Where a sentence passed by a court-martial, which has been confirmed, or which does not require confirmation, not being a sentence passed in pursuance of a new finding substituted under sub-section (1), is found for any reason to be invalid, the authority which would have had power under section 110 to commute the punishment awarded by the sentence if it had been valid may pass a valid sentence.

(3) The punishment awarded by a sentence passed under sub-section (1) or sub-section (2) shall not be higher in the scale of punishments than, or in excess of the punishment awarded by the sentence for which a new sentence is substituted under this section.]¹

109. (1) Whenever, in the course of a trial by court-martial, it appears to the Court that the person charged is of unsound mind and consequently incapable of making his defence, or that such person committed the act alleged, but was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, the Court shall record a finding accordingly, and the president of the Court shall forthwith report the case to the confirming authority or, in the case of a field general court-martial, to the prescribed officer.

(2) A confirming authority to whom a case is reported under sub-section (1) may, if it does not confirm the finding, take steps to have the accused person tried by the same or another court-martial for the offence with which he was originally charged.

(3) A prescribed officer to whom a case is reported under sub-section (1) and a confirming authority confirming a finding in any case so reported to it shall order the accused person to be kept in custody in the prescribed manner, and, where the confirming authority is not itself the [Central Government] shall report the case for the orders of the [Central Government].

(4) On receipt of a report under sub-section (1) or sub-section (3), the [Central Government] may order the accused person to be detained in a lunatic asylum or other suitable place of safe custody.

(5) Where an accused person, having been found by reason of unsoundness of mind to be incapable of making his defence, is in custody or under detention, the prescribed officer may—

(a) if such person is in custody under sub-section (3), on the report of a medical officer that he is capable of making his defence, or

(b) if such person is detained under sub-section (4), on a certificate such as is referred to in section 473 of the Code of Criminal Procedure, 1898, take steps to have such person tried by the same or another court-martial for the offence with which he was originally charged or, provided that the offence is a civil offence, by a criminal court.

(6) A copy of every order made by the prescribed officer under sub-section (5) shall forthwith be sent to the [Central Government].

110. (1) When any person subject to this Act has been convicted by a court-martial of any offence, the [Central Government] or the prescribed officer may—

(a) either without conditions or upon any conditions which the person sentenced accepts, pardon the person or remit the whole or any part of the punishment awarded; or

(b) mitigate the punishment awarded, or commute such punishment for any less punishment or punishments mentioned in this Act.

(2) If any condition on which a person has been pardoned or a punishment has been remitted is, in the opinion of the authority which granted the pardon or remitted the punishment, not fulfilled, such authority may cancel the pardon or

remission, and thereupon the sentence of the Court shall be carried into effect as if such pardon had not been granted or such punishment had not been remitted :

Provided that in the case of a person sentenced to imprisonment, such person shall undergo only the unexpired portion of his sentence.

(3) When under the provisions of section 23 a non-commissioned officer is deemed to be reduced to the ranks, such reduction shall, for the purposes of this section, be treated as a punishment awarded by sentence of a court-martial.

CHAPTER IX.

EXECUTION OF SENTENCES AND DISPOSAL OF PROPERTY.

111. In awarding a sentence of death a court-martial shall, in its discretion, direct that the offender shall suffer death by being hanged by the neck until he be dead, or shall suffer death by being shot to death.

Sentence of death.

112. Whenever any person is sentenced under this Act to imprisonment, the term of his sentence shall, whether it has been revised or not, be reckoned to commence on the day on which the original proceedings were signed by the president.

Commencement of sentence of imprisonment.

[113. Whenever any sentence of imprisonment is passed under this Act, or whenever any sentence so passed is commuted to imprisonment, the confirming officer, or, in the case of a sentence which does not require confirmation, the Court or in either case such officer as may be prescribed may direct either that the sentence shall be carried out by confinement in a civil prison or by confinement in a military or air force prison, and the commanding officer of the person under sentence or such other officer as may be prescribed, shall forward a warrant in the prescribed form to the officer in charge of the prison in which the person under sentence is to be confined and shall forward him to such prison with the warrant :

Provided that in the case of a sentence of imprisonment for a period not exceeding three months, in lieu of a direction that the sentence shall be carried out by confinement in a civil, military or air force prison, a direction may be made that the sentence shall be carried out by confinement in air force custody :

Provided further that on active service a sentence of imprisonment may be carried out by confinement in such place as the officer commanding the forces in the field may from time to time appoint.]¹

114. Whenever, in the opinion of the Air Officer Commanding His Majesty's Air Forces in India, any sentence or portion of a sentence

Execution of sentence of imprisonment in special cases.

of imprisonment cannot, for special reasons, conveniently be carried out in accordance with the provisions of section 113, such officer may direct that such sentence or portion of sentence shall be carried out by confinement in any civil prison or other fit place.

115. When any sentence of detention is passed under this Act, or when any sentence so passed is commuted to detention, the

Execution of sentence of detention.

punishment shall be carried out by detaining the offender in any military or air force detention barracks, detention cells or other military or air force custody.

[116. Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person

Communication of certain orders to prison officers.

is confined in a civil, military or air force prison a warrant in accordance with such order shall be forwarded by the prescribed officer to the officer-in-charge of the prison in which such person is confined.]²

117. Where a sentence of transportation is imposed by court-martial under section 58, the offender, until he is transported, shall be dealt with in the same manner as if he had been sentenced to rigorous imprisonment, and shall be deemed to have been undergoing his sentence of transportation during the term of his imprisonment.

Offenders sentenced to transportation how dealt with until transported.

118. When a sentence of fine is imposed by a court-martial under section 58 whether the trial was held within British India or not, a copy of such sentence, signed and certified by the president of the court or the officer holding the trial, as the case may be, may be sent to any Magistrate in British India, and such Magistrate shall thereupon cause the fine to be recovered in accordance with the provisions of the Code of Criminal Procedure, 1898, for the levy of fines as if it was a sentence of fine imposed by such Magistrate.

Execution of sentence of fine.

119. (1) After the conclusion of a trial before any court-martial, the Court or the authority confirming its finding or sentence or any authority superior to such authority, or, in the case of a finding or sentence which does not require confirmation, the officer commanding the unit within which the trial was held, may make such order as it or he thinks fit for the disposal by destruction, confiscation, delivery to any person claiming to be entitled to possession thereof, or otherwise, of any property or document produced before the Court or in its custody, or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

Order for disposal of property regarding which offence committed.

(2) Where any order has been made under sub-section (1) in respect of property regarding which an offence appears to have been committed, a copy of such order signed and certified by the authority making the same may, whether the trial was held within British India or not, be sent to a Magistrate in any presidency-town or district in which such property for the time being is, and such Magistrate shall thereupon cause the order to be carried into effect as if it was an order passed by such Magistrate under the provisions of the Code of Criminal Procedure, 1898.

Explanation.—In this section the term “property” includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.

[119-A. (1) The Central Government may set apart any building or part of a building or any place under its control as an air force prison or detention barracks for the confinement of persons sentenced to imprisonment or detention under this Act.

Establishment and regulation of air force prisons and detention barracks.

(2) The Central Government may by rules provide—

(a) for the government, management and regulation of such air force prisons and detention barracks;

(b) for the appointment and removal and powers of inspectors, visitors, governors and officers thereof;

(c) for the labour of prisoners and persons undergoing detention therein and for enabling such prisoners or persons to earn by special industry and good conduct a remission of a portion of their sentence; and

(d) for the safe custody of such prisoners or persons and the maintenance of discipline among them and the punishment by personal correction, restraint or otherwise, of offences committed by them:

Provided that such rules shall not authorise corporal punishment to be inflicted for any offence nor render the imprisonment or detention more severe

than it is under the law for the time being in force relating to civil prisons in British India.

(3) Rules made under this section may provide for the application to air force prisons or detention barracks of any of the provisions of the Prisons Act, 1894 (IX of 1894), relating to the duties of officers of prisons and the punishment of persons not prisoners.]¹

CHAPTER X.

SPECIAL RULES RELATING TO PERSONS AND PROPERTY.

120. (1) If an officer of the Indian Air Force thinks himself wronged by his commanding officer, or other superior officer, and on due application made to his commanding officer does not receive the redress to which he may consider himself entitled, he may complain to the [Central Government] in order to obtain justice.

(2) If any airman thinks himself wronged in any matter by any officer other than the officer under whose command or orders he is serving, or by any airman, he may complain thereof to the officer under whose command or orders he is serving, and if he thinks himself wronged by the officer under whose command or orders he is serving, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to his commanding officer, and if he thinks himself wronged by his commanding officer, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to the prescribed officer; and every officer to whom a complaint is made in pursuance of this section shall cause such complaint to be inquired into, and shall, if on inquiry he is satisfied of the justice of the complaint so made, take such steps as may be necessary for giving full redress to the complainant in respect of the matter complained of.

121. (1) No president or member of a court-martial, no judge advocate, no party to any proceeding before a court-martial, or his legal practitioner or agent, and no witness acting in obedience to a summons to attend a court-martial, shall, while proceeding to, attending on or returning from a court-martial, be liable to arrest under civil or revenue process.

(2) If any such person is arrested under any such process, he may be discharged by order of the court-martial.

122. (1) No officer or person enrolled in the Indian Air Force shall be liable to be arrested for debt under any process issued by, or by the authority of, any civil or revenue court or revenue officer.

(2) The Judge of any such Court may examine into any complaint made by such person or his superior officer of the arrest of such person contrary to the provisions of this section, and may, by warrant under his hand, discharge the person, and award reasonable costs to the complainant, who may recover those costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process.

(3) For the recovery of such costs no fee shall be payable to the Court by the complainant.

123. Neither the arms, clothes, equipment, accoutrements or necessities of any person subject to this Act, nor any animal used by him for the discharge of his duty, shall be seized, nor shall the pay and allowances of any such person

or any part thereof be attached, by direction of any civil or revenue Court or any revenue officer, in satisfaction of any decree or order enforceable against him.

124. Every person belonging to the Indian Air Force Reserve shall, when called out for or engaged upon or returning from training or service, be entitled to all the privileges accorded by sections 122 and 123 to a person subject to this Act.

125. (1) On the presentation to any Court by or on behalf of any person subject to this Act of a certificate, from the proper air force authority, of leave of absence having been granted to or applied by for him for the purpose of prosecuting or defending any suit or other proceeding in such Court, the Court shall, on the application of such person, arrange, so far as may be possible, for the hearing and final disposal of such suit or other proceeding within the period of the leave so granted or applied for.

Priority of hearing by courts of cases in which persons subject to this Act are concerned.

(2) The certificate from the proper air force authority shall state the first and last day of the leave or intended leave, and set forth a description of the case with respect to which the leave was granted or applied for.

(3) No fee shall be payable to the Court in respect of the presentation of any such certificate, or in respect of any application by or on behalf of any such person for priority for the hearing of his case.

(4) Where the Court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid, it shall record its reasons for having been unable to do so, and shall cause a copy thereof to be furnished to such person on his application without any payment whatever by him in respect either of the application for such copy or of the copy itself.

(5) If in any case a question arises as to the proper air force authority qualified to grant such certificate as aforesaid, such question shall be at once referred by the Court to an officer commanding a unit, whose decision shall be final.

126. The following rules are enacted respecting the disposal of the property of every person subject to this Act who dies or deserts :—

Property of deceased persons and deserters.

(1) The commanding officer of the unit to which the deceased person or deserter belonged shall secure all the movable property belonging to the deceased or deserter that is in camp or quarters, and cause an inventory thereof to be made, and draw any pay and allowances due to such person.

(2) In the case of a deceased person who has left in a Government savings bank (including any post office savings bank, however named) a deposit not exceeding one thousand rupees, the commanding officer may, if he thinks fit, require the secretary or other proper official of the bank to pay the deposit to him forthwith, notwithstanding anything in any departmental rules, and after the payment thereof in accordance with such requisition no person shall have any right in respect of the deposit except as hereinafter provided.

(3) In the case of a deceased person whose representative is on the spot and has given security for the payment of the service or other debts in camp or quarters (if any) of the deceased, the commanding officer shall deliver over any property received under clauses (1) and (2) to that representative.

(4) In the case of a deceased person whose estate is not dealt with under clause (3), and in the case of any deserter, the commanding officer shall cause the movable property to be sold by public auction, and shall pay the service and other debts in camp or quarters (if any), and, in the case of a deceased person, the expenses of his funeral ceremonies, from the proceeds of the sale and from any pay and allowances drawn under clause (1) and from the amount of the deposit (if any) received under clause (2).

(5) The surplus, if any, shall in the case of a deceased person, be paid to his representative (if any), or, in the event of no claim to such surplus being established within twelve months after the death, be remitted to the prescribed person.

(6) In the case of a deserter, the surplus (if any) shall be forthwith remitted

to the prescribed person and shall, on the expiry of three years from the date of his desertion, be forfeited to His Majesty, unless the deserter shall in the meantime have surrendered or been apprehended.

[(7) In the case of a person dying or deserting while on active service, the references in the foregoing rules to the commanding officer shall be construed as references to the Standing Committee of Adjustment, if any, appointed in this behalf in the manner prescribed; and the power conferred by rule (2) to require payment of a deposit left in a Government savings bank shall be read as a power to require the payment from any deposit left in any bank, notwithstanding anything in the rules of the bank, of a sum, not exceeding one thousand five hundred rupees, equal to the nearest multiple of one hundred rupees above the amount estimated by the Standing Committee of Adjustment as necessary to meet the service and other debts in camp or quarters of the deceased.

(8) The decision of the commanding officer or the Standing Committee of Adjustment, as the case may be, as to what are the service and other debts in camp or quarters of a deceased person and as to the amount payable therefor shall, without prejudice to any jurisdiction otherwise exercisable by a court of law, be final ;

(b) the existing *Explanation* shall be numbered *Explanation 1* and the following *Explanation* shall be added namely :—

"*Explanation 2.*—The expression 'service and other debts in camp or quarters' includes for the purposes of this section money due as—air force debts, namely, sums due in respect of, or of any advance in respect of—

(a) quarters,

(b) mess, band, and other service accounts,

(c) air force clothing, appointments and equipments, not exceeding a sum equal to six months' pay of the deceased, and having become due within eighteen months before his death.]¹

Explanation 1.—A person shall be deemed to be a deserter within the meaning of this section who has without authority been absent from duty for a period of twenty-one days and has not subsequently surrendered or been apprehended.

Meaning of deserter.

127. Property deliverable and money payable to the representative of a

Disposal of certain property without production of probate, etc.

deceased person under section 126, may, if the total value or amount thereof does not exceed one thousand rupees, and if the prescribed person thinks fit, be delivered or paid to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, without requiring the production of any probate, letters of administration, certificate or other such conclusive evidence of title ; and such delivery or payment shall be a full discharge to those ordering or making the same and to the Secretary of State for India in [Crown] from all further liability in respect of the property or money ; but nothing in this section shall affect the rights of any executor or administrator or other representative, or of any creditor of a deceased person against any person to whom such delivery or payment has been made.

Application to lunatics and persons missing on active service.

128. The provisions of [sections 126 and 127]² shall, so far as they can be made applicable, apply in the case of a person subject to this Act becoming insane or who, being on active service, is officially reported missing :

Provided that, in the case of a person so reported missing, no action shall be taken under sub-sections (2) to (5), inclusive, ²[of section 126] until one year has elapsed from the date of such report.

CHAPTER XI.

SUPPLEMENTAL.

129. (1) The Central Government may make rules for the purpose of carrying into effect the provisions of this Act.

LEG. REF.
¹ Inserted by Act VIII of 1945.
Ch. C. M.-I—6

² Substituted by Act XXI of 1948.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the discharge from the service of persons subject to this Act ;
 - (b) the specification of the punishments which may be awarded as field punishments under sections 21 and 25 ;
 - (c) the assembly and procedure of Courts of inquiry, and the administration of oaths or affirmations by such Courts ;
 - (d) the convening and constituting of courts-martial ;
 - (e) the adjournment, dissolution and sittings of courts-martial ;
 - (f) the procedure to be observed in trials by courts-martial ;
 - (g) the confirmation and revision of the findings and sentences of courts-martial ;
 - (h) the carrying into effect sentences of courts-martial ;
 - (i) the forms of orders to be made under the provisions of this Act relating to courts-martial and imprisonment ;
 - (j) the constitution of authorities to decide for what persons, to what amounts and in what manner, provision should be made for dependants under section 29, and the due carrying out of such decisions ; and
 - (k) any matter in this Act directed to be prescribed.
- (3) All rules made under this Act shall be published in the Official Gazette, and, on such publication, shall have effect as if enacted in this Act.

130. Amendment of certain enactments. [Omitted by Act I of 1938.]

THE SCHEDULE.

[Omitted by Act I of 1938.]

INDIAN AIR FORCE VOLUNTEER RESERVE (DISCIPLINE) ACT (XXXVI OF 1939.)

29th September, 1939.

An Act to provide for the discipline of members of the Indian Air Force Volunteer Reserve raised in British India on behalf of His Majesty.

WHEREAS it is expedient to provide for the discipline of members of the Indian Air Force Volunteer Reserve raised in British India on behalf of His Majesty ; It is hereby enacted as follows :—

Short title, extent and commencement.

1. (1) This Act may be called THE INDIAN AIR FORCE VOLUNTEER RESERVE (DISCIPLINE) ACT, 1939.

(2) It extends to the whole of British India and applies to members of the Indian Air Force Volunteer Reserve wherever they may be.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

Power to make rules for regulation of the Indian Air Force Volunteer Reserve.

2. The Central Government may make rules for the Government, discipline and regulation of the Indian Air Force Volunteer Reserve.

3. Every member of the Indian Air Force Volunteer Reserve, while under-

Liability to Indian Air Force Act, 1932.

going training in any unit, or otherwise, in pursuance of rules made under section 2, or when called into actual service in the Indian Air Force, in pursuance of the said rules, shall be subject to the Indian Air Force Act, 1932, in the same manner as a person belonging to His Majesty's Indian Air Force, and shall continue to be so subject until duly released from such training or service, as the case may be.

4. (1) If any member of the Indian Air Force Volunteer Reserve, when

Penalty for failure to attend when required or called up.

required, in pursuance of rules made under section 2, to join a unit or attend at any place for the purpose of undergoing training, fails without reasonable excuse to join or attend in accordance with such requirement, he shall be punishable with fine which may extend to two hundred rupees.

(2) If any member of the Indian Air Force Volunteer Reserve, when called into actual service in the Indian Air Force, and required by such call to join any unit or attend at any place, fails without reasonable excuse to comply with such requirement at or within such time as the Central Government may, by order, direct, he shall be liable to be apprehended and punished in the same manner as a person in or belonging to the Indian Air Force deserting or improperly absenting himself from duty, except that the punishment shall not exceed imprisonment which may extend to two years.

5. When any member of the Indian Air Force Volunteer Reserve is required, in pursuance of the rules made under section 2, to join any unit or attend at any place for the purpose of undergoing training, or is called into actual service in the Indian Air Force, a certificate purporting to be signed by an officer appointed in this behalf under the said rules and stating that the said member failed to join or attend in accordance with such requirement or call shall, without proof of the signature or appointment of such officer, be evidence of the matter stated therein.

6. No Court inferior to that of a Presidency Magistrate or Magistrate of the first class shall try an offence punishable under sub-section (1) of section 4.

7. The Indian Air Force Volunteer Reserve (Discipline) Ordinance, 1939, is hereby repealed; and any rules made, anything done and any action taken under the said Ordinance shall be deemed to have been made, done or taken under this Act as if this Act had commenced on the 16th day of September, 1939.

THE ANCIENT MONUMENTS PRESERVATION ACT (VII OF 1904).¹

EFFECT OF LEGISLATION.

Year.	No.	Short title.	How repealed or otherwise affected by legislation.
1904	IV	The Ancient Monuments Preservation Act, 1904.	Amended, Act XVIII of 1932. Amended by Government of India (Adaptation of Indian Laws), Order, 1937.

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LEG. REF.

¹For Statement of Objects and Reasons, see *Gazette of India*, 1903, Pt. V, p. 513; for Report of Select Committee, see *ibid.*, 1904,

Pt. V, p. 57; and for Proceedings in Council see *ibid.*, 1903, Pt. VI, pp. 166, 191; *ibid.*, 1904 Pt. VI, pp. 20 and 76.

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[18th March, 1904.]

An Act to provide for the preservation of Ancient Monuments and objects of archæological, historical or artistic interest.

WHEREAS it is expedient to provide for the preservation of ancient monuments, for the exercise of control over traffic in antiquities and over excavation in certain places, and for the protection and acquisition in certain cases of ancient monuments and of objects of archæological, historical or artistic interest; It is hereby enacted as follows :—

Short title and extent.

1. (1) This Act may be called THE ANCIENT MONUMENTS PRESERVATION ACT, 1904.

(2) It extends to the whole of British India, inclusive of British Baluchistan, the Sonthal Parganas and the Pargana of Spiti.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "ancient monument" means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archæological or artistic interest, or any remains thereof, and includes—

(a) the site of an ancient monument ;

(b) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument ; and;

(c) the means of access to and convenient inspection of an ancient monument ;

(2) "antiquities" include any movable objects which the [Central Government]¹, by reason of their historical or archæological associations, may think it necessary to protect against injury, removal or dispersion :

(3) "Commissioner" includes any officer authorized by the [Central Government]¹ to perform the duties of a Commissioner under this Act :

(4) "maintain" and "maintenance" include the fencing, covering in, repairing, restoring and cleansing of a protected monument, and the doing of any act which may be necessary for the purpose of maintaining a protected monument or of securing convenient access thereto :

(5) "land" includes a revenue-free estate, a revenue-paying estate, and a permanent transferable tenure, whether such estate or tenure be subject to incumbrances or not : and

(6) "owner" includes a joint owner invested with powers of management on behalf of himself and other joint owners, and any manager or trustee exercising powers of management over an ancient monument, and the successor in title of any such owner and the successor in office of any such manager or trustee :

Provided that nothing in this Act shall be deemed to extend the powers which may lawfully be exercised by such manager or trustee.

3. (1) The [Central Government]² may, by notification³ in the Official Gazette, declare an ancient monument to be a protected monument within the meaning of this Act.

Protected monuments.

(2) A copy of every notification published under sub-section (1) shall be fixed up in a conspicuous place on or near the monument, together with an intimation that any objections to the issue of the notification received by the [Central

LEG. REF.

¹ Substituted by A. O., 1937.

² Substituted for "Local Government" by A. O., 1937.

³ For notification under this section see General Rules and Orders and the different Local Rules and Orders.

Government]¹ within one month from the date when it is so fixed up will be taken into consideration.

(3) On the expiry of the said period of one month, the [Central Government]¹, after considering the objections, if any, shall confirm or withdraw the notification.

(4) A notification published under this section shall, unless and until it is withdrawn, be conclusive evidence of the fact that the monument to which it relates is an ancient monument within the meaning of this Act.

Ancient Monuments.

Acquisition of rights in or guardianship of an ancient monument.

4. (1) The Collector, with the sanction of the [Central Government]¹, may purchase or take a lease of any protected monument.

(2) The Collector, with the like sanction, may accept a gift or bequest of any protected monument.

(3) The owner of any protected monument may, by written instrument, constitute the Commissioner the guardian of the monument, and the Commissioner may, with the sanction of the [Central Government]¹ accept such guardianship.

(4) When the Commissioner has accepted the guardianship of a monument under sub-section (3), the owner shall, except as expressly provided in this Act, have the same estate, right, title and interest in and to the monument as if the Commissioner had not been constituted guardian thereof.

(5) When the Commissioner has accepted the guardianship of a monument under sub-section (3), the provisions of this Act relating to agreements executed under section 5 shall apply to the written instrument executed under the said sub-section.

(6) Where a protected monument is without an owner, the Commissioner may assume the guardianship of the monument.

5. (1) The Collector may, with the previous sanction of the [Central Government]¹ propose to the owner to enter into an agreement with the [Central Government]² for the preservation of any protected monument in his district.

(2) An agreement under this section may provide for the following matters, or for such of them as it may be found expedient to include in the agreement :—

(a) the maintenance of the monument ;

(b) the custody of the monument, and the duties of any person who may be employed to watch it ;

(c) the restriction of the owner's right to destroy, remove, alter or deface the monument or to build on or near the site of the monument ;

(d) the facilities of access to be permitted to the public or to any portion of the public and to persons deputed by the owner or the Collector to inspect or maintain the monument ;

(e) the notice to be given to the [Central Government]³ in case the land on which the monument is situated is offered for sale by the owner, and the right to be reserved to the [Central Government]³ to purchase such land, or any specified portion of such land, at its market value ;

(f) the payment of any expenses incurred by the owner or by the [Central Government]³ in connection with the preservation of the monument.

(g) the proprietary or other rights which are to vest in His Majesty in respect of the monument when any expenses are incurred by the [Central Government]³ in connection with the preservation of the monument ;

(h) the appointment of an authority to decide any dispute arising out of the agreement ; and

(i) any matter connected with the preservation of the monument which is a proper subject of agreement between the owner and the [Central Government]³.

LEG. REF.

¹ Substituted by "Local Government" by A. O., 1937.

² Substituted for "the Secretary of State for

India in Council," by A. O. 1937.

³ Substituted for the word "Government" by A. O., 1937.

(3) [* * * * *]¹

(4) The terms of an agreement under this section may be altered from time to time with sanction of the [Central Government]² and with the consent of the owner.

(5) With the previous sanction of the [Central Government],³ the Collector may terminate an agreement under this section on giving six months' notice in writing to the owner.

(6) The owner may terminate an agreement under this section on giving six months' notice to the Collector.

(7) An agreement under this section shall be binding on any person claiming to be owner of the monument to which it relates, through or under a party by whom or on whose behalf the agreement was executed.

(8) Any rights acquired by [the Central Government]³ in respect of expenses incurred in protecting or preserving a monument shall not be affected by the termination of an agreement under this section.

6. (1) If the owner is unable, by reason of infancy or other disability, to act for himself, the person legally competent to act on his behalf may exercise the powers conferred upon an owner by section 5.

Owners under disability or not in possession.

(2) In the case of village-property the headman or other village-officer exercising powers of management over such property may exercise the powers conferred upon an owner by section 5.

(3) Nothing in this section shall be deemed to empower any person not being of the same religion as the persons on whose behalf he is acting to make or execute an agreement relating to a protected monument which or any part of which is periodically used for the religious worship or observances of that religion.

7. (1) If the Collector apprehends that the owner or occupier of a monument intends to destroy, remove, alter, deface, or imperil the monument or to build on or near the site thereof in contravention of the terms of an agreement for its preservation under section 5, the Collector may make an order prohibiting any such contravention of the agreement.

(2) If an owner or other person who is bound by an agreement for the preservation or maintenance of a monument under section 5 refuses to do any act which is in the opinion of the Collector necessary to such preservation or maintenance, or neglects to do any such Act within such reasonable time as may be fixed by the Collector, the Collector may authorize any person to do any such act, and the expense of doing any such act or such portion of the expense as the owner may be liable to pay under the agreement may be recovered from the owner as if were an arrear of land-revenue.

(3) A person aggrieved by an order made under this section may appeal to the Commissioner, who may cancel or modify it and whose decision shall be final.

8. Every person who purchases, at a sale for arrears of land-revenue or any other public demand, or at a sale made under the Bengal Patni Taluks Regulation, 1819, an estate or tenure in which is situated a monument in respect of which any instrument has been executed by the owner for the time being, under section 4 or section 5, and every person claiming any title to a monument from, through or under an owner who executed any such instrument, shall be bound by such instrument.

9. (1) If any owner or other person competent to enter into an agreement under section 5 for the preservation of a protected monument, refuses or fails to enter into such an agreement when proposed to him by the Collector, and if any endowment has been created for the purpose of

Application of endowment to repair of an ancient monument.

LEG. REF.

ment" by *Ibid.*

¹ Sub. S (3) of 5 omitted by A.O., 1937.

² Substituted for the words "Local Govern- ment" by A. O., 1937.

³ Substituted for the word "Government"

keeping such monument in repair, or for that purpose among others, the Collector may institute a suit in the Court of the District Judge, or, if the estimated cost of repairing the monument does not exceed one thousand rupees, may make an application to the District Judge for the proper application of such endowment or part thereof.

(2) On the hearing of an application under sub-section (1), the District Judge may summon and examine the owner and any person whose evidence appears to him necessary, and may pass an order for the proper application of the endowment or of any part thereof, and any such order may be executed as if it were the decree of a Civil Court.

10. (1) If the [Central Government]¹ apprehends that a protected monument is in danger of being destroyed, injured or allowed to fall into decay, the [Central Government] may direct the Provincial Government² to acquire it under the provisions of the Land Acquisition Act, 1894, as if the preservation of a protected monument were a "public purpose" within the meaning of that Act.

(2) The powers of compulsory purchase conferred by sub-section (1) shall not be exercised in the case of—

(a) any monument which or any part of which is periodically used for religious observances; or

(b) any monument which is the subject of a subsisting agreement executed under section 5.

(3) In any case other than the cases referred to in sub-section (2) the said powers of compulsory purchase shall not be exercised unless the owner or other person competent to enter into an agreement under section 5 has failed, within such reasonable period as the Collector may fix in this behalf, to enter into an agreement proposed to him under the said section or has terminated or given notice of his intention to terminate such an agreement.

[10-A. (1) If the [Central Government]¹ is of opinion that mining, quarrying, excavating, blasting and other operations of a like nature should be restricted or regulated for the purpose of protecting or preserving any ancient monument, the [Central Government]¹ may, by notification in the Official Gazette, make rules—

(a) fixing the boundaries of the area to which the rules are to apply, (b) forbidding the carrying on of mining, quarrying, excavating, blasting or any operation of a like nature except in accordance with the rules and with the terms of a licence, and

(c) prescribing the authority by which, and the terms on which, licences may be granted to carry on any of the said operations.

(2) The power to make rules given by this section is subject to the condition of the rules being made after previous publication.

(3) A rule made under this section may provide that any person committing a breach thereof shall be punishable with fine which may extend to two hundred rupees.

(4) If any owner or occupier of land included in a notification under sub-section (1) proves to the satisfaction of the [Central Government]¹ that he has sustained loss by reason of such land being so included, the [Central Government]¹ shall pay compensation in respect of such loss.³

11. (1) The Commissioner shall maintain every monument in respect o

LEG. REF.

¹ Substituted for the words "Local Government" by A. O., 1937.

² Substituted for the words "Local Government may proceed" by *Ibid.*

³ Sec. 10-A.—S. 10-A inserted by Act, XVIII of 1932; S. 20 was also recast by that Act. The

object of the Amending Act was "to empower the Government (i) to control excavations by or enlist the aid of the archaeologists, Indian or foreign, outside the Department and (ii) to regulate the disposal of antiquities found by such agencies." *Vide Gazette of India*, dated 8th October, 1932.

Maintenance of certain pro- which the Government has acquired any of the rights
tected monuments. mentioned in section 4 or which the Government has
acquired under section 10.

(2) When the Commissioner has accepted the guardianship of a monument under section 4, he shall, for the purpose of maintaining such monument, have access to the monument at all reasonable times, by himself and by his agents, subordinates and workmen, for the purpose of inspecting the monument, and for the purpose of bringing such materials and doing such acts as he may consider necessary or desirable for the maintenance thereof.

12. The Commissioner may receive voluntary contributions towards the cost of maintaining a protected monument and may give orders as to the management and application of any funds so received by him :

Voluntary contributions. Provided that no contribution received under this section shall be applied to any purpose other than the purpose for which it was contributed.

Protection of place of wor- 13. (1) A place of worship or shrine maintained
ship from misuse, pollution by the Government under this Act shall not be used for
or desecration. any purpose inconsistent with its character.

(2) Where the Collector has, under section 4, purchased or taken a lease of any protected monument, or has accepted a gift or bequest, or the Commissioner has, under the same section, accepted the guardianship thereof, and such monument, or any part thereof, is periodically used for religious worship or observances by any community, the Collector shall make due provision for the protection of, of such monument, or such part thereof, from pollution or desecration—

(a) by prohibiting the entry therein, except in accordance with conditions prescribed with the concurrence of the persons in religious charge of the said monument or part thereof, of any person not entitled so to enter by the religious usages of the community by which the monument or part thereof is used, or

(b) by taking such other action as he may think necessary in this behalf.

Relinquishment of Govern- 14. With sanction of the [Central Govern-
ment rights in a monument. ment,]¹ the Commissioner may—

(a) where rights have been acquired by the [Central Government]² in respect of any monument under this Act by virtue of any sale, lease, gift or will, relinquish the rights so acquired to the person who would for the time being be the owner of the monument if such rights had not been acquired ; or

(b) relinquish any guardianship of a monument which he has accepted under this Act.

15. (1) Subject to such rules as may after previous publication be made

Right of access to certain by the [Central Government]¹, the public shall have
protected monuments. a right of access to any monument maintained by the
[Central Government]² under this Act.

(2) In making any rule under sub-section (1) the [Central Government]¹ may provide that a breach of it shall be punishable with fine which may extend to twenty rupees.

16. Any person other than the owner who destroys, removes, injures, alters,

Penalties. defaces or imperils a protected monument, and any
owner who destroys, removes, injures, alters, defaces
or imperils a monument maintained by the [Central Government]² under
this Act, or in respect of which an agreement has been executed under section 5,
and any owner or occupier who contravenes an order made under section 7, sub-
section (1), shall be punishable with fine which may extend to five thousand rupees,
or with imprisonment which may extend to three months, or with both.

Traffic in Antiquities.

17. (1) If the [Central Government]² apprehends that antiquities are being

LEG. REF.

¹ Substituted for the words " Local Govern-
ment " by A. O., 1937.

² Substituted for the word " Government "
by *Ibid.*

Power to Central Government to control traffic in antiquities.

Power to Central Government to control traffic in antiquities. sold or removed to the detriment of India or of any neighbouring country, it may, by notification¹ in the Official Gazette prohibit or restrict the bringing or taking by sea or by land of any antiquities or class of antiquities described in the notification into or out of British India or any specified part of British India.

(2) Any person who brings or takes or attempts to bring or take any such antiquities into or out of British India or any part of British India in contravention of a notification issued under sub-section (1), shall be punishable with fine which may extend to five hundred rupees.

(3) Antiquities in respect of which an offence referred to in sub-section (2) has been committed shall be liable to confiscation.

(4) An officer of Customs, or an officer of Police of a grade not lower than Sub-Inspector, duly empowered by the [Central Government]² in this behalf, may search any vessel, cart or other means of conveyance, and may open any baggage or package of goods, if he has reason to believe that goods in respect of which an offence has been committed under sub-section (2) are contained therein.

(5) A person who complains that the power of search mentioned in sub-section (4) has been vexatiously or improperly exercised may address his complaint to the [Central Government]³, and the [Central Government]³ shall pass such order and may award such compensation, if any, as appears to it to be just.

Protection of Sculptures, Carvings, Images, Bas-reliefs, Inscriptions or like objects.

18. (1) [Central Government]² considers that any sculptures, carvings, images, bas-reliefs, inscriptions or other like objects

Power to Central Government to control moving of sculptures, carvings or like objects.

ought not to be moved from the place where they are without the sanction of the [Central Government]³, the [Central Government]² may by notification⁴ in the Official Gazette, direct that any such object or any class of such objects shall not be moved unless with the written permission of the Collector.

(2) A person applying for the permission mentioned in sub-section (1) shall specify the object or objects which he proposes to move, and shall furnish, in regard to such object or objects, any information which the Collector may require.

(3) If the Collector refuses to grant such permission, the applicant may appeal to the Commissioner, whose decision shall be final.

(4) Any person who moves any object in contravention of a notification issued under sub-section (1), shall be punishable with fine which may extend to five hundred rupees.

(5) If the owner of any property proves to the satisfaction of the [Central Government]² that he has suffered any loss or damage by reason of the inclusion of such property in a notification published under sub-section (1), the [Central Government]² shall either—

(a) exempt such property from the said notification ;

(b) purchase such property, if it be movable, at its market-value ; or

(c) pay compensation for any loss or damage sustained by the owner of such property, if it be immovable.

19. (1) If the [Central Government]² apprehends that any object mentioned

¹ Notification No. 110, dated 28th May, 1917, *Gazette of India*, 1917, part 1, p. 989, and notification No. 1385, dated 8th July, 1924 ; *ibid.*, 1924, Pt. I, p. 641 ; Genl. R. & O. Vol. III.

² Substituted for the words 'Local Government' by A.O., 1937.

³ Substituted for the word "Government," by *ibid.*

⁴ For notification by the Government of—

(1) Bengal, See *Calcutta Gazette*, 1908, Pt. I, p. 1248 and *ibid.*, 1909, Pt. I, p. 23 ; and p. 957 as to Gaya District ;

(2) Central Provinces, See *C. P. Gazette*, 1906, Pt. III, p. 616 ;

(3) Chief Commissioner, N.W.F.P., See *Gazette of India*, 1909, Pt. II, p. 1554 ;

(4) Burma, See *Burma Gazette*, Pt. I, p. 596.

Purchase of sculptures, carvings or like objects by the Government.

in a notification issued under section 18, sub-section (1) is in danger of being destroyed, removed, injured or allowed to fall into decay, the Central Government]¹

may pass orders for the compulsory purchase of such object at its market-value, and the Collector shall thereupon give notice to the owner of the object to be purchased.

(2) The power of compulsory purchase given by this section shall not extend to—

(a) any image or symbol actually used for the purpose of any religious observance; or

(b) anything which the owner desires to retain on any reasonable ground personal to himself or to any of his ancestors or to any member of his family.

Archæological Excavation.

[20. (1) If the Central Government [* * * *]² is of opinion that excavation for archæological purposes in any

Power of Central Government to notify areas as protected.

area should be restricted and regulated in the interests of archæological research, the Central Government may by notification³ in the Official Gazette specifying

the boundaries of the area, declare it to be a protected area.

(2) From the date of such notification all antiquities buried in the protected area shall be the property of [the Crown]⁴ and shall be deemed to be in the possession of [the Crown]⁴ and shall remain the property and in the possession of [the Crown]⁴ until ownership thereof is transferred; but in all other respects the rights of any owner or occupier of land in such area shall not be affected.

20-A. (1) Any officer of the Archæological Department or any person holding

Power to enter upon and make excavations in a protected area.

a licence under section 20-B may, with the written permission of the Collector, enter upon and make excavations in any protected area.

(2) Where, in the exercise of the power conferred by sub-section (1), the rights of any person are infringed by the occupation or disturbance of the surface of any land, the [Central Government]⁴ shall pay to that person compensation for the infringement.

Power of Central Government to make rules regulating archæological excavation in protected areas.

20-B. (1) The Central Government may make rules—

(a) prescribing the authorities by whom licenses to excavate for archæological purposes in a protected area may be granted;

(b) regulating the conditions on which such licenses may be granted, the form of such licenses, and the taking of security from licensees;

(c) prescribing the manner in which antiquities found by a licensee shall be divided between [the Central Government]⁴ and the licensee; and

(d) generally to carry out the purposes of section 20.

(2) The power to make rules given by this section is subject to the condition of the rules being made after previous publication.

(3) Such rules may be general for all protected areas for the time being, or may be special for any particular protected area or areas.

(4) Such rules may provide that any person committing a breach of any rule or of any condition of a licence shall be punishable with fine which may extend to five thousand rupees, and may further provide that where the breach has been by the agent or servant of a licensee, the licensee himself shall be punishable.

LEG. REF.

¹ Substituted for the words 'Local Government' by A.O., 1937.

² Words "after consulting the Local Government" omitted by A.O., 1937.

³ For notification by the Government of—

(1) Central Provinces, see C. P. Gazette, 1906 Pt. III, p. 617.

(2) Madras, see Madras R. & O.

(3) Bengal, see Calcutta Gazette, 1909, Pt. I, p. 703 and 1642.

(4) Burma, see Burma Gazette, 1909, Pt. I, p. 448.

(5) Bihar and Orissa, see B. and O. Gazette, 1914, Pt. II, p. 733.

⁴ Substituted for the word 'Government' by A.O. 1937.

20-C. (1) If the Central Government is of opinion that a protected area contains an ancient monument or antiquities of national interest and value, it may direct the Provincial Government to acquire such area, or any part thereof, and the Provincial Government may thereupon acquire such area or part under the Land Acquisition Act, 1894, as for a public purpose.]¹

General.

21. (1) The market-value of any property which Government is empowered to purchase at such value under this Act, or the [* *]² compensation to be paid by Government in respect of anything done under this Act shall, where any dispute arises [in respect]² of such market-value or compensation be ascertained in the manner provided by the Land Acquisition Act, 1894, sections 3, 8 to 34, 45 to 47, 51 and 52, so far as they can be made applicable :

Provided that when making an inquiry under the said Land Acquisition Act, 1894, the Collector shall be assisted by two assessors, one of whom shall be a competent person nominated by the Collector, and one a person nominated by the owner or, in case the owner fails to nominate an assessor within such reasonable time as may be fixed by the Collector in this behalf, by the Collector.

22. A Magistrate of the third class shall not have jurisdiction to try any person charged with an offence against this Act.

23. (1) The Central Government [* * *]³ may make rules⁴ for carrying out any of the purposes of this Act.

(2) The power to make rules given by this section is subject to the condition of the rules being made after previous publication.

24. No suit for compensation and no criminal proceeding shall lie against any public servant in respect of any act done, or in good faith intended to be done, in the exercise of any power conferred by this Act.

THE ARMS ACT (XI OF 1878).⁵

EFFECT OF SUBSEQUENT LEGISLATION.

Year.	No.	Short title.	How affected by legislation.
1878	XI	The Indian Arms Act, 1878.	Repealed in part, XII of 1891; VIII of 1930; I of 1938. Amended, XX of 1919; XLIX of 1920, s. 35. Do. Do. Govt. of India (Adaptation of Indian Laws) Order, 1937. See also Act XXXV of 1939.

LEG. REF.

¹ New Ss. 20, 20-A, 20-B and 20-C were substituted for the old S. 20 by the Amending Act, (XVIII of 1932).

² The words "amount of" before the word "compensation" were omitted and the words "in respect" substituted for the words "touching the amount" by the Amending Act, XVIII of 1932.

³ Words or the "Local Government" omitted by A.O., 1937.

⁴ For Rules made by the Government of Madras for the decipherment, publication, and

custody of Indian Inscriptions on stone or copper, see Madras Local Rules and Orders.

⁵ For the Statement of Objects and Reasons, see *Gazette of India*, 1877, Pt. V, p. 650; for discussions in Council, see *ibid.*, 1877, Supplement, pp. 3016 and 3030; *ibid.*, 1878, Supplement, pp. 435 and 453.

SEC. 21.—Section applies to the purchase of movable antiquities. Regarding mode of determining compensation, see 19 Bom.L.R. 937=42 Bom. 100.

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THE FIRST SCHEDULE.—[Repealed.]

THE SECOND SCHEDULE.—[Repealed.]

[15th March, 1878.]

An Act to consolidate and amend the law relating to Arms, Ammunition and Military Stores.

WHEREAS it is expedient to consolidate and amend the law relating to arms, ammunition and military stores; It is hereby enacted as follows :—

Preamble.

LEG. REF.

This Act declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898), S. 4 (1) and Sch. I (Bur. Code); and in the Santhal Parganas, see Reg. III of 1872 as amended by Regulation, 1899 (III of 1899), S. 3 (B. & O. Code) and in the Arakan-Hill District by Regulation I of 1916, Sec. 2, Bur. Code.

Extended to the Myelat in the Federated Shan States by Sec. 10 (1) (XIII of 1898), see Notification No. 17, dated 5th March, 1927, *Burma Gazette*, 1927, Pt. I, p. 256; extended under sec. 10 (1) of the Burma Laws Act, 1898 (XIII of 1898), to the notified areas of Taunggyi in the State of Yawnghe Lashio, in the State of North Hsenwi and Loilem in the State of Laikha and to the Civil Station of Lioimwe in the State of Kengtung and under sec. 12 (1) (c) of that Act the officers who are to perform the duties of a Magistrate under the Act have been notified, see *Burma Gazette* 1908, Pt. I, p. 455; declared in force except sec. 15, Regulation III of 1913, B. & O. Code declared by notification under sec. 3 (a) of Act XIV of 1874, to be in force in the Districts of Hazaribagh, Lohardaga and Manbhum, and in

Pargana Dhalbhum and the Kolhan in the District of Singhbhum, see *Gazette of India*, 1881, Pt. I, p. 504. The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894; Lohardaga is now called the Ranchi District, *Calcutta Gazette*, 1899, Pt. I, p. 44; extended to British Baluchistan by notification under secs. 5 and 5-A of the Scheduled Districts Act, 1874, with certain modifications and exceptions, see p. 97 of *The Baluchistan Local Rules and Orders*, Edition, 1926, extended to the Pargana of Manipur by the Manipur Laws Regulation, 1926 (II of 1926).

As to the trial in a Presidency town of offences against the Act, see (Act V of 1898), sec. 184.

A license granted under the Indian Explosives Act, 1884 (IV of 1884), for the manufacture, possession, sale, transport or importation of an explosive may be given effect of a like licence granted under the Indian Arms Act, 1878 (XI of 1878), see Act IV of 1884, sec. 15.

As to the possession, manufacture and export of arms, ammunition and gun-powder in the Chittagong Hill Tracts, see Regulation (I of 1900), secs. 11 and 12, Ben. Code.

Its application to the Pargana of Spiti is barred by sec. 14 of the Spiti Regulation, 1873

I.—Preliminary.

1. This Act may be called THE INDIAN ARMS ACT, 1878; and it extends to the whole of British India.¹

Short title. Local extent.

Savings.

But nothing herein contained shall apply to—

(a) arms, ammunition or military stores on board any sea-going vessel and forming part of her ordinary armament or equipment, or

(b) the manufacture, conversion, sale, import, export, transport, bearing or possession of arms, ammunition or military stores by order of [any Government in British India]², or by a public servant or [a member of either of the forces constituted by the Indian Territorial Force Act, 1920, or the Auxiliary Force Act, 1920]³ in the course of his duty as such public servant or [member].⁴

Commencement.

2. This Act shall come into force on such day⁵ as the Central Government by notification in the Official Gazette appoints.

3. [Repealed by Act I of 1938.]

Interpretation-clause.

4. In this Act, unless there be something repugnant in the subject or context,—

LEG. REF.

(I of 1873). As to Upper Tanawal in the Hazara District, see secs. 3 and 6 (4) of the Hazara (Upper Tanawal) Regulation (II of 1900), Punjab and N.-W. F. Code.

As to further law relating to unlawful manufacture and possession of explosive substances, see the Explosive Substances Act, 1908 (VI of 1908) Secs. 4 (b) and 5.

It is in force throughout the province of Assam except the Lushai Hills, see Notification No. 2443-T., dated the 1st June, 1914, *Assam Gazette*, 1914, Pt. II, p. 843.

¹As to definition of "British India," see the General Clauses Act, 1897 (X of 1897), sec. 1 (7).

²Substituted for 'the Government' A. O., 1937.

³These words were substituted by sec. 35 of the Auxiliary Force Act, 1920 (XLIX of 1920).

⁴This word was substituted for the word "volunteer" by sec. 35, *ibid*.

⁵The Act came into force on the 1st October, 1878—see Notification No. 1169 dated 27th June, 1878, *Gazette of India*, 1878, Pt. I, p. 389.

SEC. 1: CONSTRUCTION OF ACT.—A penal enactment like the Arms Act must be construed in favour of the individual person where any doubt exists. 29 Cr.L.J. 575=109 I.C. 511=1928 N. 219. See also 15 A. 129 holding that the Act must be strictly construed.

CL. (b): SALE OF ARMS BY PUBLIC SERVANT IN DISCHARGE OF DUTY.—The sale of arms by the Nazir of the Court, in execution of a decree, is a sale by a public servant in the discharge of his duty, and, therefore, excluded by sec. 1, cl. (b), from the operation of the Act: it would be proper for the Court ordering the sale, to give notice of the sale and of the purchaser's name and address contemplated by sec. 5. 9 B. 518. *Police Sub-Inspector*, not of 1st grade, presented by Government, with the revolver, going armed with dagger commits no offence. U.B.R. 1907, 4th Qr. Arms. 1.

SEC. 3.—For notification No. 1169, dated 27th June, 1878, see *Gazette of India*, Pt. I, p. 389.

SEC. 4.—See also Notes under secs. 5, 14, 19 and 27.

DEFINITION—ARMS.—The definition of "arms" is intentionally wide and the list of weapons referred to therein is clearly not exhaustive. It cannot be said that every type of air gun or air pistol must be excluded from the definition. 60 C. 1477=38 C.W.N. 84=1934 C. 368=32 P. R. (1918) Cr.=20 Cr. L. J. 11=48 I.C. 486; 1 Weir 654. The word "arms" except so far as the definition expressly include other weapons must be understood to mean weapons of offence, suitable for use in warfare. L.B.R. (1893-1900) 416. The Government can exclude any weapon from the operation of the Act but cannot notify that a particular weapon is an arm within the meaning of the Act. *Ibid*. Whether or not any particular instrument is included in the expression "arms" must necessarily depend on the circumstances of each case. Whatever can be used as an instrument of attack or defence and is not an ordinary implement for domestic purposes, falls within the purview of the Act. 2 L. 291=64 I.C. 847=23 Cr.L.J. 63; 32 P.R. 1918 Cr.=20 Cr.L.J. 11=48 I.C. 486. It is always the purpose for which an implement is primarily used which determines the question whether it does or does not fall within the definition of 'arms'. Implements or articles primarily intended for domestic or agricultural use are not arms under the Act and *Takwas* fall under the former category, A.I.R. 1940 Lah. 468. See also 1927 L. 162 Neither the length, breadth, nor the form of the blade of a weapon nor the handle affords any certain test of its classification as "arms". 32 P.R. 1918 Cr.=20 Cr.L.J. 11=48 I.C. 486. See also on the point 20 P.R. 1900; 1 L.B.R. 271; L.B.R. (1893-1900) 416; *Ibid*, 417; *Ibid*, 487; 11 C.W.N. 971=34 C. 749=6 Cr.L.J. 227 on the point. The mere fact that a weapon is dangerous and may cause death if used would not make it "arms" 15 Cr.L.J. 685=26 I. C. 133. The word "fire-arms" means "arms that are fired by means of gun-powder or other explosives." 42 C. 1153=16 Cr.L.J. 9=19 C.W.N. 706=26 I.C. 313. The purpose for which an implement is primarily intended regulates whether it would, in ordinary parlance, be spoken of as an arm,

"cannon" includes also all howitzers, mortars, wall-pieces, mitrailleuses and other ordnance and machine-guns, all parts of the same, and all carriages, platforms and appliances for mounting, transporting and serving the same:

"arms" includes fire-arms, bayonets, swords, daggers, spears, spearheads and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms:

"ammunition" includes also all articles specially designed for torpedo service and submarine mining, rockets, gun-cotton, dynamite, lithofracteur and other explosive or fulminating material, gun-flint, gun-wards, percussion-caps, fuses and friction-tubes, all parts of ammunition and all machinery for manufacturing ammunition, but does not include lead, sulphur or saltpetre:

and if it is not designed for use as a weapon of offence and defence, although it may be used as such, then it is not an "arm." 1 L.B.R. 271; 28 Cr.L.J. 199=99 I.C. 935=1927 L. 162. See also 5 R. 710=29 Cr.L.J. 115=1928 R. 49; 23 Cr.L.J. 594=68 I.C. 318=1923 R. 23.

PARTS OF FIRE-ARMS.—When stray pieces of metal can be held to be parts of fire arms, see 1942 A. M.L.J. 34.

UNSERVICEABLE FIRE ARM.—A fire arm even though it is unserviceable if it could be repaired and used is a fire arm, the possession of which without license is an offence. 1943 Mad. 661=(1943) 2 M.L.J. 283.

I. WHAT ARE ARMS—CHHAVIES.—The word "arms" includes parts of arms and, therefore, *chhavies* may be "arms" within the meaning of the Act. 20 P.R. 1900 Cr.; 33 P.L.R. 1901; 10 P.L.R. 1919; 20 Cr.L.J. 577=52 I.C. 103. Everything is a *chhavi*, which has a large axe-like blade, curved or otherwise with an arrangement of ring or rings for binding it to the handle and a handle of considerable length. 33 P.L.R. 1914=15 Cr.L.J. 506=24 I.C. 594. As to *Takwas*, see A.I.R. 1940 Lah. 468.

SWORD-STICK.—A sword-stick is a sword sheathed in a cane stick and comes within the definition of arms. 11 C.W.N. 971=34 C. 749=6 Cr.L.J. 227.

LATHI.—An instrument consisting of two separate pieces, namely, a *lathi* 6 ft. 3 ins. long at one end of which a hollow screw and an axe-like blade 5 ins. by 4½ ins. having a screw to allow of its being fixed into the long *lathi* was held to be an arm within the meaning of sec. 19 (f), as no instrument like that is ever used for domestic or agricultural purposes. 9 L. 137=29 Cr.L.J. 961=1928 L. 295; 33 P.L.R. 1914; 16 P.R. 1900 Cr. and 32 P.R. (Cr.) 1918.

BATTLE-AXE.—A battle-axe is an arm. 1 Weir 654.

CLASP-KNIFE.—Clasp knives are not arms within the Act. 15 Cr.L.J. 585=25 I.C. 337; L.B.R. (1893-1900) 417, 487; 1 L.B.R. 274. But a clasp knife which has a blade 5½ inches long with a pointed end and is fitted to a long handle and turns over into the handle falls within the meaning of the word "arms." 5 R. 710=29 Cr.L.J. 115=1928 R. 49. So also a hunting knife sharpened on one side only. 51 I.C. 573=25 Cr.L.J. 1119=1924 Cal. 714.

GUN-BARREL.—A gun-barrel, so long as it can be used as a gun-barrel, is an arm within the definition of the Arms Act, sec. 4, because it is a part of a fire-arm. But it is not a "fire-arm" within the meaning of sec. 14 of the Act, nor is it one of the other articles mentioned in the section, 12 C.P.L.R. Cr. 10. But see 3 N.L.R.

53=5 Cr.L.J. 435.

A gun minus a percussion cap is an "arm" within the definition of the Act. I.L.R. 1937 N. 488=38 Cr.L.J. 639=1937 N. 213. The possession of a gun-barrel and nipple without a licence, in serviceable condition, is an offence under sec. 19 (f). 7 M. 70=1 Weir 658. See also 12 C.P.L.R. 8 Cr. =3 N.L.R. 53.

REVOLVER OUT OF REPAIR.—A revolver, even if it is out of repair, is nonetheless an arm, and a person in possession of such a weapon, without a licence, is guilty of an offence under sec. 19. 6 P.R. 1908 Cr.=7 Cr.L.J. 350. See also (1943) 2 M.L.J. 283. A revolver, the trigger of which is out of order, is a fire-arm within the meaning of the Arms Act. In such cases, the question is not so much whether the particular weapon is serviceable as a fire-arm, but whether it has lost its specific character and has so ceased to be a fire-arm. Whether in any particular case, the instrument is a fire-arm or not is a question of fact to be determined according to the circumstances of the case. 21 M. 360=1 Weir 659 (F.B.). See also 6 P.R. 1908 Cr.; 1 Sind L.R. 18. Where the accused was found to be in illegal possession of a revolver "in loose parts" without a license and it appeared that the parts were in a rusty condition but they could be used if cleaned and oiled, held, that the articles possessed by the accused were "arms" and he was liable to be convicted under sec. 19 (f). 37 C.W.N. 234=34 Cr.L.J. 916=1933 Cal. 495.

SWORD HILT.—The expression "arms" includes "parts of arms." Sword hilts are, therefore "arms". 38 P.R. 1889 Cr. As to sword-stick, see 34 C. 749. Bolts and bars of rifles are arms. 25 Cr.L.J. 539 =77 I.C. 1003 =1923 L. 761.

II. WHAT ARE NOT ARMS: COOK'S KNIFE.—The purpose for which an implement is primarily intended regulates whether it should be considered an arm or not. A cook's knife is not an arm. 5 L.B.R. 130.

AIR-GUN.—Air guns which are not adopted for use with explosive substances and which have been classed as toys by the Government for the purposes of the Tariff Act are toys and do not come under the definition of arms. 4 Cr. L.J. 239.

UNSERVICEABLE FIRE-ARMS.—In including parts of arms in the meaning of arms the Legislature intended to provide against the importation and retention of arms in parts which might be put together any moment and used as fire-arms. A fire-arm, which is defective and otherwise unserviceable, is not within the meaning of the Act. There fore possession of a gun rendered unserviceable by the loss of the trigger is not an

"military stores," in any section of this Act as applied to any part of British India, means any military stores to which the Central Government may from time to time, by notification in the Official Gazette, specially extend such section in such part, and includes also all lead, sulphur, saltpetre and other material to which the Central Government may from time to time so extend such section :

"license" means a license granted under this Act, and "licensed" means holding such license.

II.—Manufacture, Conversion and Sale.

5. No person shall manufacture, convert or sell, or keep, offer or expose for sale, any arms, ammunition or military stores, except under a license and in the manner and to the extent permitted thereby.

Unlicensed manufacture, conversion and sale prohibited.

offence. 6 M. 60=1 Weir 657 (F.B.); 1 Weir 658; R. 12 C.P.L.R. Cr. 8. A broken and unserviceable gun will not fall under the designation of "parts of arms". 1 Weir 658; 21 M. 360 (F.B.) But see 9 Cr. L.J. 259 (F.B.); 1 S.L.R. 18 Cr. and 1923 L. 617.

POLEAXE.—Is no arm, 15 Cr.L.J. 685=26 I.C. 193.

DAH.—Not arms. L.B.R. (1893-1900) 416. The true criterion is not whether any given *Dah* is an "upyat", but what was the intention of the maker as regards its purpose. 68 I.C. 818; 11 L.B.R. 340=23 Cr.L.J. 594=1923 Rang. 23 (1).

SPEARS.—It is always a question of fact whether the article for the possession of which a charge under the Act is made comes within the definition of 'arms' or not. A spear which has the appearance of a spear, and which can be used as a spear, does not cease to be so merely because it is electroplated or is called something else such as Nishan Sahib or is used for a religious purpose. The fact that an article which comes within the definition of "arms" in the Arms Act is used for religious purposes does not relieve the person in possession of such an arm from the operation of the Act. I.L.R. (1941) Lah. 789=196 I.C. 766=A.I.R. 1941 Lah. 340.

SPEAR-HEAD.—As the word 'spear' is used in sec. 4 in contradistinction to spear-head, a spear cannot be held to include spear-head. 167 I.C. 935=1937 A.L.J. 41=1937 All. 228.

AMMUNITION.—The word 'ammunition' includes only such explosive or fulminating material as could be used for any military purpose or in particular for fire-arms or torpedoes or war-rockets, etc. *Patakhas* which are quite useless for such purposes, are not ammunition within the meaning of the Act and a conviction under sec. 19 (j) is not sustainable for possessing the same without licence. 53 All. 226=32 Cr.L.J. 564=1931 A. 17. See also 8 M. 202; 1 Weir 664. Though possession of fire works is no offence, possession of gunpowder without licence is an offence even if it is for the innocent purpose of making fire-works as gun powder is capable of being used for purposes of warfare. 1 Weir 655; 8 M. 202; 1 Weir 664. Bullets made of lead are not excluded from the terms of the Arms Act. A piece of lead in the shape of a bullet or in the shape of shot is certainly ammunition or a part of ammunition. Lead as such which is not in such a shape is excluded from the meaning of the term, although lead can be made up into cartridges. 37 Cr.L.J. 727=1936 A.L.J. 657=1936 A. 292.

AMMUNITION—EMPTY CARTRIDGE CASE.—Empty cartridge case is ammunition as defined by sec. 4 the possession of which is an offence. 7 A.L.J. 102=4 I.C. 405=10 Cr.L.J. 573; 21 A.L.J. 879=26 A. 107=1924 A. 215; 32 A. 152; 1936 A.L.J. 657=162 I.C. 912=37 Cr.L.J. 727. The expression "all parts of ammunition" as used in sec. 4 of the Arms Act includes empty cartridge cases. 7 B. L.R. 474=2 Cr.L.J. 449. But see 47 A. 629=1925 A. 498 and 1926 A. 255, cited under sec. 14 holding that they are not ammunition unless they are capable of being re-loaded in India. See also 20 P.R. 1890 Cr.

FIRE-WORKS—ROCKETS.—The manufacture or possession of fire-works, including rockets which are mere fire-works, does not come within the prohibition of sec. 5. The rockets referred to in sec. 4 under the definition "ammunition" are war-rockets. 5 M. 159=1 Weir, 655. D. 8 M. 202).

SEC. 5. N.B.—See also notes under sec. 4, *supra* and sec. 19, *infra*.

REPAIRER OF ARMS.—A repairer of arms is not within the purview of secs. 5 and 19 (a). 1 Weir 656. In this Act, the word "repair" appears neither in the provision prescribing a licence nor in the provision prescribing a penalty, the word "convert" being used in substitution therefor. The term "manufacture" cannot be construed to include "repair." 1 Weir 653.

SALE OF GUN USED FOR PRIVATE PURPOSE AFTER NOTICE, BUT BEFORE PERMISSION.—The sale of a gun, used for one's private purpose, after giving notice to the Magistrate, but before the receipt of his permission, is not an offence under sec. 19 (b). 1 Weir. 657.

LICENCE FOR MATCH-LOCK CONVERTING IT INTO PERCUSSION GUN.—There is no distinction drawn in the Act between the various kinds of explosive fire-arms; and, if reference is had to Sch. II, it will be seen that a distinction is there drawn, not between the different kinds of gun, as for example, a rifle and a smooth-bore, but between fire-arms and fire-arm barrels and pistols and pistol-barrels. 10 M. 131=1 Weir 665. Where a person was charged with possessing a percussion-gun while his licence covered only a match-lock and the defence was that, for convenience sake, he had the original gun altered from match-lock to a percussion-gun after he obtained licence, held that the accused could not be convicted under sec. 19 of the Act. *Ibid*.

MANUFACTURE OF KIRPANS—EXEMPTION.—

Nothing herein contained shall prevent any person from selling any arms or ammunition which he lawfully possesses for his own private use to any person who is not by any enactment for the time being in force prohibited from possessing the same; but every person so selling arms or ammunition to any person other than a person entitled to possess the same by reason of an exemption under section 27 of this Act shall, without unnecessary delay, give to the Magistrate of the district, or to the officer in charge of the nearest police-station, notice of the sale and of the purchaser's name and address.

III.—Import, Export and Transport.

Unlicensed importation and exportation prohibited. Importation and exportation of arms and ammunition for private use.

6. No person shall bring or take by sea or by land into or out of British India any arms, ammunition or military stores except under a license and in the manner and to the extent permitted by such license.

Nothing in the first clause of this section extends to arms (other than cannon) or ammunition imported or exported in reasonable quantities for his own private use by any person lawfully entitled to possess such arms or ammunition; but the Collector of Customs or any other officer empowered by the [Central Government]¹ in this behalf by name or in virtue of his office may at any time detain such arms or ammunition until he receives the orders of the [Central Government]¹ thereon.

Explanation.—Arms, ammunition and military stores taken from one part of British India to another by sea or across intervening territory not being part of British India, are taken out of and brought into British India within the meaning of this section.

Sanction of [Central Government] required to warehousing of arms, etc.

7. Notwithstanding anything contained in the Sea Customs Act, 1878, no arms, ammunition or military stores shall be deposited in any warehouse licensed under section 16 of that Act without the sanction of the [Central Government]¹.

8. [Levy of duties on arms, etc., imported by sea.] *Rep. by the Amending Act, 1891 (XII of 1891).*

9. [Power to impose duty on import by land.] *Rep. by the Amending Act, 1891 (XII of 1891).*

Power to prohibit transport.

10. The Central Government may, from time to time, by notification in the Official Gazette—

(a) regulate or prohibit the transport of any description of arms, ammunition or military stores over the whole of British India or any part thereof, either altogether or except under a license and to the extent in the manner permitted by such license, and

(b) cancel any such notification.

Explanation.—Arms, ammunition or military stores transhipped at a port in British India are transported within the meaning of this section.

11. The [Central Government]¹, [* * * *]²,

Power to establish searching stations.

may at any places along the boundary-line between British India and foreign territory, and at such distance within such line as it deems expedient, establish searching posts at which all vessels, carts and baggage-animals, and all boxes, bales and packages in transit, may be stopped and searched for arms, ammunition

LEG. REF.

¹ Substituted for 'Local Government' by A. O., 1937.

² Words 'with the previous sanction of the Governor-General in Council' omitted by A. O., 1937.

The exemption in Schedule II of the Rules only applies to kirpans actually in existence and possessed or carried by Sikhs and not to the manufacture of kirpans which is prohibited by this section. 3 Lah. 437=25 Cr.L.J. 342=1923 L. 267.

and military stores by any officer empowered by [the Central Government]¹ in this behalf by name or in virtue of his office.

12. When any person is found carrying or conveying any arms, ammunition or military stores, whether covered by a license or not, in such manner or under such circumstances as to afford just grounds of suspicion that the same are being carried by him with intent to use them, or that the same may be used, for any unlawful purpose, any person may without warrant apprehend him and take such arms, ammunition or military stores from him.

Arrest of persons conveying arms, etc., under suspicious circumstances.

Any person so apprehended, and any arms, ammunition or military stores so taken by a person not being a Magistrate or Police-officer, shall be delivered over as soon as possible to a Police-officer.

Procedure where arrest made by person not Magistrate or Police-officer.

All persons apprehended by, or delivered to, a Police-officer, and all arms and ammunition seized by or delivered to any such officer under this section, shall be taken without unnecessary delay before a Magistrate.

IV.—Going armed and possessing Arms, etc.

13. No person shall go armed with any arms except under a license and to the extent and in the manner permitted thereby.

Prohibition of going armed without license.

Any person so going armed without a license or in contravention of its provisions may be disarmed by any Magistrate, Police-officer or other person² empowered by the [Central Government]³ in this behalf by name or by virtue of his office.

14. No person shall have in his possession or under his control any cannon or fire-arms, or any ammunition or military stores, except under a license and in the manner and to the extent permitted thereby.

Unlicensed possession of fire-arms, etc.

[* * * * * * * *]

15. In any place to which section 32, clause 2, of Act No. XXXI of 1860⁵ applies at the time this Act comes into force or to which the [Central Government]¹ [* * *]⁶ may by notification in the Official Gazette specially extend this section,⁷ no person shall have in his possession any arms of any description, except under a license and in the manner and to the extent permitted thereby.

Possession of arms of any description without license, prohibited in certain places.

LEG. REF.

¹ Substituted for 'such Government' by A. O., 1937.

² For notification appointing all headmen and rural police-men under sec. 5 of the Burma Village Act, 1907, to disarm unlicensed persons, see *Burma Gazette*, 1909, Pt. I, p. 602.

³ Substituted for 'Local Government' by A.O., 1937.

⁴ The last three paras. of sec. 14 were repealed by (XII of 1891).

⁵ Act XXXI of 1860 was repealed by sec. 3 of this Act.

⁶ Words 'with the previous sanction of the Governor-General in Council omitted by A. O., 1937.

⁷ Section 15 has been specially extended to:—

(1) Aden, see *Bombay R. and O.*, Vol. I.

(2) Other places in Bombay, see *ibid.*

(3) Places in Madras, see *Mad. R. and O.*, Vol. I.;

(4) Places in the Punjab, see *Punjab Gazette*, 1899, Pt. I, p. 285; *ibid.*, 1909, Pt. I, p. 810.

(5) Places in the U. P., see *U. P. R. & O.*,

Vol. I.

(6) Places in Assam, see *Assam Gazette*, Extra, dated 23rd March, 1923.

SECS. 13, 14 and 15.—N. B. See also notes under secs. 4, 5 and 19.

SCOPE OF SECTIONS 13 AND 14.—Section 13 prohibits an unlicensed person from going armed with any kind of arms, that is to say, a person going armed with either a knife or a revolver comes within the provisions of the section. But with regard to fire-arms, a further offence may be committed, namely of having them in possession or under control, without a licence. Sec. 14 covers this offence, and if this offence is committed with the intention referred to in sec. 20, then a heavier punishment may be inflicted than for the simple offence under sec. 14, the penalty for which is provided in sec. 19 (f). To be in possession or control of arms other than those mentioned in sec. 14 is not an offence, though it is an offence to go armed with them, as provided in sec. 13. 146 I.C. 645=1933 Cal. 692.

MEANING OF WORDS.—“*Going armed*” term “*going armed*” in sec. 13, means “*carrying arms*” 1 Weir. 663. The phrase is not to be restricted to carrying or bearing arms in the manner usual for the particular weapon in view, L.B.R. (1892-1900), 284. A person who appears in a public place or issues from his own property or abode, having about his person a weapon of the sort described in sec. 4, and not covered by a licence, *goes armed*, L.B.R. (1893-1900), 284. Taking of a blunt spear capable of being sharpened to parade ground for gymnastic purposes amounts to going armed within the meaning of the section. 31 Cr.L.J. 1109=32 Bom. L.R. 571=1930 Bom. 174.

“*Going armed in contravention of Sec. 13*”—In the case the accused was found in another man’s house wearing dagger. He did not allege that the dagger was not his or that he had not brought it to the house. On the contrary, he specified the purpose for which the dagger was used. *Held* that under the above circumstances the accused had committed the offence of “*going armed with dagger*”. U.B.R. (1897-1901), Vol. I, 4. As to what are ‘*arms*’ see notes under sec. 4 *supra*.

POSSESSION OF FIRE-ARMS AFTER THE EXPIRY OF LICENCE.—The word “*extent*” in sec. 14 cannot be limited to mean territorial extent. Possession of arms of which licence has not been renewed is punishable under sec. 19 (f) read with sec. 14. 60 C. 445=34 Cr.L.J. 363=37 C.W.N. 93=1933 C. 218.

“*POSSESSION*”—MASTER, AND SERVANT.—A servant using a gun belonging to his master would no doubt have the weapon under his control, so long as the use continued, but the weapon would remain in the master’s possession. Throughout the Act, the word “*possession*” must be taken to mean something different from mere “*control*”. 4 N.L.R. 78=8 Cr.L.J. 18. A person licensed to carry a gun, lent one of his servants his gun to shoot game with it. *Held*, that the servant should not be convicted for carrying a gun without a licence and that the gun should not be confiscated. A.W.N. (1881) 7 [R. 22 A. 118]; 17 A.L.J. 758=20 Cr.L.J. 432 =51 I. C. 208; 14 B.L.R. 501=13 Cr.L.J. 525 =15 I.C. 797. It must constantly happen that sportsmen on their way to and from the field hand over their guns to their servants to avoid unnecessary fatigue to themselves, and by doing so it does not appear that the servants should be considered as *going armed* when they have no control over the use of the gun so far as intended, and are simply bearers of the gun as a load. If the gun were taken to pieces before being handed to the servant, it would be difficult to hold that he could be armed with it; and the moral restriction of the servant’s duty to make no use of the gun seems in effect to make the same difficulty when the gun is left complete. U.B.R. (1897-1901), Vol. I, 1 (15 A. 27, R.). See also 27 P.R. 1885 (Cr.).

LICENCE TO CARRY ARMS COVERING ONE RETAINER.—A licence to carry arms including a retainer authorises any retainer to carry the arms specified in the licence with the permission of his master. The licence should not be so construed as to restrict the retainer to carry the arms only in the presence of the master. 20 C. 444. See also cases cited under Sec. 19, cl. (b) the point.

UNLICENSED POSSESSION OF FIRE-ARMS.—The notification of Government of India exempts all soldiers in the service of Her Majesty from the operation of certain provisions of Secs. 13 to 16 of the Arms Act. The term “*soldiers*” includes reservists. A reservist found in possession of double-barrelled gun without a licence was not guilty under sec. 19. 1 P.R. 1902 (Cr.).

LICENCE TO GO ARMED FOR SPECIAL PURPOSE.—Where a licence to go armed is granted for protection only, the licensee cannot use it for sport or display. 1 Weir. 663.

ORDER APPOINTING AN OFFICER AS COMMISSIONED OFFICER WITH RETROSPECTIVE EFFECT.—The petitioner, who was promoted from the rank of Havildar to the rank of Jamadar on 30th August, with retrospective effect from the 1st June was held to be a commissioner officer from the 1st June, and therefore was held to fall within one of the classes exempted by the Government of India from the operation of the prohibitions contained in secs. 14 and 15 of the Act. 27 P.R. 1885 (Cr.). A gun minus a percussion cap being an ‘*arm*’ within the definition in the Act, a person who goes about with it ‘*goes armed*’ within the meaning of sec. 13. 1 L.R. 1937 N. 488=38 Cr.L.J. 639=1937 N. 213. The unserviceable remains of a gun could not be fairly described as a ‘*fire-arm*’ within the meaning of sec. 14 and do not require to be protected by a licence. 12 C.P.L.R. Cr. 8 (6 M. 60 and 7 M. 70, R.).

POSSESSION OF FIRE-ARMS NOT COVERED BY LICENCE.—Where a licence granted relates to a full-sized gun, the person holding such a licence cannot keep a half-barrel gun under it. 29 Cr.L.J. 472=109 I.C. 120=1928 L. 759.

DALWES—SPEARS—FORKS—POSSESSION OF.—Dalwes, spears, and forks do not come within the term “*military stores*” and the mere possession of such weapons is not a punishable offence. But going armed with swords or spears without a licence is punishable under sec. 13. U.B.R. (1892-1896), Vol. I, 1. As to possession of arms without licence, see 9 B.L.R. Ap. 34; 18 W.R. (Cr.) 1; 18 W.R. (Cr.) 26; 119 P.R. 1866 (Cr.); 9 B. 478. As to unlicensed possession of saltpetre, see 25 P.R. 1869.

POSSESSION OF BAYONETS.—The possession of bayonets without a licence is not an offence punishable under the Arms Act except in districts proclaimed under sec. 15 of that Act. L.B.R. (1872-1892), 426.

POSSESSION OF EMPTY CARTRIDGES.—While the police were searching accused’s house, for stolen property (which was not present) they discovered in a locked box two empty brass 405 used cartridge cases, which were incapable of being re-loaded in India. *Held*, that accused was not guilty. 47 A. 629=26 Cr.L.J. 1039=1925 A. 498. To support a conviction for possession of empty cartridges it should be proved that the cartridges can be re-loaded in India and used as ammunition by the persons with whom they are found. If this is not found the cartridges are not ammunition and so no prosecution can be made on their basis. 24 A.L.J. 208=27 Cr.L.J. 136=1926 A. 255.

POSSESSION OF ARMS FOR PURPOSE OF REPAIR.—From the provisions of the U.P.R. Arms Rules and Orders (1924) it is perfectly clear that a

¹[16. (1) Any person possessing arms, ammunition or military stores the possession whereof has, in consequence of the cancellation or expiry of a license or of an exemption or by the issue of a notification under section 15 or otherwise, become unlawful, shall without unnecessary delay deposit the same either with the officer in charge of the nearest police-station, or, at his option and subject to such conditions as the [Central Government]² may by rule prescribe, with a licensed dealer.

In certain cases arms to be deposited at police stations or with licensed dealers.

(2) When arms, ammunition or military stores have been deposited under sub-section (1) or, before the first day of January, 1920, under the provisions of any law for the time being in force, the depositor shall, at any time before the expiry of such period as the ²[Central Government] may by rule prescribe, be entitled—

(a) to receive back any thing so deposited the possession of which by him has become lawful; and

(b) to dispose, or authorize the disposal, of any thing so deposited by sale or otherwise to any person whose possession of the same would be lawful; and to receive the proceeds of any such sale:

Provided that nothing in this sub-section shall be deemed to authorize

LEG. REF.

¹This section was substituted by sec. 2 (Act XX of 1919).

²Substituted for 'Local Government' by A.O. 1937.

person who repairs arms and is in possession of guns made over to him for repairs cannot be convicted of an offence of being in possession of arms without licence. Once it is found that a person was in possession of arms for *bona fide* purpose of repairing them the length of time during which his possession thereof is justified depends upon the circumstances of each case. 30 Cr.L.J. 984=1930 A.L.J. 201=1929 A. 720 *See also* under sec. 5.

BEING IN POSSESSION OF ARMS WITHOUT LICENCE.—SANCTION OF COLLECTOR TO PROSECUTE.—In order to prosecute a person for being in possession of guns without licence, the Collector's sanction for the prosecution should be obtained under sec. 28. 5 M. 26=1 Weir. 662. On this point, *see also* notes under sec. 19 *infra*.

FAILURE TO PRODUCE LICENCE.—The provisions of sec. 13 which prohibits any person from going armed except under licence, cannot be held to mean that the licensee is bound to take his licence with him whenever he goes armed. 1 Weir. 661. The law does not require nor the licence provide, that a licence to carry arms shall always be on the person of the bearer of arms. 20 C. 444. If on being required to show his licence, the bearer of arms is prepared to produce it, on being given a reasonable opportunity to get it, and such licence exists, he should not be prosecuted. 20 C. 444. The production of the licence at trial is a sufficient answer to the charge of infringing the Act. 20 C. 444; 3 C.W.N. 394. *See also* 64 I.C. 275=22 Cr.L.J. 755 in which 20 C. 444 was followed.

FAILURE TO DEPOSIT ARMS (SPEARS).—There is no provision in sec. 14 requiring a person to deposit a spear. Where there is no other basis for conviction, it is illegal. 2 L.W. 532=16 Cr.L.J. 528=29 I.C. 544.

EXEMPTION—PRIVILEGE.—A person who is exempted from the operation of the Act can send

a servant armed with his gun to shoot for him. 18 Cr.L.J. 297=38 I.C. 329. Any licence or exemption not granted under the Act or Rules should be invalid and would give no protection to the accused. 1932 R. 180.

EXEMPTION OF KIRPANS.—The exemption in Sch. II of the Rules only applies to *Kirpans* actually in existence and possessed or carried by Sikhs and not to the manufacture of *Kirpans* by Sikhs. A sikh is not prevented from dealing with a *Kirpan* which he possesses in any way he likes, 3 L. 437=1923 L. 267.

SEARCH.—The knowledge of the existence of fire-arms found in a hut on search should not, without further evidence, be imported to any other than the occupier of the hut nor would that presumption operate even against him if it could be proved that it was possible, the arms might be there without his knowing it. 41 C. 350=18 C.W.N. 498=15 Cr.L.J. 385=23 I.C. 985. Sentence—Conspiracy to possess arms in contravention of—Sentence of transportation—If can be awarded. *See* 39 C.W.N. 334 (F.B.).

SECS 14 AND 19.—The possession of a gun by a person after the expiry of his licence and before its renewal is in contravention of S. 14 and is an offence punishable under S. 19 (f) of the Act. Note 11 appended to the conditions printed on the license granted in Form XVI, which prescribes the fees payable if the license is renewed within one month of the date on which it expired and those payable after one month from that date, merely provides a period of grace during which the application for renewal may be made and the fees payable thereon deposited. It does not lay down that the *quondam* license-holder is entitled, as of right to have the license renewed on payment of the fee mentioned. 44 P.L.R. 486=A.I.R. 1942 Lah. 300=I.L.R. (1943) Lah. 756.

SEC. 16.—N. B.—*See also* notes under secs. 13—15.

POSSESSION OF GUN WITHOUT LICENCE BEING RENEWED.—An order confiscating a gun because of mere delay in renewing the licence is illegal. 15 Cr.L.J. 21; 22 I.C. 165.

the return or disposal of any thing the confiscation of which has been directed under section 24.

(3) All things deposited as aforesaid and not returned or disposed of under sub-section (2) within the prescribed period therein referred to shall be forfeited to His Majesty.

(4) (a) The [Central Government]¹ may make rules consistent with this Act for carrying into effect the provisions of this section.

(b) In particular and without prejudice to the generality of the foregoing provision, the [Central Government]¹ may by rule prescribe—

(i) the conditions subject to which arms, ammunition and military stores may be deposited with a licensed dealer, and

(ii) the period after the expiry of which things deposited as aforesaid shall be forfeited under sub-section (3).]

V.—Licenses.

17. The Central Government may from time to time, by notification in the Official Gazette, make rules to determine the officers by whom the form in which, and the terms and conditions² on and subject to which, any license shall be granted; and may by such rules among other matters—

(a) fix the period for which such license shall continue in force;

(b) fix a fee payable by stamp or otherwise in respect of any such license granted in a place to which section 32, clause 2, of Act XXXI of 1860³ applies at the time this Act comes into force or in respect of any such license other than a license for 'possession granted in any other place';

(c) direct that the holder of any such license other than a license for possession shall keep a record or account, in such form as the [Central Government] may prescribe, of anything done under such license, and exhibit such record or account when called upon by an officer of Government to do so;

(d) empower any officer of Government to enter and inspect any premises in which arms, ammunition or military stores are manufactured or kept by any person holding a license of the description referred to in section 5 or section 6;

(e) direct that any such person shall exhibit the entire stock of arms, ammunition and military stores in his possession or under his control to any officer of Government so empowered; and

(f) require the person holding any license or acting under any license to produce the same, and to produce or account for the arms, ammunition or military stores covered by the same when called upon by an officer of Government so to do.

Cancelling and suspension of license. 18. Any license may be cancelled or suspended—

(a) by the officer by whom the same was granted, or by any authority to which he may be subordinate, or by any Magistrate of a district, or Commissioner of Police in a presidency-town, within the local limits of whose jurisdiction the

LEG. REF.

¹ Substituted for 'Local Government' by A.O., 1937.

² For rules as to licences, see the Indian Arms Rules, 1924 Genl. R. & O., Vol. II.

³ Act XXXI of 1860 was repealed by sec. 3 of this Act.

NOTES.

SEC. 17: LICENCE TO KILL WILD BEASTS—KILLING WILD BEAST FOR SPORT WITHOUT SPORTING LICENCE.—Persons who are granted licence to carry arms, under Form XI, R. 16, of the Act, to kill bisons which are notoriously in the habit of injuring crops, will be justified in going armed for the purposes of sport and no separate licence under Form VIII, R. 13, is necessary. 5 M. 26=1, Weir. 662. The U. P. Arms Rules and Orders (1924) make it

clear that possession of arms for purpose of repair is not an offence. 30 Cr.L.J. 984=119 I.C. 13=1929 A. 720. District Magistrate in granting licence is not a Court. 4 N.L.R. 134. Schedule VII does not provide for the exemption of any person from the necessity of a licence. It simply describes the persons who are exempt from payment of fee chargeable for a licence in Form No. 16 in respect of certain arms. The most that a person falling within item (c), Sch. VII of the Rules of 1924, viz., a member of the Indian Defence Force with a long service medal, is entitled to, is a paper declaring that the holder was entitled to a licence without payment. He is not entitled to a life certificate of exemption from the necessity of a licence. 34 Cr. L.J. 112=1932 R. 180.

holder of such license may be, when, for reasons to be recorded in writing such officer, authority, Magistrate or Commissioner deems it necessary for the security of the public peace to cancel or suspend such license; or

(b) by any Judge or Magistrate before whom the holder of such license is convicted of an offence against this Act, or against the rules made under this Act; and

the ¹[Central Government] may ²[* *] by notification in the Official Gazette cancel or suspend all or any licenses throughout the whole or any portion of ³[British India].

VI.—Penalties.

For breach of sections 5, 6, 10, 13 to 17.

⁴19. Whoever commits any of the following offences (namely):—

(a) manufactures, converts or sells, or keeps, offers or exposes for sale, any arms, ammunition or military stores in contravention of the provisions of section 5;

LEG. REF.

¹ Substituted for the words "Local Government" by A.O., 1937.

² Words 'at its discretion' omitted by *ibid*.

³ Substituted for "the territories under its administration" by *ibid*.

⁴ Offences under this section are bailable, see Schedule II, Code of Criminal Procedure, 1898 (Act V of 1898).

SEC. 19: GENERAL.—N. B. See also notes under secs. 4, 5, 13, 14, 15 and 20. Offences under this section are bailable. See Cr. P. Code, 1898, Sch. II.

SALTPETRE IN KANDESH DISTRICT.—As the Government of India has not, by any notification extended sec. 19 to saltpetre in the Khandesh District, a person cannot be convicted under sec. 19 for keeping saltpetre without a licence. Rat. 227=Cr. Rg. 1 of 1886.

EXTENSION OF TIME BEFORE RENEWAL OF LICENCE, EFFECT OF.—An order extending the time for renewal of a licence has the effect of keeping a licence previously granted practically in force. 3 C.W.N. 394.

TRIAL.—An offence under sec. 19 is not triable summarily. 1 Weir. 654.

SENTENCE.—Under this section, a Magistrate on finding the accused guilty is bound to pass some sentence, though, of course, it is open to him to pass a nominal sentence. 1 Weir 654. Solitary confinement cannot be awarded for offences under the Act. 25 Cr.L.J. 120=1924 L. 667.

BURDEN OF PROOF.—The notification of 11th May, 1917, permits Sikhs, to carry *Kirpan* with impunity; and where an accused claims the benefit of an exception to the broad rule of law, he must establish that he comes within the exception. Though a *Kirpan* means sword, every sword cannot come within the meaning of the word. 23 Cr.L.J. 78=65 I.C. 430=1922 L. 141. See also 32 Bom.L.R. 106=1930 B. 155.

IRREGULARITY IN PROCEDURE.—Where the head constable made a false report that a dacoity had been committed and he had arrested some dacoits and after a delay of three days, as he said, recovered the arms from the petitioner, not in the presence of witnesses, who signed the list but who distinctly recorded that the arms were produced before them by the constable, *held*, the petitioner was not guilty. 1923 L. 466.

CLAUSE (a).—An offence under sec. 19 (a)

is committed only if the weapon is actually delivered to a person who has not got a licence. Mere negotiations for sale to a person who has no licence is not in itself an offence. 60 C. 445=37 C.W.N. 93=1933 C. 218. A dagger was found in a room in a house. The room and the house were jointly occupied by a father and his adult son. There was no evidence to show that either of them was aware of its existence. *Held*, that neither of them could be convicted of an offence under sec. 19. 52 P.R. 1905 Cr.=3 Cr.L.J. 71. When it is not shown that the accused had *exclusive possession of the room in which arms are found*, or that arms were placed there by him, or belonged to him, or that he knew they were there, the accused cannot be convicted of the offence under sec. 19. 75 P.L.R. 1901. (25 P.R. 1883.) See also 41 C. 350=15 Cr.L.J. 385. Where the accused, who had a licence under the *Explosives Act* to manufacture and sell gunpowder and fire-works on certain premises, manufactured fire-works at a different place, *held*, that the accused could not be convicted under the Arms Act. 1 Weir. 656. Clasp knives are not arms within the Act and a sale of them is not punishable under sec. 19 (a). 15 Cr.L.J. 585=25 I.C. 337. Sikh found in possession of *kirpans* of the length varying from nine to ten inches is not guilty of the offence under sec. 19 as such *kirpans* are not swords. 32 B.L.R. 106=125 I.C. 435=31 Cr.L.J. 847=1930 B. 153. In Punjab, Sikhs are exempt in virtue of Schedule II, 3 (6) from prosecution under sec. 19 (f) for possessing a sword or *kirpan*. 26 Cr.L.J. 661=5 L. 308=1924 L. 600. But manufacture of *kirpans* by Sikhs is prohibited by sec. 15 and is not covered by the exemption in Sch. II of the Rules which applies to *kirpans* actually in existence and possessed or carried by Sikhs. 3 L. 437=25 Cr.L.J. 342=1923 L. 267.

POSSESSION OF GUN-POWDER WITHOUT LICENCE.—The term "ammunition" is defined by the Act, as meaning, among other things, any explosive material. The intention of the Act was to deal with an explosive material capable of being used for purposes of warfare. 8 M. 202=1 Weir. 664. Therefore, a person, in possession of a quantity of gun-powder without licence is liable to be convicted under sec. 19, although he may intend to employ the powder in the manufacture of fire-works or other harmless purposes. 8 M. 202=1 Weir 664 (5 M. 159.) The mere possession or sale of fire-works,

- (b) fails to give notice as required by the same section ;
 (c) imports or exports any arms, ammunition or military stores in contravention of the provisions of section 6 ;
 (d) transports any arms, ammunition or military stores in contravention of a regulation or prohibition issued under section 10 ;
 (e) goes armed in contravention of the provisions of section 13 ;

without a licence, is no offence under the Arms Act. But the possession of gun-powder without a licence, even though for the innocent purpose of making fire-works, is an offence.

1 Weir. 653. There is nothing in the Act or the rules, which renders a sale of sulphur and ammunition by the agent of a licence-holder illegal.

12 M. 473=1 Weir. 655. As to possession of unserviceable fire arms, see 1943 Mad. 661= (1943) 2 M.L.J. 283.

CL. (d).—Where a person orders a gun from a dealer in Bombay ostensibly for an intending purchaser but in fact upon his own account, the act does not amount to offence of transporting without licence under sec. 19 (d). Under R. 24 Arms Rules, it is for the consignor and not for the consignee to apply for and obtain licence and when the transporting is done by dealer in Bombay, it is fully covered by the licence. Conviction under sec. 19 (d) cannot in such a case be sustained. It is sufficient that the person ordering the gun should under R. 22 hold a licence to possess the gun and if he is found without one he is liable to prosecution, on receipt of the weapon for possessing it without licence. 52 M. 999=1929 M. 864=57 M.L.J. 520. It is for the prosecution to prove definitely that the number of cartridges in the actual possession of the accused on any particular date exceeded the number covered by his licence. 141 I.C. 263=34 Cr.L.J. 190=1933 L. 166.

CLAUSE (e)—OFFENCE UNDER THE CLAUSE, WHETHER TRIABLE BY THE SECOND-CLASS MAGISTRATE.—No Magistrate of the second-class has the power to try an offence under sec. 19 (e). 1 Weir. 660.

GOING ARMED.—The offence of going armed with fire-arm is considerably more narrow than the offence of being in possession merely of fire-arms. The expression "going armed" clearly indicates two things, namely, firstly an intention to use it as a fire-arm and secondly the possibility of using it. 48 M.L.J. 502=26 Cr.L. L. 1028=1925 Mad. 585. Thus, simply possessing arms without licence and without an intention to use them is no offence under s. 19 (e). 37 B. 181=14 Bom.L.R. 964=13 Cr.L.J. 860. But the Sind Court has held that a person who carries about a gun without any ammunition can be said to go "armed" holding the view that to define "armed" as meaning "one who is equipped with an arm capable of immediate use as an arm" would be contrary to the vernacular meaning of the word "armed" and would also be not safe. 77 I.C. 736=25 Cr.L.J. 448=1925 Sind 177. But see *contra* 1 Weir. 661 and 1 Weir 662 cited *infra* under cl. (f).

The term does not include taking arm for the purpose of repair. A.W.N. 1891, 208. See also. 15 A. 27; 16 A. 276; 24 A. 454. If a person carries a gun not in his hand but tied to his bi-cycle in the manner of a piece of luggage, he must be said to be "going armed"

within the meaning of S. 19 (e) of the Arms Act and is liable to conviction. 22 P.L.T. 570=1941 P.W.N. 423=A.I.R. 1941 Pat. 284.

The mere temporary possession, without a licence, of arms for purposes other than their use as such, is not an offence within the meaning of sec. 19. The above principle is not confined to the case of a servant carrying his master's gun, but applies also to a friend performing the same office to a friend. The essence of the offence is the going armed, i.e., carrying a weapon with the intention of using it as a weapon, when the necessity or opportunity arises. 24 A. 454. See also. 6 P.R. 1908 Cr.=7 Cr.L.J. 350; 4 N.L.R. 146; 5 L.B.R. 83. Accused who was the servant of a licence-holder was only in possession of the gun on behalf of his master who had left the place where the accused was guarding his master's money for a short time only; held that the accused should not be convicted. 146 I.C. 498=1933 Pat. 600. A servant who goes out at the request of his master with his master's gun to shoot duck for him is guilty of "going armed". 4 S.L.R. 214=12 Cr.L.J. 122=9 I.C. 720. See also 24 A. 54 and 38 I.C. 329. Sec. 19, cl. (e) does not include the word "habitually" and the words "goes armed" connote carrying a weapon with the intention of using it when the necessity arises. Even an isolated act of carrying a weapon in contravention of the licence could amount to an offence under sec. 19, cl. (e). Where an accused gets himself possessed of a sword with the intention of using it as a weapon for the purpose of attacking his opponents and uses it, while using that weapon he must have moved about and he would therefore be considered to have gone armed within the meaning of cl. (e), sec. 19. 53 B. 604=31 Bom.L.R. 536=30 Cr.L.J. 1059=1929 B. 283. The privilege conferred by the exemption referred to in Notification No. 518, dated 6th March, 1879, as amended by Notification No. 458 dated 18th March, 1898, is of a persona nature and protects only persons carrying fire-arms for their own personal use, and does not extend to the servants and retainers of the persons exempted. 14 C.P.L.R. Cr. 112. (22 A. 118, Diss.) A gun minus a percussion cap is within the definition of 'arm' in sec. 4, and a person going about with it 'goes armed,' and his conviction under sec. 19 (e) is not improper. I.L.R. 1937 Nag. 488=38 Cr.L.J. 639=1937 N. 213.

PERSON CARRYING ARMS—PRESUMPTION.—A man who is found going about with a pistol, gun, sword or other weapon must, in the absence of proof to the contrary, be presumed to be carrying it with the intention of using it, should an opportunity for using it arise, and, unless he is licensed to carry the weapon and is not exceeding the terms of his licence, he may be properly convicted under sec. 19 (e); 15 A. 27; I.L.R. 1937 N. 488=38 Cr. L.J. 639=168 I.C. 879=1937 N. 213.

OFFENCE, WHEN COMPLETE.—The offence is

(f) has in his possession or under his control any arms, ammunition or military stores in contravention of the provisions of section 14 or section 15 ;

(g) intentionally makes any false entry in a record or account which, by a rule made under section 17, clause (c), he is required to keep ;

complete the moment a person enters with the arms in his possession. No particular intention is necessary. 35 M. 596=13 Cr.L.J. 776=17 I.C. 408.

SPEAR EXEMPTED.—The carrying of a spear is not offence, because *spears are exempted* from the operation of secs. 13 to 16. Rat. 507. Under Rule 11-A of the notification of the Government of India, dated 6th March, 1879, spears of all kinds are, so far as regards the Presidency of Madras, excluded from the operation of any prohibition and direction contained in the Arms Act. 1 Weir. 660. The notification issued by the U. P. Local Government does not prohibit the possession of a spear-head in the District of Ghazipur. The word 'spear' used in that notification cannot be extended to spear-head in view of the language of sec. 4 of the Act. Accordingly, the possession of a spear-head in Ghazipur District cannot justify a conviction under sec. 19 (f) of the Act. 167 I.C. 935=1937 A.L.J. 41=A.I.R. 1937 A. 228. The meaning of *Dahnyang* in the Burmese translation of the Arms Act must be limited to the meaning of *dagger*. L.B.R. (1893-1900) 320. As to *takwas* being arms, see A.I.R. 1940 Lah. 468=42 Cr. L.J. 144.

CLAUSE (f) OFFENCE UNDER.—[See also the cases cited under secs. 14 and 15 and 52 M. 999, cited under clause (d) of this section.] The offence under S. 19 (f) is constituted by 'possession or control' of any arms, etc. The test provided by the section is not as to whom the arms belong to but whether they are in the possession or under 'control' of the person charged. It is not exclusive possession or exclusive control that is required by the section, but merely possessing or control. It is the actual physical possession and control that the Act is speaking of and not merely a 'possession' or 'control' by construction of law. The offence is the offence of physically and actually possession or controlling the arms in question. It is not a liability to be found in a merely constructive or presumed possession or control which the law might for other purposes import into the facts of the case. 190 I.C. 785=1940 A.L.J. 467=A.I.R. 1940 All. 449=I.L.R. (1940) All. 657. "Possession" for the purposes of the Arms Act is possession for use. The mere holding of a weapon by one person on behalf of the person entitled to it is not "possession" within the meaning of S. 19 (f). When a person holding a licence for a gun stays in the house of a friend and leaves the house leaving the gun in that house intending to return for it shortly afterwards, it cannot be held that the licensee is not in possession or that the friend in whose house it has been left, is in possession of it, especially when the friend has not made any use of the gun. 191 I.C. 187=42 Cr.L.J. 97. "Possession for the purposes of the Arms Act is possession for use. The mere holding of a weapon by one person on behalf of the person entitled to it is not "possession" within the meaning of S. 19 (f). When a person holding a licence for a gun stays in the house of a friend and leaves the house leaving the gun in that

house intending to return for it shortly afterwards, it cannot be held that the licensee is not in possession or that the friend in whose house it has been left, is in possession of it especially when the friend has not made any use of the gun. 42 Cr.L.J. 97=1941 Pat. 209. In a case under S. 19 (f) it is the primary duty of the prosecution to prove the possession of the accused, but there may be cases in which the circumstances are such that possession of the accused can safely be presumed, otherwise it will be impossible for the prosecution to secure a conviction. Hence the words 'and control' in the section must be taken in a wider sense and to mean something more than actual possession. Where it was found that the room from which the illicit arms were recovered was in the joint exclusive possession of the two accused and that other male members of the house lived in another portion of the house, it was held that the accused must be held to have the joint control of the room and that where there was no one willing to take the responsibility the only possible presumption the Court could make was that they were in joint control. 201 I.C. 401=43 Cr.L.J. 666=A.I.R. 1942 Cudh 448=18 Luck. 253. See also 1943 Pesh. 20. Exclusive possession or control of any particular person over an incriminating article is not required under S. 19 (f), Arms Act, and S. 5, Explosive Substances Act. The possession or control might well be possession or control of two or more persons. Every case must depend upon its particular facts and the Courts must consider each case and come to a conclusion whether it is proved that the incriminating article is in the possession or under the control of any particular person or in the possession or under the control of more than one person. 1944 Lah. 339 (F.B.). In cases under S. 5, Explosive Substances Act, and S. 19, Arms Act, the onus of proving the guilt of the accused rests on the prosecution as in all other criminal charges. S. 106, Evidence Act, applies to cases similar to the two cases given in the illustrations to that section and does not affect the onus of proving the guilt of an accused. That onus rests on the prosecution and is not shifted on to the accused by reason of that section. Consequently in cases where incriminating articles are recovered from a place in the occupation or possession of more persons than one and it is not possible to fix the liability on any particular individual, it would not be legally permissible to call upon all the occupants of the place to account for the presence of the incriminating articles in their premises and in the absence of any satisfactory explanation on their part to hold all of them to be in possession or control of the same. Mere proof that an incriminating article is found in premises occupied by a number of persons does not in itself establish *prima facie* the guilty of any particular person or all of them jointly. 215 I.C. 161=A.I.R. 1944 Lah. 339 (F.B.). See also 1944 Lah. 64.

POSSESSION OR CONTROL. The words "possession and control" in S. 19 (f), Arms

(h) intentionally fails to exhibit anything which, by a rule made under section 17 clause (e), he is required to exhibit; or

(i) fails to deposit arms, ammunition or military stores, as required by section 14 or section 16;

Act, and S. 5, Explosive Substances Act mean something more than mere constructive or legal possession and control. Possession and control required to constitute offences under the aforesaid sections must mean conscious possession and actual control, and as under those sections mere possession of incriminating articles constitutes serious criminal offences there must be *mens rea* or guilty knowledge before a person can be convicted of such possession. Consequently, where incriminating articles under S. 19 (f), Arms Act, and S. 5, Explosive Substances Act, are recovered from a place in the occupation or possession of more persons than one and it is not possible to fix the liability on any particular individual, a Court is not bound to hold that the said articles were in possession or under the control of the head of the family. 215 I.C. 161 = A.I.R. 1944 Lah. 339 (F.B.). The phrase "the possession of the arms or control over the arms" referred to in Cl. (f) of sec. 19 implies actual physical possession or control of the arms or ammunition in respect of which the charge has been lodged. Where the arms were found concealed underneath a gunny cloth spread inside the bullock-cart, and the persons were found sitting inside the bullock-cart, and jumped out of it and tried to escape but were caught, *held*, they must alone be deemed to be in joint physical possession of these arms, which were found in the cart and liable to punishment under sec. 19 (f) and not other members of the gang. 35 Cr.L.J. 973 = 149 I.C. 533 = 1934 O. 200. *See also* 45 P.L.R. 421. Where an unlicensed gun, on the information of the accused, was recovered from the railway premises within the railway fencing, which place was accessible to the public, and a path was running close by, *Held*, that no member of the public could have ordinarily got at the gun inasmuch as it was concealed from view, whereas the accused could have access to it at opportune moments and hence in the eye of the law he must be deemed to be in possession and control of the gun. I.L.R. 1937 A. 710 = 38 Cr.L.J. 910 (2) = 1937 A. 497. Where a person is proved to have kept a gun for sometime and then made it over to another to keep for him he cannot be convicted under sec. 19, Cl. (f). 15 C.W.N. 440 = 10 I.C. 688 = 12 Cr.L.J. 197. The licensee was forbidden under the terms of his licence from taking the gun to a public assemblage; if he does so, he would be guilty of an offence under sec. 19. 24 Bom.L.R. 487 = 22 Cr.L.J. 450 = 67 I. C. 722 = 1923 B. 35. (Marriage assemblage). Where the condition of licence was that the licensee should not carry the gun to a fair, religious assemblage, or other public assemblage, without the special permission of the District Magistrate, carrying of the arm in a marriage procession would not be an offence as a marriage procession would neither come under the category of a religious procession nor of a public assemblage. 29 Cr.L.J. 575 = 109 I.C. 511 = 1928 N. 219. It is possible for a minor to be in custody and in control of arms and

where he is proved to be in actual possession of arms and without a licence he can be convicted under sec. 19 (f). 40 A. 420 = 19 Cr.L.J. 447 = 44 I.C. 975. As to conspiracy to possess fire-arms coming under sec. 120-B of the Penal Code, *see* 31 C.W.N. 239 = 28 Cr. L. J. 241 = 1937 C. 265; *see also* 39 C.W.N. 334 (F.B.). Simply because a person knows that there are some fire-arms illegally concealed in his master's garden, it cannot be held that they are necessarily in his possession or control, and he cannot be convicted under sec. 19 (f), 40 C.W.N. 1374.

POSSESSION AFTER EXPIRY OF LICENCE.—A man who possesses an arm for which he holds an expired licence does not do so "under that licence and in the manner and to the extent permitted thereby." Accordingly he commits an offence under sec. 19 (f) and is not punishable under sec. 23. 167 I.C. 191 = 38 Cr.L.J. 396 = A.I.R. 1937 Pesh. 30. *See also* 44 P.L.R. 486 = 1942 Lah. 300. R. 30 of the Bengal Government Rules which prescribes that renewal may be granted if applied for within 30 days of the expiry of the licence does not affect the liability under the Arms Act. 60 C. 445 = 34 Cr.L.J. 363 = 37 C.W.N. 93 = 1933 C. 218.

OFFENCE AFTER SEVERAL YEARS AFTER THE ACT CAME INTO FORCE.—Where several years after passing of this Act an offence under sec. 19 (f) was committed at a place to which the previous Act of 1860 applied, the previous sanction of a Magistrate is not a condition precedent for prosecution. 24 P.R. 1913 Cr. = 14 Cr.L.J. 688 = 21 I.C. 1008.

DISTINCT OFFENCE.—Offences created by and punishable under sec. 20 are distinct from those under sec. 19. 17 Cr.L.J. 209 = 8 L.B.R. 452 = 34 I.C. 321; 42 C. 1153 = 16 Cr. L.J. 9 = 19 C.W.N. 706 = 26 I.C. 313. *See also* 1940 O.W. N. 481 = A.I.R. 1940 Oudh 337. Where the accused are in possession of a stolen revolver, the fact that they are convicted in respect of its possession under sec. 411, I. P. C. or under sec. 414, I. P. C. is no bar to their being convicted under sec. 19 (f). 146 I.C. 354 = 1933 O. 470. *See also* 145 I.C. 609 = 34 Cr.L.J. 1018 = 1933 A.L.J. 523 = 1933 A. 461. Where accused has been convicted and sentenced separately for being in possession of the revolver, it is questionable whether they can be convicted separately for being in possession of the cartridges with which the revolver is loaded. 146 I.C. 354 = 1933 O. 470. Accused, who was charged under sec. 120-B, Penal Code read with secs. 19 and 20 of the Arms Act for having joined in a conspiracy with others to possess arms in contravention of the Arms Act, was absconding and when arrested he was found in possession of arms, *held*, that separate proceedings can be taken for the possession of arms on the second occasion, that the two cases are wholly independent and that the evidence or the conviction in one cannot be considered in the other. 143 I.C. 627 = 34 Cr.L.J. 637 = 1933 L. 231. But where the case against the accused was found on facts, as constituting an offence under the Arms Act,

shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

as well as under sec. 30 of the Rangoon Police Act. *Held*, that the accused should not have been charged and convicted twice as for two offences under each of the said Acts. 3 L.B.R. 218 (F.B.). On this section, *see also* 5 Bom.L.R. 26.

JOINT POSSESSION—BENEFIT OF DOUBT.—Having regard to the fact that the CHAVI was found in a house admittedly in the joint possession of both the accused, it could not be said with any degree of certainty that one of them was in exclusive possession thereof. The accused must be given the benefit of doubt. 25 Cr.L.J. 399=77 I.C. 447=1923 L. 513. *See also* 65 I.C. 447=23 Cr.L.J. 95 (L.) *See also* 158 P.L.R. 1905 and 75 P.L.R. 1901, cited under clause (a), *supra*. Accused led the police to a cattle-shed near the house in which he was living with his father and brother and pointed out the place where a revolver was lying. *Held*, the mere knowledge of the fact that the revolver was lying in the shed or the pointing out of the place from which it was actually found, without proof that the place was in the exclusive possession of the accused was not sufficient to hold the accused guilty under sec. 19 (f). 146 I.C. 232=34 Cr.L.J. 1256=1933 L. 314. In a case under S. 19 (f) it is the primary duty of the prosecution to prove the possession of the accused, but there may be cases in which the circumstances are such that possession of the accused can safely be presumed, otherwise it will be impossible for the prosecution to secure a conviction. Hence the words 'and control' in the section must be taken in a wider sense and to mean something more than actual possession. Where it was found that the room from which the illicit arms were recovered was in the joint exclusive possession of the two accused and that other male members of the house lived in another portion of the house, it was held that the accused must be held to have the joint control of the room and that where there was no one willing to take the responsibility the only possible presumption the Court could make was that they were in joint control. 1942 O.W.N. 379=43 Cr.L.J. 666=A.I.R. 1942 Oudh 448.

ARMS FOUND IN JOINT FAMILY HOUSE ACCESSIBLE TO MANY—OFFENCE.—When the place in which an incriminating article is found is one to which several persons have equal rights of access, it cannot be said to be in the possession of any one of them. 21 C. W.N. 899; 18 Cr.L.J. 781=41 I.C. 157. *See also* 92 I.C. 589=27 Cr.L.J. 301 (All.); 100 I.C. 819=28 Cr.L.J. 339=1927 L. 725; 32 Cr.L.J. 699=131 I.C. 441=1931 O. 115. In the case of a house occupied by a joint family there is an initial presumption that an article found therein is in the possession of the head of the family. 30 Cr.L.J. 668=1929 L. 872 (1928 L. 272, relied on). 169 I.C. 681=38 Cr.L.J. 838=A.I.R. 1937 Pesh. 73; 1941 Nag. 296. The same principle applies to all families living jointly in the same house. The weight to be attached to the presumption must vary according to circumstances. It could easily be rebutted by showing that the room or receptacle in question was in the particular and exclusive possession of a particular member of the family. The strength of the presumption would also vary according to the improbability

that the article owing to its size, etc., could have escaped the notice of the head of the family. I.L.R. (1942) Nag. 523=196 I.C. 727=1941 N.L.J. 405=A.I.R. 1941 Nag. 296. Thus where a house was occupied by the accused, his father who was 80 years old, and his wife, and a *chhavi* blade was found in the wife's possession, the mere fact that the father is 80 years old is not sufficient to establish that the accused was in possession of the *chhavi*. 30 Cr.L.J. 668=1929 L. 872. Although it is not laid down as an invariable rule that where weapons are found in a house occupied by a Hindu family living jointly, possession is necessarily that of the managing member only, yet in all such cases, where it is sought to establish that possession and control are with some member of the family other than the managing member, there must be good and clear evidence of the fact, before the Court can arrive at such a conclusion. The Act is one highly penal and must be strictly construed. 15 A. 129. Where an unlicensed gun is found in the house belonging to a Hindu joint family a presumption arises against all the adult male members that it was in their possession and control and they might one and all be tried on the charge. It is for the members to show they were not in possession of the gun. The mere fact that a member is not the manager would not by itself absolve him from liability. 54 A. 411=33 Cr.L.J. 719=1932 A.L.J. 570=1932 A. 441. *But see* 55 A. 112, cited below in which the above decision has been dissented from. In order to sustain a conviction under sec. 19 (f) it is necessary to prove not only the presence of the article in the house but the possession of some particular person over that article. So the head of the family cannot be convicted merely on the ground that some loaded cartridges were found in the grain bin of the house. 55 A. 112=143 I.C. 114=1933 A. 112. Where the house of the accused was searched by the police on receipt of certain information and the receipt of search was that an unlicensed muzzle loading pistol was found concealed under a heap of grain inside a vessel and inside the barrel of the pistol percussion caps were also found and it appeared that the accused and his sons and their wives were living in the house at that time. *Held*, that the accused being the head of the family could under the circumstances be taken to have had knowledge of the concealment. 147 I.C. 625=35 Cr.L.J. 428=1934 A. 548. The conviction of the other members of the family under such circumstances is not legal and will be set aside. 15 P. 696=17 P.L.T. 573=1936 P. 512. Where unlicensed arms are found concealed upon premises which though legally the joint property of a joint Hindu family, are in fact, at the time of the finding, in the exclusive possession and control of one member of the family, that member of the family, can properly be held to be in possession of such arms. 3 Cr.L.J. 88=28 A. 302=3 A.L.J. 833.

EXCLUSIVE POSSESSION.—[*See A.L.J. 467=A.I.R. 1940 All. 449.*] An accused was charged under sec. 19 (f) and the only evidence against him was that at his instance a place was dug up in the house of another person wherefrom a pistol

and some cartridges were recovered, but during the commission of robbery he was not alleged to be armed with a pistol; moreover the person from whose house the pistol and cartridges were recovered was suspiciously withheld by the police, *Held*, that such exclusive possession was not established against the accused as would justify his conviction for the offence of possessing a pistol without a licence. A.I.R. 1937 L.561. In a case under the Arms Act the question of exclusive possession of an arm cannot be raised for the first time in appeal. 15 Cr.L.J. 506=24 I.C. 594.

POSSESSION OF ARMS—EVIDENCE DOUBTFUL—CONVICTION ILLEGAL.—Where it was found that the two accused were found lying on a bed in the house of another and in the bedding a *chhavi* was found wrapped in a cloth, *held*, that it was impossible to say which of the two was actually in possession and therefore that the conviction of the accused was illegal. 65 I.C. 447 (1)=23 Cr.L.J. 95 (L.). See also 33 C.W.N. 202=30 Cr.L.J. 1038=119 I.C. 297=1929 C. 30. Sec. 19 (f) was never intended to cover a case of two persons making temporary use of a revolver in order to foist a false case on another. That two people should jointly own a single revolver is itself an unusual circumstance. 1937 M.W.N. 572 (2). Where the charge rested on suspicion and the guilt was not proved. Two persons L and M were shown to have been moving about under suspicious circumstances. L was caught and searched and a revolver and cartridges were recovered from him. It appeared that M knew of L's possession of the revolver but there was nothing more incriminating against him. *Held*, that sec. 34, Indian Penal Code, had no application and that M could not be convicted under sec. 19 (f). 37 C.W.N. 201=60 C. 618=34 Cr.L.J. 299=1933 C. 132. Where the only evidence for the prosecution is that a miscellaneous collection of arms and ammunition was found in a house belonging to the accused, it is not safe to convict him of an offence under sec. 19 (f) when there is no clear evidence that the accused was living in the house until within a short period before the discovery. 46 L.W. 522=(1937) 2 M.L.J. 620.

POSSESSION OF LEAD FOR INDUSTRIAL PURPOSES.—Where it was possible that the lead found in the possession of the accused was for fishing purposes, the Magistrate should have, where the accused was unrepresented, put some questions with a view to elucidating from them whether they were *prima facie* vendors of lead for industrial, that is, fishing purposes. 32 Cr.L.J. 206=1930 R. 349.

POSSESSION OF GUN WITHOUT AMMUNITION.—The possession of a gun without ammunition, in the absence of a licence, is not punishable under sec. 19 (e); nor can the accused be convicted under sec. 19 (f), in the absence of the previous sanction of the District Magistrate. 1 Weir 662. The carrying of a gun without ammunition, by an unlicensed person is an offence under sec. 19 (f), but not under sec. 19 (e). 1 Weir 661. [F. 1 Weir 662]. But see 77 I.C. 736 (Sind), cited under clause (e). The provisions of sec. 19 (f) do not make the mere possession of a gun punishable; they make possession contrary to the provisions of sec. 14 punishable. 12 C.W.N. 272; 7 Cr.L.J. 112=35 C. 219. The snatching up of a gun, which was in the hand of another,

and firing it at a mad dog, do not constitute the possession contemplated by sec. 14. 12 C.W.N. 272; 7 Cr.L.J. 112; 35 C. 219. Where a person is found to have kept a gun for some time and then made it over to another to keep for him he cannot be convicted under sec. 19 (f). 15 C.W.N. 440=12 Cr.L.J. 197=10 I.C. 688. A person carrying a revolver in his pocket, without a licence is guilty only under sec. 19 (f), and not under sec. 20. 72 P.L.R. 1916=33 I.C. 823. Where a revolver is found in the possession of one of two men sitting together and it was proved at one time that revolver was possessed by one or the other of the two, both are guilty of possessing arms without a licence. 16 Cr.L.J. 637=30 I.C. 461=27 P.W.R. (Cr.) 1915. The possession of a sword or dagger without a licence in a place to which sec. 15 has not been rendered applicable is not punishable under sec. 19 (f). 1 Weir 666. Thus, possession of a *jambia* or a kind of dagger is not an offence under sec. 19 in the Bombay Presidency. 32 Bom.L.R. 350=31 Cr.L.J. 932=1930 B. 159.

POSSESSION BY SERVANT OR RELATION—USE OF GUN BY SERVANT.—A person who is exempted from the provisions of the Act, if can send his servant armed with a gun to shoot for him. 9 Cr.L.J. 297=38 I.C. 329. A person licensed to possess gun cannot authorize the possession of that gun by his servant for an unlawful purpose; and a servant who is in such possession of that gun can be properly convicted under sec. 19 (f) of the Arms Act. 159 I.C. 183=1935 A.L.J. 1096=1935 A. 916. A servant of a gun licensee who is merely carrying the gun of his master to the latter's house under his orders cannot be held liable to conviction under S. 19 (f), Arms Act, 187 I.C. 120=1939 M.W.N. 1260=A.I.R. 1940 Mad. 257. The temporary possession of a gun by a servant who carries it from his master's house to the balacksmith's for repairs and by the blacksmith for the purpose of repair, without a licence, is not punishable under sec. 19. 16 A. 267. See also 24 A. 454 cited under cl. (e). But use of the gun by the servant of a licensee, for his own purposes is an offence though the servant can carry the gun legally for the purpose of his master or in the presence of his master. 47 M. 438=25 Cr.L.J. 975=1924 M. 668=46 M.L.J. 401. Though an unlicensed pistol was found in a shop, the master being absent the servant in possession of the pistol alone could be convicted for the offence. The master's conviction could not be upheld. 20 A.L.J. 855=23 Cr.L.J. 729=1923 A. 33. Where a person who apparently had a licence to go armed had come to shoot to a village wherein his cousin's servant was, feeling thirsty, went to get a drink, leaving the gun with the servant (a person not holding a licence under the Arms Act), *held*, that such a temporary custody of the gun by the servant did not amount to the "possession" or "control" contemplated by cl. (f) of sec. 19. 4 N.L.R. 146 (Cr.) A servant carrying a gun on his master's behalf is not guilty under sec. 19 (f) of the Arms Act, of possessing a gun in contravention of the provisions thereof. 41 C. 11=17 C.W.N. 979=14 Cr.L.J. 377=20 I.C. 137. But if the master himself had no licence, the servant would be, though technically, guilty under this section 19 (f) whether the servant

may or may not be aware of the absence of licence, which will affect only the quantum of punishment. 18 P.L.T. 88=38 Cr.L.J. 409. On this point, as to possession of arms by servant, see also 13 C.W.N. 124=4 I.C. 333; 1 Weir 664; 3 C.W.N. 394. Even a servant who is found in British India carrying a gun for the purpose of having it repaired, will not be protected from the provisions of sec. 19 read with sec. 6 if the gun is not covered by a licence acknowledged by the British Government. 30 Cr..L.J. 543=1929 O. 157. When communal riots were taking place in different quarters of the town, the accused, brother of a licence-holder, took out his brother's gun and fired shots in the air so that people mischievously inclined might know that it was not safe for them to do any mischief to the people living in the house, *held*, that the possession of the gun was on behalf of the brother and the accused was not guilty. 47 A. 606=23 A.L.J. 356=1925 A. 396. Where the accused took out the gun of his father who held a licence for it, for the purpose of shooting birds and was found out by an officer of the police near a pond, it was held that the letter of the law was contravened but that a fine of Rs. 25 would answer the purpose. 47 A. 267=22 A.L.J. 1095=26 Cr.L.J. 479=1935 A. 175. See also 157 I.C. 411=1935 Pesh. 103. The accused who was a cousin of the licensee of a gun borrowed the gun and carried it in a marriage procession when he fired some shots and wounded some people accidentally. *Held* he was guilty under sec. 19. 24 Bom. L.R. 487=22 Cr.L.J. 450=57 I.C. 722=1923 B. 35.

OTHER ILLUSTRATIVE CASES.—There is *nothing in the Arms Act to exempt the custodians of a temple which had a collection of fire-arms used as objects of worship*, from complying with the requirements of the Act either by taking out a licence or obtaining exemption under sec. 27, so that a conviction under sec. 19, cl. (f), for neglect to take out licence in respect of such arms, is not illegal. 8 C. 473. A fire-arm, which is defective and otherwise unserviceable, is not within the meaning of the Arms Act, and, consequently, not one for which a licence need be taken out, although it might be capable of being rendered serviceable by being repaired. 1 Weir 658. Whether in any particular instance an instrument is a fire-arm or not, is a question to be determined according to the facts of each case, and the circumstance that it is in an unserviceable condition is not sufficient to take it out of the category of fire-arms. 9 Cr.L.J. 259=1 S.L.R. 18 Cr. (F.B.). Possession of a revolver "in loose parts" without a licence was held to be an offence where it appeared that the parts were in a rusty condition but they could be used if cleaned and oiled. 34 Cr.L.J. 916=37 C.W.N. 234=1933 C. 495. In a District which has not been disarmed, the possession of a sword without a licence is not an offence under the Act, unless the person in possession goes armed with it. 1 Weir 666. *Patakhars*, which are quite useless for military purpose or for use as fire-arms or torpedos or war-rockets are not ammunition within the meaning of the Act and a conviction under sec. 19 (f) is not sustainable for possessing the same without licence. 53 A. 226=32 Cr.L.J. 564=1931 A. 17. *Empty cartridge cases with exploded caps* are not "ammunition" as de-

fined in the Act. 20 P.R. 1890 (Cr.) An *instrument for recapping cartridge cases* of the Martini-Hurley rifles is not machinery for manufacturing ammunition within the meaning of the Act. 20 P.R. 1890 (Cr.)

CONCEALMENT OF ARMS.—Each case of concealment of arms must be decided on its own facts as to whether it falls under sec. 19 or sec. 20 but for sec. 20 to apply there must be some special indication of an intention to conceal the possession of the arms from a public servant, railway official or public carrier. 9 L. 550=29 Cr.L.J. 577=1928 L. 193. (8 P.R. 1915 Cr.; 1923 L. 79; 1925 L. 434; 1926 L. 262, Foll.; 9 P.R. 1912 (Cr.) and 1925 L. 395, Diss. from.) See also 1931 Lah. 561. Merely keeping of a *chhavi* blade in one's own house and possessing a stick that would fit into it, cannot be regarded as falling within the purview of sec. 20. The case would fall more appropriately under the definition of sec. 19 (f). 1931 L. 561 (r). See also 15 Cr.L.J. 506=24 I.C. 594. If a person carries on his person a small weapon such as a pistol, a dagger, or a blade of a *chhavi* he naturally puts it in his pocket or dab and if with that weapon in his pocket or dab he is in his house or in his village or in a bazaar or in a Court compound, it cannot be inferred that he was so carrying the weapon with the intention specified in sec. 20. 28 Cr.L.J. 671=1927 L. 561. Where a Railway passenger was found to have a revolver and cartridges in the inner coat, *held*, that he was liable to be convicted under sec. 20, not under sec. 19. 32 Cr.L.J. 995=1931 L. 663. Section 20 is applicable to a case of possession of arms contrary to the provisions of the Act, when the accused has concealed it in his waist band of loin cloth. 8 P.R. 1915 (Cr.)=16 Cr.L.J. 412=28 I.C. 796. The mere denial, on the part of a person, whose house is being searched by the Police for unlicensed arms, that he has any such arms in his possession does not constitute a concealment or attempt to conceal arms on search being made by the Police within the meaning of the second paragraph of sec. 20. 3 Cr.L.J. 88=28 A. 302=3 A.L.J. 833. Where certain fire-arms had been found from the possession of the accused, who had concealed them under a heap of straw, in order that visitors in his house should not see them, *held*, that the concealment was not with the intention specified in sec. 20, and the accused could, therefore, be convicted only under sec. 19(f). 9 Cr.L.J. 259 (F.B.); 1 S.L.R. 18 (Cr.) Being in possession of a *chhavi* and keeping it hidden is punishable under sec. 19. Section 20 applies only when the export or import of an arm is attempted. 1 P.W.R. 1914 (Cr.)=33 P.L.R. 1914=15 Cr.L.J. 506=24 I.C. 594. (18 I.C. 265 Foll.) See also 6 L. 151=86 I.C. 221=1925 L. 395. A discovery of arms in consequence of the information supplied by the accused that he had buried a revolver in his field fulfils the requirements of sec. 19 (f) and sec. 20. 72 P.L.R. 1916=33 I.C. 823=17 Cr.L.J. 183. See also 100 I.C. 122=28 Cr.L.J. 250=1927 L. 900; 1923 L. 434.

SEARCH BY POLICE OFFICER.—LEGALITY OF.—The power of search in respect of an offence punishable under sec. 19 (f) must be exercised in the presence of some officer specially appointed by name or in virtue of his office by the Local

[S. 19-A applicable to Bengal only.]

LEG. REF.

AMENDMENT IN BENGAL.—[N. B. — Sections 19-A and 20 Proviso were inserted by Bengal Act XXI of 1932, and they are applicable only to the Bengal Province.]

“19-A. Notwithstanding anything contained in section 19 whoever commits an offence under cl. (c) or cl. (e) or cl. (f) of section 19 shall, if the offence is committed in respect of a pistol, revolver, rifle, or shot gun, be punished with transportation for life or any shorter term, or with imprisonment for a term which may extend to fourteen years, or with fine.”

Government in this behalf. A search conducted by a police officer in charge of a reporting station, especially empowered as above, without obtaining a warrant from a Magistrate is not illegal. 16 A.L.J. 721=19 Cr.L.J. 943=47 I.C. 801. As to search see also 27 C. 692=4 C.W.N. 750; 22 A. 118. Where the offence has been undoubtedly committed by the accused, who was in possession of arms, the fact that the legal procedure (sec. 25) was not followed in making the search would not, by itself, be sufficient ground to acquit the accused. U.B.R. (1892-1896), Vol. I, 2. 16 P.L.T. 598=1935 Cr.C. 1202=159 I.C. 487=1935 P. 465. A person charged under sec. 19 (f) cannot be acquitted simply because the search was not in strict compliance with sec. 103 Cr. P. Code. 131 I.C. 441=32 Cr.L.J. 699=1931 O. 115. See also 47 A. 575=1925 A. 434.

The exemption of volunteers from the operation of the Arms Act, by Government of India Notification No. 458, dated 18th March, 1898, is not confined merely to purposes of volunteering. 22 A. 323. A volunteer is, by virtue of such exemption entitled to keep fowling pieces and to use them for the purpose of protecting his cultivation. 22 A. 323.

RESERVIST IN POSSESSION OF GUN.—The possession of a double-barrelled gun by the accused, who was a reservist, did not constitute any offence against the provisions of the Act. 5 P.L.R. 1902; 1 P.R. 1902.

SANCTION OF DISTRICT MAGISTRATE NECESSARY.—A prosecution under sec. 19 (f) requires the sanction of the District Magistrate. L.B.R. (1872-1892), 426. See also U.B.R. (1892-1896), Vol. I, 1; 9 C.P.L.R. (Cr.) 26; 1 Weir 660; 1 Weir 663; 27 C. 692; 4 L.B.R. 247=8 Cr.L.J. 65; 12 Cr.L.J. 234=10 I.C. 261; 25 Cr.L.J. 203=76 I.C. 571=1924 R. 85; 17 Cr.L.J. 209=8 L.B.R. 452=34 I.C. 321; 9 Bur.L.T. 217=18 Cr.L.J. 357=38 I.C. 741; 11 Cr.L.J. 190=4 I.C. 1107; 1941 P.W.N. 423=22 Pat. L.T. 570=1941 Pat. 284. According to sec. 29, sanction of the District Magistrate was necessary to prosecute a person under sec. 19 (f) for possessing arms without a licence in the District of Aligarh, only for three months after 15th March, 1878, and not subsequently. 1929 A.L.J. 215=117 I.C. 822=30 Cr.L.J. 856=1929 A. 69. So also in the Bijnor District and other parts of the United Provinces to the north of the rivers Jumna and Ganges, the sanction of

the District Magistrate for prosecution under sec. 19 is not necessary. 24 A.L.J. 30=27 Cr.L.J. 15=91 I.C. 47=1926 A. 143. As provisions of sec. 32 of Act XXXI of 1860 were not in force in District Dera Ghazi Khan, the previous sanction of the District Magistrate is necessary under sec. 19 (f) and a prosecution without such sanction is illegal. 146 I.C. 437=43 P.L.R. 965=1933 L. 869. Such sanction is required in the Peshawar and also in the other four Districts of the Frontier Province. 143 I.C. 508=34 Cr.L.J. 670=1933 Pesh. 69. Where the accused is clearly in possession of arms and ammunition without a licence, no sanction is necessary for starting prosecution under sec. 19 (f). 1929 A.L.J. 28=30 Cr.L.J. 566=1929 A. 68. Where sanction is necessary the proceeding is illegal, null and void if no sanction is obtained. 12 Cr.L.J. 234=10 I.C. 261= (1911) 1 M.W.N. 271. See also 1941 P.W.N. 423=1941 Pat. 284. The trial without sanction under sec. 29, is not merely an error of procedure. The Court has no power to allow proceedings to be instituted without such sanction. No failure of justice is necessary to set aside a conviction under the section made in proceedings without such sanction. U.B.R. (1872-1896), Vol. I, 2. Where sanction is obtained after commitment, neither sec. 532 nor sec. 537, Cr. P. Code, can cure the omission. 5 M.L.T. 162. Section 537 (b) does not cure the want of sanction in any case, except when the sanction is required under sec. 195, Cr. P. Code. 4 L.B.R. 247=8 Cr.L.J. 65. Sections 19 and 20 are so interwoven that it is difficult to see how an offence can be committed under the first paragraph of sec. 20 unless an offence under one of the enumerated sub-sections in sec. 19 has also been committed; therefore, before prosecuting a person under sec. 20 previous sanction should be obtained. 27 C. 692=4 C.W.N. 750. Where the offence reported to the Magistrate (under sec. 157 Cr. P. Code) was an offence under sec. 20, and the proceedings prior to the application for sanction to prosecute under sec. 19 (f), were proceedings under sec. 20 for which no sanction is necessary under sec. 29, the objection that the prosecution was bad for failure to obtain the previous sanction of the District Magistrate for an offence under sec. 19 (f) could not be sustained. 130 I.C. 437=32 Cr.L.J. 517=1931 Sind 9. Where sanction to prosecute is given under sec. 29 for unlawful possession and concealment of arms and ammunition and for an offence under sec. 20 read with sec. 19 (f), held, that as no sanction was required by sec. 29 for an offence under sec. 20 the sanction should be treated as one given for an offence under sec. 19 (f) and hence conviction under sec. 19 (f) is not illegal. (Ibid.) If an accused person is convicted of an offence punishable under sec. 20 by the trying Magistrate, there is nothing to prevent the appellate Court, from altering the conviction to one under sec. 19 (f). (Ibid.). Section 29 is restricted to offence under sec. 19 (f) and does not extend to a prosecution under sec. 20. The first part of sec. 20 creates offences distinct from and graver than those under sec. 19. 9 Bur.L.T. 217=11 Cr.L.J. 357=38 I.C. 741. See also 25 Cr.L.J. 203=76 I.C. 571=1924 R. 85.

20. Whoever does any act mentioned in clause (a), (c), (d) or (f) of section 19 in such manner as to indicate an intention that such act may not be known to any public servant as defined in the Indian Penal Code, or to any person employed

upon a railway or to the servant of any public carrier,

and whoever, on any search being made under section 25, conceals or

attempts to conceal any arms, ammunition or military stores,

shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

[Proviso added by Bengal Act XXI of 1931 applicable only to Bengal].

LEG. REF.

S. 20. AMENDMENT IN BENGAL.—The following proviso has been added, namely:—"Provided that if an offence committed under this section is in respect of a pistol, revolver, rifle, or shot gun, the offender shall be punished with transportation for life or any shorter term, or with imprisonment for a term which may extend to fourteen years, or with fine." [Applicable only to Bengal.]

SECS. 19 (f) and 19-A: CHARGE AND CONVICTION UNDER—APPEAL—CHARGE AND CONVICTION UNDER SEC. 20-A—LEGALITY.—Possession of fire-arms in furtherance of terrorist movements is not in itself an offence under the Arms Act. For a conviction for an offence under sec. 19-A of the Arms Act, as amended by Bengal Act XXI of 1932, it is incumbent on the prosecution to prove that the fire-arms were possessed in contravention of the Arms Act; in other words, the prosecution must lead some evidence which would justify an inference that the possession was against the provisions of the Act, *i.e.*, without license or some other legal authority. Mere proof that the accused are members of an organisation the object of which is to commit terrorist crimes or offences is not sufficient; because it would not follow therefrom, in the absence of other evidence, that the accused are also parties to a criminal conspiracy for the specific and definite purpose of possessing fire-arms in contravention of the Arms Act. 62 C. 819=39 C.W. N. 761. In an appeal from a conviction on a charge under secs. 19 (f) and 19-A of the Indian Arms Act, the High Court is not competent to substitute a charge under sec. 20-A of the Arms Act and convict him thereunder. To do so would be to infringe one of the most important principles of criminal law, namely, that a man should not be charged, tried and convicted without being heard in defence. 39 C.W.N. 334=62 C. 433=1935 C. 561 (F.B.).

CL. (i).—The offence of failing to deposit arms under cl. (i) of sec. 19 was not triable by a second class Magistrate. 1 Weir 660.

SECS. 19 AND 20: SCOPE.—It is difficult to lay down any general rule as to what cases fall under S. 20 and what cases under S. 19. Every case must be decided on its own facts. S. 20 is not confined to cases where import or export of arms is attempted and applies to cases where a person is concealing a weapon. Where certain arms and ammunition were found tied and concealed under the cot of the accused in a room in a hostel, it must be presumed that the intention of the accused was not only to conceal them from the boys of the hostel but also from any public servant who may happen to come

to the hostel and hence they are guilty under S. 20 of the Act. 188 I.C. 110=A.I.R. 1940 Oudh 337. See also 34 I.C. 321=8 L.B.R. 452; 42 Cal. 1153.

SEC. 20.—See also under sec. 19, *supra*, heading CONCEALMENT OF ARMS.

SCOPE AND APPLICATION.—For a conviction to fall under S. 20, Arms Act there must be some special indication of an intention that the possession of the arms was being concealed from a public servant or from a Railway official. Hence if a man carries an unlicensed weapon in his haversack when sitting in the platform of a Railway station, it must be conceived that it is his intention that his possession of unlicensed weapon may not be known to any public servant or Railway official and the case would fall under S. 20 of the Act. 1942 A.L.J. 383=43 Cr.L.J. 854=A.I.R. 1942 A. 349=I.L.R. (1942) All 899. Each case of concealment of arms must be decided on its own facts as to whether it falls under sec. 19 or sec. 20, but for sec. 20 to apply there must be special indication of an intention to conceal the possession of arms from a public servant, railway official or a public carrier. 9 L. 550=29 Cr.L.J. 577=109 I.C. 593=1928 L. 193; 7 L. 65. See also 6 L. 151=26 Cr.L.J. 733=1925 L. 395; 32 P.L.R. 651=1931 L. 571; 1931 L. 561; 156 I.C. 645=1933 C. 692. The question whether the circumstances justify the inference that the intention was such as is indicated in sec. 20 must depend on the particular circumstances of each case. 144 I.C. 850=34 Cr.L.J. 890=1933 P. 493. Each case of concealment of arms must be decided on its own facts. 23 Cr.L.J. 609=68 I.C. 833=1923 L. 79; 7 L. 65=1926 L. 262; 130 I.C. 437=1931 Sind 9=32 Cr.L.J. 517. The fact that a person is concealing a weapon while he is on a railway platform must indicate an intention to conceal the weapon from railway officials who are about that platform. 9 L. 302=29 Cr.L.J. 256=1928 L. 110. Section 20 is not confined to cases where the import or export of arms is attempted but can apply to ordinary cases of concealment also. 132 I.C. 855=32 Cr.L.J. 995=1931 L. 663; 146 I.C. 645=1933 C. 692; 60 Cr.L.J. 190=38 C.W.N. 656=1934 C. 705. But see *contra* 6 L. 151; 9 P.R. 1914 cited below. The section applies only to cases where the import or export of arms is attempted and not to every case of possession or concealment of arms. Something more than a mere ordinary concealment should be established in order to bring the possession within the meaning of sec. 20. 6 L. 151=86 I.C. 221=26 Cr.L.J. 733=1925 L. 395. See also 9 P.R. 1912=18 I.C. 265=14 Cr.L.J. 41. But see 132 I.C. 855=32 Cr.L.J. 995=1931 L. 663, cited *in* *ind.* The

21. Whoever, in violation of a condition subject to which a license has been granted, does or omits to do any act shall, when the doing or omitting to do such act is not punishable under section 19 or section 20, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

first part of sec. 20 does not deal with cases of concealment of arms in the possession of the person on his being arrested. It only deals with cases of concealment before arrest. (1911) 1 M.W.N. 271=10 I.C. 261=12 Cr.L.J. 234. The two parts of sec. 20 are quite independent of one another. Mere possession of an unlicensed weapon is punishable under sec. 19 (f) but, if the circumstances are such as to indicate an intention that the possession may not be known to the police the offence is punishable under sec. 20. Whether the intention referred to above exists or not is a pure question of fact. The mere concealment of an unlicensed weapon may not of itself be sufficient to bring the offence within the mischief of the first part of sec. 20 more especially if the circumstances are such as to indicate that the intention of the offender was merely to keep the weapon concealed from his friends, relations or other private persons and not necessarily from the police but actual physical concealment is not a necessary ingredient of the offence but a mere piece of circumstantial evidence which may be taken into consideration along with other circumstances with a view to ascertaining the real intention of the offender. 60 C. 545=144 I.C. 957=34 Cr.L.J. 879=1933 C. 516. A person proceeding to commit dacoity with arms in his possession would ordinarily carry them in his pocket or in his clothes, without there being any express intention on his part to conceal them from public servants or railway employees, so that the mere fact that the weapon is not exposed to view does not necessarily indicate the intention mentioned in sec. 20. 144 I.C. 850=34 Cr.L.J. 890=1933 P. 493. An unlicensed person going armed with a revolver may be convicted either under sec. 19 or sec. 14 [sec. 19 (e) or sec. 19 (f)] and consequently may be convicted under sec. 20 if the offence is committed with the intention referred to in sec. 20. 146 I.C. 645=1933 C. 692.

JURISDICTION.—An offence under sec. 20 is not triable by a first-class Magistrate. 2 L.B.R. 244. On this point, see also I.L.R. (1940) Kar. 296=A.I.R. 1940 Sind 107.

PRACTICE AND PROCEDURE.—If, in a trial of a case under the Arms Act, the evidence recorded shows an offence under sec. 20, the Magistrate ought to commit the case to the Sessions Court. 34 I.C. 314=20 C.W.N. 732=17 Cr.L.J. 202. Where the arms were discovered on the information given by the accused, the concealment of the *chhavis* and other arms recovered from the possession of the accused is clearly with the intention referred to in sec. 20. 1923 L. 434. See also 72 P.L.R. 1916 and 9 L.L.J. 211 cited under sec. 19. Where the petitioner was alleged to have given information which led to the discovery of the rifle, proof of his knowledge where the rifle was would not be enough by itself to raise a presumption that he had concealed it himself. 1923 L. 238.

ILLUSTRATIVE CASES.—Where the weapon

which was found to fit the *dang* the appellant was carrying was originally concealed but the appellant voluntarily took it from its place of concealment in order to threaten a railway servant who caught him for travelling without a ticket, *held*, it indicates an indifference as to whether the weapon was seen or not. The intention requisite for an offence under sec. 20 had not been established and conviction must be altered to sec. 19. 26 Cr.L.J. 166=83 I.C. 726=1923 L. 10. The fact that the accused secreted the spear-head next to the skin does not indicate any intention that the possession by the accused of the spear-head might not be known to any public servant. 31 Cr.L.J. 79=120 I.C. 273=1929 L. 576. The fact that the accused ran away when challenged by the constable indicates an intention of the character mentioned in sec. 20. But where accused had a companion who also ran away but upon whose person nothing incriminating could be found, as no such intention can be credited to the companion on the ground he also ran away, it cannot be attributed to the accused as well. (*Ibid.*) Where revolvers are concealed in a trunk being conveyed by railway the intention of the person must be presumed to be to conceal them from railway officials and the case falls under sec. 20. 32 P.L.R. 651=1931 L. 571. So also where the accused who travelled in a railway compartment was found to have a revolver and certain cartridges in the pocket of his inner coat. 132 I.C. 855=32 Cr.L.J. 995=1931 L. 663. Where the accused had a revolver in his possession, and when the police appeared he attempted to run away, *held*, his intention was that his possession of the revolver might not be known to the police and that he was guilty under sec. 19 (f) read with sec. 20. 55 A. 681=1933 A. 627. See also 146 I.C. 645=1933 C. 692 as to the circumstances evidencing the intention required by sec. 20. Where the circumstances under which a pistol was recovered from the accused who had come on a visit to Lahore from his village, led to a clear inference that his intention was that the possession of the pistol by him may not be known to any public servant, it was not a case of an ordinary concealment and conviction should be one under sec. 20. 96 I.C. 390=27 Cr.L.J. 934. Where a person who was in unlicensed possession of revolver and cartridges gave the revolver to somebody else for the purpose of keeping it concealed and it was evident that the possession of the revolver was in some way connected with the political opinions of the accused, *held*, that the accused was liable to be convicted under sec. 20. 60 C. 571=143 I.C. 802=37 C. W.N. 195=1933 C. 124. Keeping ammunition and parts of arms in a bag hidden under a chadder or hidden under the clothes falls clearly under sec. 20 and not merely under sec. 19. 26 Cr.L.J. 1459=89 I.C. 1027=1926 L. 61. See also 37 C.W.N. 509=1933 C. 679. Merely keeping a *chhavi* blade in one's own house and possessing a stick that would

For knowingly purchasing arms, etc., from an unlicensed person.

For delivering arms, etc., to person not authorized to possess them.

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

23. Any person violating any rule made under this Act, and for the violation of which no penalty is provided by this Act, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

24. When any person is convicted of an offence punishable under this Act,

fit into it, cannot be regarded as falling under the purview of sec. 20. The case would fall more appropriately under the definition of sec. 19 (f). 1931 L. 561 (1). Where the gun was upon a charpoy upon which the accused was sitting and was covered with a *dotahi* and the accused had been convicted under sec. 20, the conviction was altered into one under sec. 19 (f). 6 L. 151=26 Cr.L.J. 733=1925 L. 395.

EVIDENCE—APPROVER'S STATEMENTS.—Where an approver makes a statement disclosing his illegal possession of fire-arms, and is released having fulfilled the conditions of his pardon, it is illegal to try him under sec. 20. 10 A.L.J. 717=22 Cr.L.J. 699=63 I.C. 827.

SENTENCE.—Merely on the ground that the weapon concealed is a *chhavi* the maximum sentence ought not to be inflicted. 3 L. L.J. 145; 66 I.C. 995=23 Cr.L.J. 339. Sentence of three years' rigorous imprisonment without special grounds is very heavy and ought to be reduced. 17 Cr.L.J. 80=32 I.C. 672 (M.). See also 9 L. 302. The fact that there was suspicion in the mind of the police that the accused was about to take part in the criminal undertaking is not a circumstance which a Court can take into consideration in arriving at an appropriate punishment for the actual offence which has been proved under sec. 20. 9 L. 302=29 Cr.L.J. 256=1928 L. 110. Previous conviction is ground for giving maximum sentence. 8 P.R. (Cr.) 1915=16 Cr.L.J. 412. Where there was nothing to show that the appellant was of bad character or was engaged in any criminal undertaking at the time he was arrested, and he had produced evidence of good character, *held*, that a sentence of three years' rigorous imprisonment was sufficient for the offence under sec. 20. 132 I.C. 855=32 Cr.L.J. 995=1931 L. 663. The accused who had a pistol without a licence was sentenced to eighteen months' rigorous imprisonment for having by its use caused accidental homicide. He was again prosecuted under sec. 20, Arms Act, and sentenced to seven years' rigorous imprisonment. *Held*, that the sentence was too severe even assuming that a separate sentence was justified. Sentence was reduced to one month's rigorous imprisonment. 137 I.C. 141=33 Cr.L.J. 413 (1)=1932 L. 365.

SEC. 22: APPLICABILITY.—Section 22 deals with persons without licence dealing with licensed

22. Whoever knowingly purchases any arms, ammunition or military stores from any person not licensed or authorized under the proviso to section 5 to sell the same; or

delivers any arms, ammunition or military stores, into the possession of any person without previously ascertaining that such person is legally authorised to possess the same,

vendors or purchasers or with persons with licences dealing with unlicensed vendors or purchasers. 31 C.W.N. 239=28 Cr.L.J. 241=1927 C. 265. Selling of sword sticks and their possession without licence amount to an offence under sec. 22. 146 I.C. 472=35 Bom. L.R. 884=1933 B. 438.

SELLING MILITARY STORES TO UNAUTHORISED PERSON BY MANAGER OF LICENSED VENDOR.—If the manager of a licensed vendor of arms and ammunition sells military stores to a person, without previously ascertaining that he is legally authorised to possess the same, the licensee becomes liable to punishment under sec. 22; and it is no defence to plead that the delivery by the man in charge is not a delivery by the owners of the shop. 24 B. 423; 2 B.L.R. 52. The rule "whatever a servant does in the course of his employment with which he is entrusted and as a part of it, is his master's act" is applicable to certain criminal proceedings also. 24 B. 423=2 B.L.R. 52.

RIFLE—DELIVERY INTO THE CUSTODY OF SERVANT NOT AUTHORISED TO POSSESS.—A and his servant N, while out on a shooting excursion, came across a deer recently killed by a tiger. A fixed his rifle over the killed deer so as to form the trap for the tiger and went home leaving N to watch the trap. A was charged under sec. 22 of the Arms Act, with having delivered the rifle into the possession of an unauthorised person. *Held*, that the delivery into possession contemplated by sec. 22 of the Arms Act is such a delivery as gives the person into whose possession the arm is delivered control over the arm and authority to use it as an arm and that therefore A cannot be convicted for an offence under sec. 22. 5 L.B.R. 83. Where a gunmaker acting under the directions of the licence-holder made over his gun to a person merely to carry it to its owner and not with any authority to use it as an arm, *held*, that the gunmaker did not commit an offence under sec. 22. A licence-holder of a gun can permit another person who is not so licensed to carry his gun. 26 A.L.J. 162=29 Cr.L.J. 97=1928 A. 55.

SEC. 24: ORDER FOR CONFISCATION.—All licence-holders should be meticulous in taking all precautions for the safe custody of weapons for which they hold a licence and for preventing the borrowing of those weapons by other persons. Absence of such precautions consti-

Power to confiscate.

committed by him in respect of any arms, ammunition or military stores, it shall be in the discretion of the convicting Court or Magistrate further to direct that the whole or any portion of such arms, ammunition or military stores, and any vessel, cart or baggage-animal used to convey the same, and any box, package or bale in which the same may have been concealed, together with the other contents of such box, package or bale, shall be confiscated.

25. Whenever any Magistrate has reason to believe that any person residing within the local limits of his jurisdiction has in his

Search and seizure by Magistrate.

possession any arms, ammunition or military stores for any unlawful purpose,

or that such person cannot be left in the possession of any such arms, ammunition or military stores without danger to the public peace,

such Magistrate, having first recorded the grounds of his belief, may cause a search to be made of the house or premises occupied by such person or in which such Magistrate has reason to believe such arms, ammunition or military stores are or is to be found, and may seize and detain the same, although covered by a license, in safe custody for such time as he thinks necessary.

The search in such case shall be conducted by, or in the presence of, a Magistrate, or by, or in the presence of some officer specially empowered¹ in this behalf by name or in virtue of his office by the [Central Government]².

26. The [Central Government]³ may at any time order or cause to be seized any arms, ammunition, or military stores in the pos-

Seizure and detention by [Central Government].

session of any person, notwithstanding that such person is licensed to possess the same, and may detain

the same for such time as it thinks necessary for the public safety.

27. The Central Government may from time

Power to exempt.

to time, by notification⁴ published in the Official Gazette,—

LEG. REF.

¹For notification empowering Deputy Superintendents of Police in Burma to conduct searches, see *Burma Gazette*, 1909, Pt. I, p. 602.

²Substituted for 'Local Government' 1937.

³For exemptions and withdrawals under sec. 27 (a), see R. 3 and Schedules I to IV of the Indian Arms Rules, 1924, Gen. R and O., Vol. II.

For order exempting residents of Pondicherry, being Europeans, from payment of Import duty on guns, when holding passports from their own authorities, see Notification No. 2257, *Gazette of India*, 1879, Pt. I, p. 782.

tutes a danger to the public, and hence under sec. 24, they are liable to be confiscated to Government. 157 I.C. 411=36 Cr.L.J. 1204=1935 Pesh. 103. Sec. 24 shows that the order for confiscation is in addition to any sentence which may be passed. Therefore without the sentence, an order for confiscation cannot be passed. 1 Weir 654. Manufacture and selling of gunpowder without licence—Sentence see 5 M.H.C. App. 23 and 7 M.H.C. App. 22. As to sentences that can be passed, see 1 B. 308 (F.B.); 120 P.R. 1866 (Cr.)

SEC. 25.—For notification empowering Deputy Superintendents of Police in Burma to conduct searches, see *Burma Gazette*, 1908, Pt. I, p. 134.

SEARCH WARRANT.—A Magistrate directing the issue of a warrant to search premises on information received that the owner or occupant thereof is in possession of fire-arms without a licence acts as a Court and not merely as a

public servant whether he purports to act under the Criminal Procedure Code or under sec. 25 of this Act. 35 M.L.J. 686=20 Cr.L.J. 90=48 I.C. 890=42 M. 96. Possession of fire-arms—Illegality of the search—Effect. See 2 N. W. P. 57. Want of compliance with the provisions of sec. 25 will not render conviction under secs. 19 and 20 illegal. 28 Cr.L.J. 652=103 I.C. 108=1927 A. 516. Whether the search was legal or illegal, arms having been found in the possession of the accused, no question of the legality of the search or otherwise can be raised by him. 1929 A.L.J. 28=30 Cr.L.J. 566=1929 A. 68.

SECS. 25 AND 30.—Sections 25 and 30 were enacted for the protection of the subject as well as to inspire confidence in the proceedings conducted by the police officers, and their provisions cannot normally be allowed to be disregarded so as to reduce them to a mere dead-letter. If no reasonable excuse or justification is offered for not following them, the Court may well look with suspicion upon the entire proceeding and hesitate to convict an accused person upon the result of the search, unless the prosecution offers strong and unimpeachable evidence to remove the suspicion. 37 Cr.L.J. 100=16 P.L.T. 598=1935 P. 465.

SEC. 27: ARMY REGULATIONS, EFFECT OF, ON POWERS OF GOVERNOR-GENERAL IN COUNCIL.—The Army Regulation, India, cannot restrict the powers exercised by the Governor-General in Council under sec. 27. 1 P.R. 1902 (Cr.)

NOTIFICATION.—A publication printed by the

(a) exempt any person by name or in virtue of his office, or any class of persons, or exclude any description of arms or ammunition, or withdraw any part of British India, from the operation of any prohibition or direction contained in this Act; and

(b) cancel any such notification, and again subject the persons or things or the part of British India comprised therein to the operation of such prohibition or direction.¹

28. Every person aware of the commission of any offence punishable under

Information to be given
regarding offences.

this Act shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person give information of the same to the nearest Police-

officer or Magistrate, and

every person employed upon any railway or by any public carrier shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information to the nearest Police-officer regarding any box, package or bale in transit which he may have reason to suspect contains arms, ammunition or military stores in respect of which an offence against this Act has been or is being committed.

29. Where an offence punishable under section 19, clause (f), has been committed within three months from the date² on which

Sanction required to certain
proceedings under section 19,
clause (f).

this Act comes into force in any province, district or place to which section 32, clause 2, of Act XXXI of 1860³ applies at such date, or where such an offence

has been committed in any part of British India not being such a district, province or place, no proceedings shall be instituted against any person in respect of such offence without the previous sanction of the Magistrate of the district or, in a presidency-town, of the Commissioner of Police.

LEG. REF.

¹For notification declaring arms, etc., brought into an Indian port and declared under manifest to be consignments without transhipment to any port on the sea-board of the Persian Gulf, to be liable to the prohibitions and directions contained in sec. 6, see No. 902 P., dated 27th April, 1904, *Gazette of India*, 1904, Pt. I, p. 296. As to exemption of small parcels under certain conditions or of arms, etc., exported under licence and in transit at an intermediate port, see *ibid.*

²The 1st October, 1878;

³Act XXXI of 1860 was repealed by sec. 3 of this Act.

Government of India Press in 1923 entitled the "Arms Act" and described *inter alia* as "brief explanation of the Arms Act" is not a notification within the meaning of sec. 27. 1932 R. 180.

NOTIFICATIONS—CONSTRUCTION.—Notifications relating to the Arms Act imposing a penalty upon the subject must be construed very strictly. 32 B.L.R. 106=31 Cr.L.J. 847=1930 B. 153.

ARMS, DEFINITION OF—POWERS OF GOVERNMENT TO EXCLUDE.—The word "arms," except so far as the definition expressly includes other weapons must be understood to mean weapons of offence, suitable for use in war-fare. L.B.R. (1893-1900) 416. The Government of India have under sec. 27, the power of excluding any description of arms from the operation of the Act. (*Ibid.*). But the Act does not empower the Government to define what is an arm within the meaning of the Act. (*Ibid.*) If anything is not, in the opinion of the Court, an arm within the meaning of the Arms Act, it is immaterial

Cr. C. M-I—10

whether Government have or have not excluded it from the operation of the Act. (*Ibid.*) *Dahs* of the kind described in the Government of India, Home Department Notification No. 827, dated 15th June, 1893, as excluded from the operation of the Act are not arms within the meaning of the Act, and it is therefore, unnecessary to exclude them from the operation of the Act. A sword-stick is a weapon different from *kirpan*. The two expressions cannot be regarded as synonymous, and so the possession of a sword-stick by a Sikh is not exempted by sec. 27. 29 Cr.L.J. 425=108 I.C. 596=1928 L. 299. See also under sec. 19.

SEC. 29.—See also notes under sec. 19 (f) under heading "Sanction of District Magistrate necessary."

SCOPE OF THE SECTION.—The "proceedings" referred to in S. 29 clearly mean legal proceedings in a Criminal Court and such "proceedings" are "instituted" within the meaning of S. 29 only when under S. 190, Cr.P.C. a magistrate takes cognizance of the offence. I.L.R. (1949) Kar. 524=1944 Sind 103. According to sec. 29 sanction of the District Magistrate was necessary to prosecute a person under sec. 19 (f) for possessing arms without a licence in the District of Aligarh, only, for three months after 15th March, 1878 and not subsequently. 1929 A.L.J. 215=30 Cr.L.J. 856=1929 A. 69. See also 1941 P.W.N. 423=1941 Pat. 284. See also under sec. 19, cl. (f). Proceedings may be taken against a person under sec. 20 for the secret possession of arms in contravention of sec. 14 or 15 of the same Act, without previous sanction under sec. 29. 17 Cr.L.J. 209=34 I.C. 321=8 L.B.R. 432 (F.B.). See also 38 C.W.N. 656=

30. Where a search is to be made under the Code of Criminal Procedure or the Presidency Magistrates Act, 1887,¹ in the course

Searches in the case of offences against section 19, clause (f), how conducted.

of any proceedings instituted in respect of an offence punishable under section 19, clause (f), such search shall, notwithstanding anything contained in the said Code or Act, be made in the presence of some officer specially² appointed by name or in virtue of his office by the [Central Government]³ in this behalf, and not otherwise.

31. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under

Operation of other laws not barred.

LEG. REF.

¹For the references to Act X of 1872 and the Presidency Magistrates Act, 1877 (IV of 1877), read now Act V of 1898.

²For officers appointed under this section in Burma, see *Burma Gazette*, 1909, Pt. I, p. 602.

³Substituted for 'Local' by Government of India (Adaptation of Indian Laws) Order, 1937.

⁴For notification under this section by Chief Commissioner of Coorg, see *Coorg District Gazette*, 1910, Pt. I, p. 13.

1934 C. 705. But the accused should be discharged under sec. 20 if the intention to conceal the possession is not made out. (*Ibid.*) Where a City Magistrate who is also the Additional District Magistrate empowered with the powers of District Magistrate tries a case under S. 19-F, it cannot be said that sanction under S. 29 is unnecessary because he exercised the powers of a District Magistrate as well. Even in such a case trial without sanction under S. 29 is illegal. Sanction under S. 29 can only be granted on a consideration of the facts connected with the prosecution and it cannot be said that the Magistrate tried the case after granting sanction to himself in his capacity as Additional District Magistrate; for having granted the sanction in that capacity the case cannot be tried by the Magistrate granting the sanction whether he acts as Additional District Magistrate or City Magistrate. The trial therefore is illegal. I.L.R. (1940) Kar. 296=41 Cr.L.J. 707=A.I. R. 1940 Sind 107.

"PROCEEDINGS."—As in the case of a suit, a proceeding is instituted when for the first time the adjudication of a Court of competent jurisdiction is sought. Therefore, the expression "proceedings" in sec. 29 mean legal proceedings in Court and not searches or arrests or investigations made by the police in exercise of the powers conferred upon them by the Criminal Procedure Code; or any other law. 6 P. 768=29 Cr.L.J. 301=1928 P. 146. See also 104 I.C. 433=28 Cr.L.J. 817=1927 C. 721. Entering a case in the case-book and making out a charge is not institution of proceedings under sec. 29. 104 I.C. 433=28 Cr.L.J. 817=1927 C. 721.

Sec. 30.—See Notes under secs. 19 (f) and 20, *supra*.

SCOPE OF SECTION.—The Act appears to contemplate the presence of some specially empowered officer besides the officer conducting the search. 8 C. 473. See also 47 A. 575=26 Cr.L.J. 1112=1925 A. 434; 16 A.L.J. 721=19 Cr.L.J. 949=47 I.C. 801. The Act appears to refer to cases in which the Magistrate considers that arms, whether under a licence or

not, are possessed "for an illegal purpose," or under circumstances such as to endanger the public peace. 8 C. 473.

JURISDICTION.—Search for arms would be illegal if it was not ordered by a Magistrate in pursuance of sec. 25. U.B.R. (1892-1896), Vol. I, 1. As to jurisdiction of Magistrates under the Act, see also Rat. 80=Cr. Reg. 15th January, 1874; 3 P.R. 1869 (Cr.). In the United Provinces, an officer in charge of a Police station is empowered to conduct a search. An officer who takes action under a particular section must be deemed to have full powers until the contrary is proved. 1929 A.L.J. 28=30 Cr.L.J. 566=1929 A. 68.

SEARCH, WARRANT, FORM OF.—Magistrates before they issue search warrants, under the Act, should record the grounds of their belief, that there are in the house, which it is proposed to search, weapons kept for an unlawful purpose. 15 A. 129.

ILLEGAL SEARCH—DAMAGES.—The defendant, who did not, before causing the search of the plaintiff's house, to be made, first record the grounds of his belief as provided for by sec. 25 could not justify the search under the provisions of the said Act. 8 C.L.J. 75. As there was no proceeding pending before him, the defendant was not a 'Court' within the meaning of sec. 94 of the Code of Criminal Procedure, and, therefore, the defendant could not direct a search to be made in his presence under the provisions of sec. 205 of the Code. (*Ibid.*) The search having been for the purposes of discovering arms generally, sec. 165 of the Code did not apply. Conducting a search for arms is not an act done in the discharge of a judicial duty. Judicial Officers Protection Act does not apply to such a case. Even where a defendant's *bona fide*, in conducting a search, is established, it does not release him from the obligation the law casts upon him as being in supreme control of the search party, of seeing that the search was conducted in a proper and reasonable manner. (*Ibid.*) In such a case, the damages, should be substantial, and not merely nominal. (*Ibid.*) As to effect of illegality of search, see 2 N.W.P. 57. Although the search is illegal, a person can be convicted where the evidence against him is conclusive. The ordinary meaning of "in the course of any proceeding instituted" is in the course of any legal proceedings which have already begun. 47 A. 575=23 A.L.J. 364=26 Cr.L.J. 1112=1925 A. 434. (35 A. 75, foll.). See also U.B.R. (1892-1896) Vol. I, 2; 131 I.C. 441=32 Cr.L.J. 699=1931 C. 115. On this section, see also 13 C.W.N. 458=9 C.L.J. 298=36 C. 433.

such other law to any higher punishment or penalty than that provided by this Act : Provided that no person shall be punished twice for the same offence.

32. The [Central Government]³ may from time to time, by notification⁴ in the Official Gazette, direct a census to be taken of all fire-arms in any local area, and empower any person by name or in virtue of his office to take such census.

Power to take census of fire-arms.

On the issue of any such notification, all persons possessing any such arms in such area shall furnish to the person so empowered such information as he may require in reference thereto, and shall produce such arms to him if he so requires.

Any person refusing or neglecting to produce any such arms when so required shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees or with both.

33. No proceeding other than a suit shall be commenced against any person for anything done in pursuance of this Act, without

Notice and limitation of proceedings.

having given him at least one month's previous notice in writing of the intended proceeding and of the cause thereof, nor after the expiration of three months from the accrual of such cause.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

[*Repealed by the Repealing Act, 1938 (I of 1938), S. 2 and Sch.*].

THE SECOND SCHEDULE.

ARMY, ETC., LIABLE TO DUTY.

[*Rep. by the Amending Act, 1891 (XII of 1891).*]

THE INDIAN ARMY ACT (VIII OF 1911).

EFFECT OF SUBSEQUENT LEGISLATION.

Year.	No.	Short title.	How affected by Legislation.
1911	VIII	The Indian Army Act, 1911.	Amended— Act XV of 1914 ; Act X of 1917 ; Act XVIII of 1919 ; Act II of 1920 ; XX of 1920 ; Act XXXIII of 1923 ; Act VIII of 1929 ; Act XXXIII of 1934 ; Act VII of 1935 ; Act XV of 1937. Repealed in pt. and amended ; Act XI of 1918 ; Act XII of 1927 ; Act XXXVII of 1920. Amended Act XIV of 1943 ; Act XXI of 1943 ; Ordinances No. 18 of 1942, 31 of 1942, 58 of 1942 ; V of 1944 ; also Act VII of 1945, See Act XXXV of 1939. Declared in force— in British Baluchistan, Reg. 2 of 1913, s. 3 ; in the Angul District, Reg. 3 of 1913, s. 3.

LEG. REF.

³For Statement of Objects and Reasons, see Gazette of India, 1910, Pt. V, p. 140 ; for Report of Select Committee, see *ibid.*, 1911, Pt. V, p. 39 ; and for Proceedings in Council, see *ibid.*, 1910, Pt. VI, p. 16, dated 13th August, 1910, and *ibid.*, 1911, Pt. VI, pp. 34, 36 and 362.

This Act has been declared in force in British

Baluchistan, by the British Baluchistan Laws and Regulations, 1913 (II of 1913) see Baluchistan Code ; in the Angul District, by the Angul Laws Regulation, 1913 (III of 1913), S. 3 ; B. & O. Code, Vol. I ; in the Sonthal Parganas, by Notification under S. 3 of the Sonthal Parganas Settlement Regulation, 1872 (III of 1872), B. & O. Code, Vol. I, p. 806.

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*Repealed.*THE INDIAN ARMY ACT (VIII OF 1911).¹

[16th March, 1911.]

An Act to consolidate and amend the law relating to the Government of His Majesty's Indian¹ Forces.

WHEREAS it is expedient to consolidate and amend the law relating to the government of the [Indian Commissioned Officers, Viceroy's Commissioned

LEG. REF.

¹The word "Native" was repealed by S. 26

and Schedule of the Indian Army (Amendment) Act 1918 (XI of 1918).

officers]¹ soldiers and other persons in His Majesty's Indian Forces ; It is hereby enacted as follows :—;

CHAPTER I.

PRELIMINARY.

Short title and commencement.

1. (1) This Act may be called THE INDIAN ARMY ACT, 1911.

(2) It shall come into force on such date² as the Central Government may, by notification in the Official Gazette, direct in this behalf.

Application of Act.

2. (1) The following persons shall be subject to this Act, namely :—

(a) [Indian commissioned officers, Viceroy's commissioned officers]³ and warrant officers ;

[Provided that a person holding a commission in the Army in India Reserve of officers shall be so subject only when ordered on any duty or service for which he is liable as a member of such reserve force ;]⁴ and

(b) persons enrolled under this Act ;

(c) persons not otherwise subject to military law, who, on active service, in camp, on the march, or at any frontier post specified by the Central Government by notification⁵ in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, His Majesty's Forces :

* * * * *

(2) Every person subject to this Act under sub-section (1), clause (a) or (b), shall remain so subject to until duly [retired, discharged, cashiered, removed or dismissed from the service]⁶.

³[Provided that an officer of the Indian Land Forces retired therefrom and appointed to the Indian Regular Reserve of Officers shall again become so subject when ordered on any duty or service for which he is liable as a member of such reserve force.]⁷

3. (1) The Central Government may, by notification,⁸ direct that any persons or class of persons subject to this Act under section 2, sub-section (1), clause (c), shall be so subject as [Indian commissioned officers, Viceroy's commissioned officers]³, warrant officers or non-commissioned officers, and may authorize any officer to give a like direction with respect to any such person and to cancel such direction.

(2) All persons subject to this Act other than officers, warrant officers and non-commissioned officers shall, if they are not persons in respect of whom a notification or direction under sub-section (1) is in force, be deemed to be of a rank inferior to that of a non-commissioned officer.

LEG. REF.

¹Substituted by Act XXXIII of 1934. *N.B.*—For the expressions "native" and "a native" wherever they occur in this Act, the expressions "Indian" and "an Indian" were substituted respectively by S. 2 of Act, XI of 1918.

²The first January, 1912, *see* General Statutory Rules and Orders, Vol. IV, p. 120.

³Substituted by Act XXXIII of 1934.

⁴Inserted by Act XV of 1937.

⁵For places declared to be frontier posts under this sub-section and S. 22, *see* Act XI of 1918.

⁶The proviso to sub-S. (1) of S. 2 was repealed by S. 26 and Schedule of the Indian Army (Amendment) Act, 1918 (XI of 1918).

⁷Inserted by Act XV of 1937.

⁸For notification declaring the rank of certain Civil officers when subject to the Act, *see* General

Statutory Rules and Orders.

Sec. 1.—The rules in App. IV of Vol. II of the Army Regulations have not the force of law ; and a transfer which is valid under the ordinary law cannot be invalidated by these rules, except where a person taking cantonment land subject to these rules is bound by them. 1924 A. 415=46 A. 427=22 A.L.J. 354.

Sec. 2 (1) (a).—An army Assistant Surgeon is a warrant officer, and his pay is not attachable even if he is recruited in India. 48 A. 73=23 A.L.J. 929=89 I.C. 882=1926 A. 122. Where a person at the time of his insolvency was employed at a military frontier post in the army, his salary cannot be attached. 1934 L. 845. The pay of a Staff Sergeant in the Army is not attachable under the decree of a Civil Court. 35 Bom.L.R. 1112.

4. Every person subject to this Act under section 2, sub-section (1), clause (c), shall, for the purposes of this Act, be deemed to be under the commanding officer of the corps, department or detachment (if any) to which he is attached, and if he is not attached to any corps, department or detachment, under the command of any officer who may for the time being be named as his commanding officer by the officer commanding the force with which such person may for the time being be serving, or of any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said officer commanding the force.

Commanding officer of persons subject to military law under section 2, clause (c).

detachment, under the command of any officer who may for the time being be named as his commanding officer by the officer commanding the force with which such person may for the time being be serving, or of any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said officer commanding the force.

Provided that an officer commanding a force shall not place a person under the command of an officer of official rank inferior to that of such person if there is present at the place where such person is any officer of higher rank under whose command he can be placed.

Powers to apply Act to certain forces under the Central Government.

5. (1) The Central Government may, by notification,¹ apply all or any of the provisions of this Act to any force raised and maintained in India under the Authority of the Central Government.

[“(1-A) On such notification being made, any provisions of this Act so applied shall have effect in respect of persons belonging to any such force as they have effect in respect of persons subject to this Act holding in His Majesty’s Indian Forces the same rank as the aforesaid persons hold for the time being in the force to which this Act is so applied, and shall have effect in respect of persons who are employed by, or are in the service of, or are followers of, or accompany any portion of any such force as they have effect in respect of persons subject to this Act under section 2, sub-section (1), clause (c)”]²

(2) While any of the provisions of this Act apply to any such force, the Central Government, may, by notification,³ direct by what authority any jurisdiction, powers or duties incident to the operation of these provisions shall be exercised or performed in respect of that force, and may suspend the operation of any other enactment for the time being applicable to that force.⁴

Officers to exercise powers in certain cases.

6. ⁴[(1) Whenever persons subject to this Act are serving—

(a) out of India under an officer not subject to the authority of the Central Government, or

(b) in India under an officer commanding any military organization not in this section specifically named, and being, in the opinion of the Central Government, not less than a brigade,

the Central Government may prescribe the officer⁵ by whom the powers which, under this Act, may be exercised by officers commanding armies, army corps, divisions and brigades shall, as regards such persons, be exercised.]

(2) The Central Government may confer such powers either absolutely, or subject to such restrictions, reservations, exceptions and conditions as he may think fit.

[6-A. When an officer, warrant officer or non-commissioned officer of His

Relations between Indian Forces and Burman Forces when acting together, etc.

Majesty’s Burma Forces is a member of a body of those forces acting with, or is attached to, any body of His Majesty’s Indian Forces under such conditions as may be prescribed, then for the purposes of command

¹For such Notification, see General Statutory Rules and Orders, Vol. IV, p. 123.

²Inserted by Ordinance No. XXXI of 1942.

³For such notification, General Statutory Rules and Orders, Vol. IV, p. 124.

⁴This sub-section was substituted by Act (XI of 1918).

⁵For such officers, see General Statutory Rules and Orders, Vol. IV, p. 125.

and discipline and for the purposes of the provisions of this Act relating to superior officers he shall in relation to that body of His Majesty's Indian Forces be treated and have all such powers as if he were an officer, warrant officer or non-commissioned officer as the case may be of His Majesty's Indian Forces.

(2) When an officer, warrant officer, non-commissioned officer or soldier of His Majesty's Indian Forces is a member of a body of those forces acting with, or is attached to, any body of His Majesty's Burma Forces under such conditions as may be prescribed, then for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers the officers, warrant officers and non-commissioned officers of that body of His Majesty's Burma Forces shall in relation to him be treated and have all such powers as if they were officers, warrant officers or non-commissioned officers of His Majesty's Indian Forces.

(3) In this section "prescribed" means "prescribed by the Central Government and the Governor of Burma", and, for the purposes of this section, the relative rank of officers, warrant officers and non-commissioned officers of His Majesty's Indian Forces and His Majesty's Burma Forces may be determined by regulations made by the the Central Government and the Governor of Burma.]¹

Definitions.

Definitions.

7. In this Act, unless there is something repugnant in the subject or context,—

[(1) 'British officer' means a person holding His Majesty's commission in His Majesty's Land Forces or in the Royal Marines or in the Territorial Army, and includes, in relation to a person subject to this Act when serving under such conditions as may be prescribed, a person holding a commission in His Majesty's Naval Forces or Royal Air Force] ;

[" (2) 'Indian commissioned officer' means a person commissioned, gazetted or in pay as an officer holding His Majesty's commission in the Indian Land Forces, and includes, in relation to a person subject to this Act when serving under such conditions as may be prescribed, a person holding a commission in the Indian Air Force :

(2-A) 'Viceroy's commissioned officer' means a person commissioned, gazetted or in pay as a Viceroy's commissioned officer in the Indian Army.]² ;

(3) "warrant officer" means a person appointed, gazetted or in pay as [an Indian warrant]⁴ officer in His Majesty's Indian Forces :

(4) "non-commissioned officer" means a person attested under this Act holding [an Indian]⁴ non-commissioned rank in His Majesty's Indian Forces, and includes an acting non-commissioned officer :

[(5) 'officer' means an officer of any of His Majesty's Military Forces, and includes in relation, to a person subject to this Act when serving under such conditions as may be prescribed, an officer of any of His Majesty's Naval or Air Forces, but does not include a warrant officer, petty officer or non-commissioned officer :]⁵

(6) "commanding officer," when used in any provision of this Act with reference to any separate portion of His Majesty's forces or to any department means the British officer [or Indian Commissioned officer]⁶ whose duty it is under the regulations of the army, or, in the absence of any such regulation, by the custom of the service, to discharge with respect to that portion of the forces or that depart-

LEG. REF.

¹S. 6-A inserted by A.O., 1937.

²Substituted for old sub-S. (1) by Act XXXIII of 1934.

³Sub-cl. (2) and (2-A) substituted for old sub-cl. (2) by Act XXXIII of 1934.

⁴For the expression 'native and 'a native'

wherever they occur in this Act, the expressions "Indian" and "an Indian" were substituted respectively by sec. 2 of Act XI of 1918.

⁵Substituted for old sub-cl. (5) by Act XXXIII of 1934.

⁶Inserted by Act XXXIII of 1934.

ment the functions of commanding officer in regard to matters of the description referred to in that provision ;

(7) "superior officer," when used in relation to a person subject to this Act, includes a warrant officer and a non-commissioned officer ; and, as regards persons placed under his orders, [an officer, warrant officer, petty officer or non-commissioned officer of any of His Majesty's Naval, Military or Air Forces]¹;

[(8) 'army,' 'army corps,' 'division,' and 'brigade' mean respectively an army, army corps, division or brigade which is under the command of an officer subject to the authority of the Central Government or, when on active service, an army, army corps, division or brigade under the command of an officer holding a commission in His Majesty's Land Forces :]² [or His Majesty's Indian (Forces)]³ ;

(9) "corps" means any separate body of persons subject to this Act or the Army Act which is prescribed as a corps for the purposes of all or any of the provisions of this Act ;

(10) "independent brigade" means a brigade which does not form part of a division ;

(11) "department" includes any division or branch of a department :

(12) "enemy" includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of a person subject to military law to act ;

(13) "active service," as applied to a person subject to this Act, means the time during which such person is attached to, or forms part of, a force which is engaged in operations against an enemy or is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country ;

(14) "military custody" means the arrest or confinement of a person according to the usages of the service [and includes air force custody]⁴.

(15) "military reward" includes any gratuity or annuity for long service or good conduct, any good conduct pay, good service pay or pension, and any other military pecuniary reward ;

(16) "court-martial" means a court-martial held under this Act ;

(17) "criminal court" means a court of ordinary criminal justice in British India, or established elsewhere by the authority of the [Central Government or the Crown Representative]⁵ ;

(18) "civil offence" means an offence which, if committed in British India, would be triable by a Criminal Court :

(19) "offence" means any act or omission punishable under this Act, and includes a civil offence as hereinbefore defined :

(20) "notification" means a notification published in the Official Gazette ;

(21) "prescribed" means prescribed by rules made under this Act ; and

(22) all words and expressions used herein and defined in the Indian Penal Code and not hereinbefore defined shall be deemed to have the meanings respectively attributed to them by that Code.

CHAPTER II.

ENROLMENT AND ATTESTATION.

Enrolment.

8. Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled the enrolling officer shall read and explain to him, or cause to be read and explained to him in his presence, the conditions of

LEG. REF.

¹Substituted by Act XXXIII of 1934.

²Substituted by Act XI of 1918.

³Added by Act XXXIII of 1934.

CR. C. M.-I-11

⁴Inserted by Act XXXIII of 1934.

⁵Substituted for "Governor-General in council" by Government of India (Adaptation of Indian Laws) Order, 1937.

the service for which he is to be enrolled ; and shall put to him the questions set forth in the prescribed form of enrolment, and shall, after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under this Act, record or cause to be recorded his answer to each such question.

9. If, after complying with the provisions of section 8, the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put to him and consents to the conditions of service, and if he perceives no impediment, he shall sign [and shall also cause the person to sign]¹ the enrolment paper, and the person shall then be deemed to be enrolled.

²10. Every person who has for the space of three months been in the receipt of military pay as an enrolled person and been borne on the rolls of any corps or department shall be deemed to have been duly enrolled, and shall not be entitled to claim his discharge on the ground of any irregularity or illegality in his enrolment or on any other ground whatsoever ; [and if any person, in receipt of military pay and borne on the rolls as aforesaid, claims his discharge before the expiry of three months from his enrolment no such irregularity or illegality or other ground shall, until he is discharged]³ in pursuance of his claim, affect his position as an enrolled person under this Act or invalidate any proceedings, act or thing taken or done prior to his discharge.]

Attestation.

11. The following persons shall be attested
Persons to be attested. namely :—

- (a) all persons enrolled as combatants ;
- (b) all other enrolled persons prescribed by the Central Government.

12. (1) When a person who is to be attested is reported fit for duty, or has completed the prescribed period of probation, an oath or affirmation shall be administered to him in the prescribed form by his commanding officer in front of his corps or such portion thereof or such members of his department as may be present or by any other prescribed person.

(2) The form of oath or affirmation prescribed under this section shall contain a promise that the person to be attested will be faithful to His Majesty, His heirs and successors, and that he will serve in His Majesty's Indian Forces and go wherever he is ordered by land or sea, and that he will obey all commands of any officer set over him, even to the peril of his life.

(3) The fact of an enrolled person having taken the oath or affirmation directed by this section to be taken shall be entered on his enrolment paper, and authenticated by the signature of the officer administering the oath or affirmation.

CHAPTER III.

DISMISSAL AND DISCHARGE.

Dismissal by Central Government and Commander-in-Chief in India.

13. (1) The Central Government [* * *]⁴ may dismiss from the service any person subject to this Act.

LEG. REF.

¹Inserted by Act XI of 1918.

²Substituted by ordinance LVIII of 1942.

³Substituted by Act VI of 1945.

⁴The words "or the Commander-in-Chief in India" repealed by Act XXXIII of 1934.

¹[(2) The Commander-in-Chief in India may dismiss from the service any person subject to this Act other than an Indian commissioned officer.]

Dismissal by officer commanding army, division, brigade, etc.

14. An officer commanding an army, [arm corps]², division or brigade, or any prescribed officer, may dismiss from the service any person serving under his command other than an[* *]³ officer,

15. [Dismissal of convicts.] Rep. by s. 26 and Schedule of the Indian Army (Amendment) Act, 1918 (XI of 1918).

16. The prescribed authority may, in conformity with any rules prescribed in this behalf, discharge from the service any person subject to this Act.

Discharge.

17. Every enrolled person who is dismissed or discharged from the service shall be furnished by his commanding officer with a certificate, in the English language and in the mother tongue of such person (when his mother tongue is not English), setting forth—

- (a) the authority dismissing or discharging him;
- (b) the cause of his dismissal or discharge;
- (c) the full period of his service in the army.

18. (1) Any person enrolled under this Act who is entitled under the conditions of his enrolment to be discharged, or whose discharge is ordered by competent authority, and who, when he is so entitled or ordered to be discharged, is serving out of India, and requests to be sent to India, shall, before being discharged, be sent to India with all convenient speed;

(2) Any person enrolled under this Act who is dismissed from the service and who, when he is so dismissed, is serving out of India, shall be sent to India with all convenient speed:

⁴[Provided that, where any such person is sentenced to dismissal combined with any other punishment, such other punishment, or in the case of a sentence of transportation or imprisonment, a portion of such other punishment may be inflicted before he is sent to India.]

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CHAPTER IV.

SUMMARY REDUCTION AND PUNISHMENTS OTHERWISE THAN BY ORDER OF COURT-MARTIAL.

19. (1) The Commander-in-Chief in India, an officer commanding an army, [army corps]⁶, division or brigade, or any prescribed officer, may reduce to a lower grade or to the ranks [any warrant officer or]⁷ any non-commissioned officer under his command.

[Provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks as a sepoy.]⁷

(2) The commanding officer of an acting non-commissioned officer may order him to revert to his permanent grade of a non-commissioned officer, or, if he has no permanent grade above the ranks, to the ranks.

20. (1) The Commander-in-Chief in India may, subject to the control of the Central Government, specify the minor punishments to which persons subject to this Act shall be

Minor punishments.

LEG. REF.

¹Section 13 has been re-numbered as sub-S. (1) of S. 13, and sub-S. (2) has been newly added by Act XXXIII of 1934.

²Inserted by Act XI of 1918.

³The word "Indian" was omitted by Act

XXXIII of 1934.

⁴This proviso was added by Act, XI of 1918.

⁵Sub-section (3) was repealed by *ibid*.

⁶Inserted by Act XI of 1918.

⁷Inserted by Act XXXIII of 1934.

liable without the intervention of a court-martial, and the officer or officers by whom, and the extent to which, such minor punishments may be awarded.

(2) ¹[Imprisonment in military custody and in the case of persons subject to this Act on active service any prescribed field punishment may be specified as minor punishments], provided that—

(a) the term of such imprisonment ²[or field punishment] shall not exceed twenty-eight days ; and

(b) it shall not be awarded to any person of or above the rank of non-commissioned officer, or who, when he committed the offence in respect of which it is awarded was of, or above such rank.

21. Whenever any weapon or part of a weapon forming part of the equipment of a half squadron, battery, company or other similar unit is lost or stolen, the officer commanding the army ³[army corps] division or independent brigade to which such unit belongs may, after obtaining the report of a court of inquiry impose a collective fine upon the ⁴[Viceroy's commissioned officers, warrant officers,] non-commissioned officers and men of such unit or upon so many of them, as in his judgment, should be held responsible for such loss or theft.

22. (1) For any offence, in breach of good order, the commanding officer of any corps or detachment on active service, in camp, on the march, or at any ⁵frontier post specified by the Central Government by notification in this behalf a which troops are stationed, may punish any ⁶[Indian] follower of such corps or detachment who is subject to this Act under section 2, sub-section (1), clause (c)—

(a) if such follower is not a menial servant, with imprisonment for a term which may extend to thirty days, or with fine which may extend to fifty rupees ;

(b) if such follower is a menial servant, with imprisonment for a term which may extend to seven day, or, if on active service, with corporal punishment not exceeding twelve strokes of a rattan.

(2) Imprisonment awarded under this section may be carried out in a military guard, or in a jail, as ordered by the said commanding officer ; and the officer in charge of any jail, shall, on the delivery to him of the person of the offender, with a warrant, under the hand of the said commanding officer, detain the offender according to the exigency of the warrant, or until he is discharged by due course of law.

Provost Marshals.

23. For the prompt and instant repression of irregularities and offences committed in the field or on the march, provost-marshals may be appointed by the Commander-in-Chief in India or an officer commanding an army, ⁷[army corps] division or independent brigade or an officer commanding the forces in the field ; and the powers and duties of such provost-marshals shall be regulated according to the established custom of war and the rules of the service.

24. (1) The duties of a provost-marshal so appointed are to take charge of prisoners confined, for offences of a general description, to preserve good order and discipline, and to

LEG. REF.

¹Inserted by Act XXXIII of 1934.

²Substituted for words "Imprisonment in military custody may be specified as such a minor punishment," by Act (XXXVII of 1920).

³Inserted by *ibid.*

⁴Inserted by Act (XI of 1918).

⁵Substituted by Act XXXIII of 1934.

⁶For places so declared, see Genl. R. & O., Vol. IV, p. 120.

⁷Substituted by Act (XI of 1918).

⁸Inserted by *ibid.*

prevent breaches of the same by persons belonging or attached to the army. ¹[He may at any time arrest and detain for trial any person subject to this Act who commits an offence and may also carry into effect any punishments to be inflicted in pursuance of the sentence of a court-martial.]

²[(2) A provost-marshal may punish with any punishment mentioned in section 22, sub-section (1) clause (b), any follower who is subject to this Act under section 2, sub-section (1), clause (c) and is a menial servant and who is on active service and in his view, or in the view of any of his assistants, commits any breach of good order and military discipline.]

CHAPTER V.

OFFENCES.

Offences in respect of Military Service.

Offences punishable with death. 25. Any person subject to this Act who commits any of the following offences, that is to say,—

(a) shamefully abandons or delivers up any garrison, fortress, post or guard committed to his charge, or which it is his duty to defend ; or

(b) in presence of an enemy, shamefully casts away his arms, or ammunition, or intentionally uses words or any other means to induce any person subject to military law to abstain from acting against the enemy, or to discourage such person from acting against the enemy, or misbehaves in such manner as to show cowardice ; or

(c) directly or indirectly holds correspondence with, or communicates intelligence to, the enemy, or any person in arms against the State, or who, coming to the knowledge of any such correspondence or communication, omits to discover it immediately to his commanding or other superior officer ; or

(d) treacherously makes known the watchword to any person not entitled to receive it ; or

(e) directly or indirectly assists or relieves with money, victuals or ammunition, or knowingly harbours or protects, any enemy or person in arms against the state ; or

(f) in time, of war, or during any military operation, intentionally occasions a false alarm in action, camp, garrison or quarters, or spread reports calculated to create alarm or despondency ; or

(g) being a sentry in time of war or alarm, or over any State prisoner, treasure, magazine or dockyard, sleeps upon his post, or quits it without being regularly relieved or without leave ; or

(h) in time of action, leaves his commanding officer or his post or party to go in search of plunder ; or

(i) in time of war, quits his guard, picquet, party or patrol without being regularly relieved or without leave ; or

(j) in time of war or during any military operation, uses criminal force to, or commits an assault on, any person bringing provisions or other necessities to the camp or quarters of any of His Majesty's forces, or forces a safeguard, or breaks into any house or any other place for plunder, or plunders, injures or destroys any field, garden or other property of any kind ; ³[or

(k) on active service commits any offence against the property or person of any inhabitant of, or resident in, the country in which he is serving] ; shall, on conviction by court-martial, be punished with death, or with such less punishment as is in this Act mentioned.

Offences not punishable, 26. Any person subject to this Act who commits with death, any of the following offences, that is to say,—

(a) strikes or forces or attempts to force, any sentry ; or

(b) in time of peace, intentionally occasions a false alarm in camp, garrison or cantonment ; or

LEG. REF.

¹Added by Act (XXXVII of 1920).

²Substituted for original sub-Ss. (2) and (3)

by Act (XXXVII of 1920).

³The word "or" and cl. (k) were added by Act (XI of 1918).

(c) being a sentry, or on guard, plunders or wilfully destroys or injures any property placed under his charge or under charge of his guard ; or

(d) being a sentry, in time of peace, sleeps upon his post, or quits it without being regularly relieved or without leave ;
shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Mutiny and Insubordination.

Offences punishable with death. 27. Any person subject to this Act who commits any of the following offences that is to say—

(a) begins, excites, causes, ¹[or conspires with any other persons to cause] or joins in any mutiny ; or

(b) being present at any mutiny, does not use his utmost endeavours to suppress the same ; or

(c) knowing or having reason to believe in the existence of any mutiny, or of any intention to mutiny, or of any conspiracy against the State, does not, without delay, give information thereof to his commanding or other superior officer ; or

(d) uses or attempts to use criminal force, to, or commits an assault on, his superior officer, whether on or off duty, knowing or having reason to believe him to be such ; or

(e) disobeys the lawful command of his superior officer ;
shall, on conviction by court-martial, be punished with death , or with such less punishment as is in this Act mentioned.

Offences not punishable with death. 28. Any person subject to this Act who commits any of the following offences, that is to say—

(a) is grossly insubordinate or insolent to his superior officer in the execution of his office ; or

(b) refuses to superintend or assist in the making of any field-work or other military work of any description ordered to be made either in quarters or in the field : or

(c) impedes a provost-marshal or an assistant provost-marshal, or any officer, or non-commissioned officer or other person legally exercising authority under or on behalf of a provost-marshal, or, when called on, refuses to assist, in the execution of his duty, the provost-marshal, assistant provost-marshal, or any such officer, non-commissioned officer or other person ;
shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Desertion, Fraudulent Enrolment and Absence without Leave.

29. Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by court-martial, be punished
Desertion. with death, or with such less punishment as is in this

Act mentioned.;

Harbouring deserter, absence without leave, etc.

30. Any person subject to this Act who commits any of the following offences, that is to say,—

(a) knowingly harbours any deserter, or who, knowing, or having reason to believe that any other person has deserted, or that any deserter has been harboured by any other person, does not without delay give information thereof to his own or some other superior officer, or use his utmost endeavours to cause such deserter to be apprehended ; or

(b) knowing, or having reason to believe, that a person is a deserter, procures or attempts to procure the enrolment of such person ; or

(c) without having first obtained a regular discharge from the corps or department to which he belongs, enrolls himself in the same or any other corps or department ; or

(d) absents himself without leave or without sufficient cause over-stays leave granted to him ; or

(e) being on leave of absence and having received information from proper authority that any corps or portion of a corps, or any department, to which he belongs, has been ordered on active service, fails, without sufficient cause, to rejoin without delay ; or

(f) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty ; or

(g) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer quits the parade or line of march ; or,

(h) in time of peace, quits his guard, piquet or patrol without being regularly relieved or without leave ; or

(i) without proper authority is found two miles or upwards from camp ; or

(j) without proper authority is absent from his cantonment or lines after tattoo, or from camp after retreat beating ;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Disgraceful Conduct.

Disgraceful conduct.

31. Any person subject to this Act who commits any of the following offences, that is to say,—

(a) dishonestly misappropriates or converts to his own use any money, provisions, forage, arms, clothing, ammunition, tools, instruments, equipments or military stores of any kind, the property of ¹[[the Crown] entrusted to him ; or

(b) dishonestly receives or retains any property in respect of which an offence under clause (a) has been committed, knowing or having reason to believe the same to have been dishonestly misappropriated or converted ; or

(c) wilfully destroys or injures any property of ¹[[the Crown] entrusted to him ; or;

(d) commits theft in respect of any property of ¹[[the Crown] or of any military mess, band or institution, or of any person subject to military law, or serving with, or attached to, the army ; or

(e) dishonestly receives or retains any such property as is specified in clause (d) knowing or having reason to believe it to be stolen ; or

(f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person ; or

(g) malingers or feigns or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity ; or

(h) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or any other person ; or

(i) commits any offence of a cruel, indecent or unnatural kind, or attempts to commit any such offence and does any act towards its commission ; shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Intoxication.

32. Any person subject to this Act, who is in a state of intoxication, whether on duty or not on duty, shall, on conviction by court-martial, be punished, with imprisonment, or with such less punishment as is in this Act mentioned.

Offences in relation to Persons in Custody.

33. Any person subject to this Act who, without proper authority, releases any State prisoner, enemy or person taken in arms against the State, placed under his charge, or who negligently suffers any such prisoner, enemy or person

Offences punishable with death.

LEG. REF.

¹Substituted for "Government" by Govern-

ment of India (Adaptation of Indian Laws) Order, 1937.

to escape, shall, on conviction by court-martial be punished with death, or with such less punishment as is in this Act mentioned.

Offences not punishable with death. 34. Any person subject to this Act who commits any of the following offences, that is to say,—

(a) being in command of a guard, picket or patrol, refuses to receive any prisoner or person duly committed to his charge ; or

(b) without proper authority releases any prisoner or person placed under his charge, or negligently suffers any such prisoner or person to escape ; or

(c) being in military custody, leaves such custody before he is set at liberty by proper authority ;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Offences in relation to Property.

Offences in relation to property. 35. Any person subject to this Act who commits, any of the following offences, that is to say,—

(a) commits extortion, or without proper authority exacts from any person carriage, portage or provisions ; or

(b) in time of peace, commits house-breaking for the purpose of plundering, or plunders, destroys or damages any field, garden or other property ; or

(c) designedly or through neglect kills, injures, makes away with, ill-treats or loses his horse or any animal used in the public service ; or

(d) makes away with, or is concerned in making away with, his arms, ammunition, equipments, instruments, tools, clothing or regimental necessities ; or

(e) loses by neglect anything mentioned in clause (d) ; or

(f) wilfully injures anything mentioned in clause (d) or any property belonging to ¹[the Crown] or to any military mess, band or institution, or to any person subject to military law, or serving with, or attached to, the army ; or

(g) sells, pawns, destroys or defaces any medal or decoration granted to him ;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Offences in relation to False Documents and Statements.

False accusations and offences in relation to documents. 36. Any person subject to this Act who commits any of the following offences, that is to say,—

(a) makes a false accusation against any person subject to military law, knowing such accusation to be false ; or

(b) in making any complaint under section 117 [or section 117-A]² knowingly makes any false statement affecting the character of any person subject to military law, or knowingly and wilfully suppresses any material fact ; or

(c) obtains or attempts to obtain for himself, or for any other person, any pension, allowances or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement ; or

(d) knowingly furnishes a false return or report of the number or state of any men under his command or charge or of any money, arms, ammunition clothing, equipments, stores or other property in his charge, whether belonging to such men or to ¹[the Crown] or to any person in or attached to the army, or who, through design or culpable neglect omits or refuses to make or send any return or report of the matters aforesaid ;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this act mentioned.

LEG. REF.

¹Substituted for "Government" by Government of India (Adaptation of Indian Laws)

Order, 1937.

²Inserted by Act XXXIII of 1934.

37. Any person having become subject to this Act who is discovered to have made wilfully a false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer before whom he appears for the purpose of being enrolled, shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Offences in relation to Courts-martial.

Offences in relation to courts-martial. 38. Any person subject to this Act who commits any of the following offences, that is to say,—

(a) when duly summoned to attend as a witness before a court-martial, intentionally omits to attend, or refuses to be sworn or affirmed or to answer any question, or to produce or deliver up any book, document or other thing which he may have been duly warned and called upon to produce or deliver up ; or

(b) intentionally offers any insult or causes any interruption or disturbance to, or uses any menacing or disrespectful word, sign or gesture, or is insubordinate or violent in the presence of, a court-martial while sitting ; or

(c) having been duly sworn or affirmed before any court-martial or other military court competent to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true ;

shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

Miscellaneous Military Offences.

Miscellaneous military offences. 39. Any person subject to this Act who commits any of the following offences, that is to say,—

(a) being an officer or warrant officer, behaves in a manner unbecoming his position and character ; or

(b) strikes or otherwise ill-treats any person subject to this Act being his subordinate in rank or position ; or

(c) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person or to report the case to the proper authority ; or

(d) by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person ; or

(e) attempts to commit suicide and does any act towards the commission of such offence ; or

(f) being below the rank of warrant officer, when off duty, appears, without proper authority, in or about camp or cantonments, or in or about, or when going to or returning from any town or bazaar, carrying a sword, bludgeon or other offensive weapon ; or

(g) directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service ; or

(h) neglects to obey any general or garrison or other orders ; or

(i) is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and military discipline ; shall, on conviction by court-martial, be punished with imprisonment, or with such less punishment as is in this Act mentioned.

¹[39-A. Whoever attempts to commit an offence punishable by this Act or to cause such an offence to be committed, and in such attempt does any act towards the commission of

the offence may, where no express provision is made by this Act, for the punishment of such attempt, be punished with the punishment provided in this Act for such offence.]

Abetment.

40. Every person subject to this Act who abets any offence punishable under this Act may be punished with the punishment provided in this Act for such offence.

Civil Offences.

41. ¹(1) Every person subject to this Act who [either within British India or]¹ at any place beyond British India [* *]¹ commits any civil offence shall be deemed to be guilty of an offence against military law, and, if charged therewith under this section shall, subject to the provisions of this Act, be liable to be tried for the same by court-martial, and on conviction to be punished as follows, that is to say :—

(a) if the offence is one which would be punishable under the law of British India with death or with transportation, he shall be liable to suffer any punishment [other than whipping]² assigned for the offence by the law of British India ; and

(b) in other cases, he shall be liable to suffer any punishment [other than whipping]² assigned for the offence by the law of British India, or such punishment as might be awarded to him in pursuance of this Act in respect of an act prejudicial to good order and military discipline.

[Provided that a person subject to this Act who at any place within British India or at any place, other than such frontier posts as may be specified by the Central Government by notification in this behalf, [in which the Central Government or the Crown Representative exercises jurisdiction by virtue of the Government of India Act, 1935, or of any Order in Council made under the Foreign Jurisdiction Act, 1890]³ and while not on active service, commits the offence of murder or culpable homicide not amounting to murder in relation to a person not subject to military law or the offence of rape, shall not be deemed to be guilty of an offence against military law and shall not be tried by a court-martial.

(2) The powers of a court-martial to try and to punish any person under this section shall not be affected by reason of the fact that the civil offence with which such person is charged is also a military offence.]

42. [Certain civil offences triable by military Law.]⁴ Repealed by Act XXXIII of 1934.

CHAPTER VI.

PUNISHMENTS.

43. Punishments may be inflicted in respect of offences committed by persons subject to this Act, and convicted by court-martial, according to the scale following, that is to say :—

- (a) death ;
- (b) transportation for life or for any period not less than seven years ;
- (c) imprisonment [either rigorous or simple]⁵ for any term not exceeding fourteen years ;
- ⁶[(cc) in the case of Indian Commissioned officers, cashiering ;]
- (d) dismissal from the service ;

LEG. REF.

¹S. 41 has been re-numbered as sub-S. (1) of S. 41. In the said section as so re-numbered, after the words "Every person subject to this Act who" the words "either within British India or" have been inserted ; the words "or when on active service in British India" have been omitted by Act XXXIII of 1934.

²Inserted by Act XXXVII of 1920.

³Substituted for "in which the Governor-General in Council exercises jurisdiction by

virtue of the Indian (Foreign Jurisdiction) Order in Council, 1902;" by Government of India (Adaptation of Indian Laws) Order, 1937.

⁴Proviso and sub-S. (2) added by Act XXXIII of 1934 ;

⁵Substituted for the words and brackets "(with or without solitary confinement)"¹ by Act XI of 1918.

⁶New clause (cc) inserted by Act XXXIII of 1934.

(e) [* * * * *]¹

¹[(f) reduction, in the case of a warrant officer, to a lower grade or class or place in the list of his rank, or to the ranks; or in the case of a non-commissioned officer, to a lower grade or a lower rank or to the ranks:]

Provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks as a sepoy;]

(g) in the case of officers, warrant officers and non-commissioned officers, forfeiture ¹[in the prescribed manner of seniority of rank and service for the purpose of promotion];

²[(gg) in the case of officers, ¹[warrant officers and non-commissioned officers] reprimand or severe reprimand];

(h) forfeitures and stoppages as follows, namely:—

(i) forfeiture of service for the purpose of ¹[* *] increased pay, pension or any other prescribed purpose;

(ii) ¹[* *]

(iii) forfeiture, in the case of a person sentenced to ¹[cashiering or] dismissal from the service ³[* * * *] of all arrears of pay and allowances and other public money due to him at the time of such ¹[cashiering or] dismissal;

(iv) stoppages of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good;

⁴[(v) on active service forfeiture of pay and allowances for a period not exceeding three months.]

44. Where in respect of any offence under this Act there is specified a

Lower punishments. particular punishment or such less punishment as is in this Act mentioned, there may be awarded in respect of that offence instead of such particular punishment (but subject to the other provisions of this Act as to punishments and regard being had to the nature and degree of the offence) any one punishment lower in the above scale than the particular punishment.

45. ⁵[Where any person, subject to this Act and under the rank of warrant

Field punishments. officer, on active service is guilty of any offence it shall be lawful for court-martial to award for that offence any such punishment, other than flogging, as may be prescribed as a field punishment. Field punishment shall be of the character of personal restraint or of hard labour but shall not be of a nature to cause injury to life or limb.]

46. ⁶[Field punishment] shall, for the purpose of commutation, be deemed to stand in the scale of punishments next below dismissal.

47. A sentence of a court-martial may award in addition to or without any one other punishment: ⁷[the punishment specified in clause (cc) or clause (d) and any one or more of the punishments specified in clauses (f), (g), (gg) and (h) of section 43.]

Cashiering of Indian commissioned officer on conviction. ⁸[47-A. Whenever an Indian commissioned officer is sentenced to transportation or imprisonment, the Court shall by its sentence sentence such officer to be cashiered.]

48. Whenever any person is sentenced to rigorous imprisonment, the Court

LEG. REF.

¹In S. 43,—cl. (e) has been omitted; for old cl. (f) new cl. (f) has been substituted; in cl. (g) for the words “of seniority of rank” the words within brackets have been substituted; in cl. (gg), the words within brackets inserted; and in cl. (h),—in sub-cl. (i) the word “promotion,” has been omitted; sub-cl. (ii) has been omitted; in sub-cl. (iii) after the words “sentenced to” and after the word “such” the words “cashiering or” have been inserted by Act

XXXIII of 1934.

²Inserted by Act XI of 1918.

³Words “or whose sentence involves such dismissal” were repealed by Act XI of 1918.

⁴Sub-clause added by Act XI of 1918.

⁵Section substituted by Act XXXVII of 1920.

⁶Substituted for words “corporal punishment” by Act XXXVII of 1920.

⁷Substituted by Act XXXIII of 1934.

⁸S. 47-A inserted by *ibid.*

Solitary confinement. may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say,—

(a) a time not exceeding one month if the term of imprisonment does not exceed six months ;

(b) a time not exceeding two months if the term of imprisonment exceeds six months and does not exceed one year ;

(c) a time not exceeding three months if the term of imprisonment exceeds one year.

49. ¹[A warrant officer or a non-commissioned officer] sentenced by court-martial to transportation, imprisonment, ²[field punishment] or dismissal from the service, shall be deemed to be reduced to the ranks.

Reduction of non-commissioned officers to ranks.

³[49-A. When ⁴[any enrolled person] on active service has been sentenced by court-martial to dismissal or to transportation or imprisonment, whether combined with dismissal or not, the prescribed officer may direct that such person may be retained to serve in the ranks, and where

Retention in the ranks of a person convicted on active service.

such person has been sentenced to transportation or imprisonment, such service shall be reckoned as part of his term of transportation or imprisonment.]

CHAPTER VII.

PENAL DEDUCTIONS.

50. [(1) The following penal deductions may be made from the pay and allowances, of an Indian commissioned officer, that is to say,—

Deductions from pay and allowances.

(a) all pay and allowances for every day of absence without leave, unless a satisfactory explanation has been given through his Commanding Officer and has been approved by the Central Government;

(b) any sum required to make good such compensation for any expenses, loss, damage or destruction occasioned by the commission of any offences as may be determined by the court-martial by whom he is convicted of such offence [or by an officer exercising authority under section 20]⁵;

(c) any sum required to make good the pay of any person subject to this Act which he has unlawfully retained or unlawfully refused to pay ;

(d) any sum required to make good any loss, damage or destruction of public or regimental property which after due investigation appears to the Central Government to have been occasioned by any wrongful act or negligence on the part of the Indian commissioned officer ;

(e) any sum ordered by a court-martial to be stopped under section 43.]⁶

⁶[(2) The following penal deductions may be made from the pay and allowances of a person subject to this Act, ¹[other than an Indian commissioned officer], that is to say,—

(a) all pay and allowances for every day of absence either on desertion or without leave, or as a prisoner of war, and for every day of imprisonment awarded by a criminal court, a court-martial, or an officer exercising authority under section 20 ²[or of field punishment awarded by a court-martial or such officer] ;

(b) all pay and allowances for every day whilst he is in custody on a charge for an offence of which he is afterwards convicted by a criminal court or court-martial, or on a charge of absence without leave for which he is afterwards awarded

LEG. REF.

¹Substituted by Act XXXIII of 1934.

²Substituted for words "corporal punishment" by Act XXXVII of 1920.

³Section added by Act (XI) of 1918.

⁴Substituted by Act XXXIII of 1934.

⁵Inserted by Act XXI of 1943.

⁶Old S. 50 has been re-numbered as sub-S.

(2) of S. 50 and in that section as so re-numbered, after the words "a person subject to this Act" in both places where they occur, the word "other than an Indian commissioned officer" have been inserted and sub-S. (1) has been newly inserted by Act XXXIII of 1934.

⁷Added by Act XXXIII of 1920.

imprisonment ¹[or field punishment] by an officer exercising authority under section 20 ;

(c) all pay and allowances for every day on which he is in hospital on account of sickness certified by the ²[* * *] medical officer attending on him [* *]³ to have been caused by an offence under this Act committed by him ;

⁴[(cc) for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by his own misconduct or imprudence, such sum as may be specified by order of the Commander-in-Chief in India] ;

⁵[(d) all pay and allowances ordered by a court-martial under section 43, or by an officer exercising authority under section 20, to be forfeited ;]

(e) any sum ordered by a court-martial to be stopped under section 43 ;

(f) any sum required to make good such compensation for any expenses caused by him, or for any loss of or damage or destruction done by him to any arms, ammunition, equipment, clothing, instruments, regimental necessities or military decoration, or to any building or property, as may be awarded by his commanding officer ;

(g) any sum required to pay a fine awarded by a criminal court, a court-martial exercising jurisdiction under section 41 [* * *]⁶ or an officer exercising authority under section 20 or section 21 :

Provided that the total deductions from the pay and allowances of a person subject to this Act ⁷[other than an Indian commissioned officer] made under clauses (e) to (g), both inclusive, shall not (except in the case of a person sentenced to dismissal ⁸[* * * *]) exceed in any one month one-half of his pay and allowances for that month.

Explanation.—For the purposes of clauses (a) and (b)—

(i) absence or custody for six consecutive hours, or upwards, whether wholly in one day or partly in one day and partly in another, may be reckoned as absence or custody for a day ;

(ii) absence or custody for twelve consecutive hours or upwards may be reckoned as absence or custody for the whole of each day during any portion of which the person was absent or in custody ; and

(iii) any absence or custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absentee from fulfilling any military duty which was thereby thrown upon some other person.

51. Any sum authorized by this Act to be deducted from the pay and allowances of any person may, without prejudice to any other mode of recovering the same, be deducted from any public money other than pay.

52. Any deduction from pay and allowances authorized by this Act may be remitted in such manner, ⁹[and to such extent] and by such authority as may from time to time be prescribed.

¹⁰[52-A. (1) In the case of all persons subject to this Act, being prisoners of war, whose pay and allowances have been forfeited under section 50, but in respect of whom a remission has been made under section 52, it shall be lawful, notwithstanding any provision in any enactment or any rule of law to the contrary, for proper provision to be made by the prescribed authorities out of such pay and allowances for any dependants of such persons, and any such remission shall in that case be deemed to apply only to the balance thereafter remaining of such pay and allowances.

LEG. REF.

¹Inserted by Act XXXII of 1920.

²Word "proper" repealed by Act XI of 1918.

³Words "at the hospital" repealed by *ibid.*

⁴This clause was inserted by *ibid.*

⁵Substituted by Act VII of 1935.

⁶Words "or section 42" omitted by Act VII

of 1935.

⁷See Footnote (6), p. 92.

⁸Words "or whose sentence involves dismissal" repealed by Act (XI of 1918).

⁹Inserted by Act (X of 1917).

¹⁰Section inserted by *ibid.*

(2) Any payments hitherto made to dependants by way of deductions from pay and allowances which, if this section had been in force, could have been validly made are hereby validated.]

CHAPTER VIII.

COURTS-MARTIAL.

Constitution and Dissolution of Courts-Martial.

Courts-martial and the kinds thereof.

53. For the purposes of this Act there shall be four kinds of courts-martial, that is to say :—

- (1) general courts-martial ;
- (2) district courts-martial ;
- (3) summary general courts-martial ; and
- (4) summary courts-martial.;

54. A general court-martial may be convened by the Commander-in-Chief in India, or by any officer empowered in this behalf by warrant of the Commander-in-Chief in India.

55. A district court-martial may be convened by any officer having power to convene a general court-martial, or by any officer empowered in this behalf by warrant of any such officer.

Contents of warrant issued under section 54 or section 55.

56. A warrant issued under section 54 or section 55 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

¹[57. A general court-martial shall consist of not less than five British officers or Indian commissioned officers, each of whom has held a commission for not less than three whole years and of whom not less than four are of a rank not below that of captain.]

58. A district court-martial shall consist of not less than three ²[British officers or Indian commissioned officers.]

59. [Convening order to state if larger number of officers is not available.] Omitted by Act XXX of 1934.

³[60. A general, summary general or district court-martial may be composed of either British officers or Indian commissioned officers or of both British officers and Indian commissioned officers.]

61. [Claim to trial by British officers.] Omitted by Act XXXIII of 1934.

62. The following authorities shall have power to convene a summary general court-martial namely :—

- (a) an officer empowered in this behalf by an order of the Central Government or of the Commander-in-Chief in India ;
- (b) on active service, the officer commanding the forces in the field, or any officer empowered by him in this behalf ;
- (c) an officer commanding any detached portion of His Majesty's troops upon active service when, in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by an ordinary general court-martial.

LEG. REF.

¹Substituted for old Sec. 57 by Act XXXIII of 1934.

²Substituted by Act XXXIII of 1934.

³Substituted for old Sec. 60 by Act XXXIII of 1934.

—The Army Act gives powers of arrest and trial of a person who has ceased to be subject to military law. But his trial must commence within three months of his ceasing to be so subject. After the expiration of the period of three months the person charged with an offence ceases to be liable to arrest or trial by court-martial. 1934 Cr.C. 1185=1934 L. 845.

Composition of summary general courts-martial. 63. A summary general court-martial shall consist of not less than three ¹[British officers or Indian commissioned officers.]

Summary courts-martial.

64. (1) A summary court-martial may be held—
(a) by the commanding officer of any corps or department of His Majesty's Indian Forces, or of any detachment of those forces ;

(b) by the commanding officer of any British corps or detachment to which details subject to this Act are attached.

(2) At every summary court-martial the officer holding the trial shall alone constitute the court, but the proceedings shall be attended throughout by two other officers who shall not, as such, be sworn or affirmed.

Dissolution of courts. 65. (1) If a court-martial after the commencement of a trial is reduced below the smallest number of officers of which it is by this Act required to consist it shall be dissolved.
2[* * * *]

(2) If, on account of the illness of the accused before the finding it is impossible to continue the trial, a court-martial shall be dissolved.

(3) Where a court-martial is dissolved under this section, the accused may be tried again;.

Jurisdiction of Courts-martial.

66. When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been summarily dealt with for an offence under section 26 or section 22, he shall not be liable to be tried again for the same offence by a court-martial or dealt with summarily in respect of it under either of the said sections.

3[67. No trial by court-martial of any person subject to this Act for any offence (other than an offence of mutiny, desertion or fraudulent enrolment) shall be commenced after the expiration of three years from the date of such offence, and no such trial for an offence of desertion (other than desertion on active service) or of fraudulent enrolment shall be commenced if the person in question ⁴[(not being an Indian commissioned officer)] has, subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of His Majesty's regular forces.

Explanation.—For the purposes of this section, 'mutiny' means any of the offences specified in clauses (a), (b) and (c) of section 27.]

68. Any person subject to this Act who commits any offence against it may be tried and punished for such offence in any place
Place of trial. whatever.

Adjustment of the jurisdiction of Courts-martial and Criminal Courts.

69. When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the prescribed military authority to decide before which Court the proceedings shall be instituted, and, if that authority decides that they shall be instituted before a court-martial to direct that the accused person shall be detained in military custody.

LEG. REF.

¹Substituted by Act XXXIII of 1934.

²Proviso omitted by Act XXXIII of 1934.

³Section substituted by Act XXXVII of 1920).

⁴Inserted by Act XXXIII of 1934.

SECS. 69 AND 70 : APPLICABILITY.—Where a military servant was accused of criminal breach of trust and desertion, *held*, that since the offence of criminal breach of trust was triable both by Criminal Court and by a court-

martial, it rested with the military authority to decide whether the accused should be tried by court-martial or not. *Held, further*, that since the offence of desertion could be tried by the military Court only, S. 70 could not apply and that the mere fact that the accused was arrested by the police and was put up before the Magistrate and the case had proceeded to some length, could not make any difference. 26 A.L.J. 942=29 Cr.L.J. 803=1928 A. 672 (673.)

70. (1) When a criminal court having jurisdiction is of opinion that proceedings ought to be instituted before itself in respect

Power of criminal court to require delivery of offender.

of any alleged offence, it may, by written notice,, require the prescribed military authority at its option either to deliver over the offender to the nearest Magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Central Government.

(2) In every such case the said authority shall either deliver over the offender in compliance with the requisition or shall forthwith refer the question as to the Court before which the proceedings are to be instituted for the determination of the Central Government whose order upon such reference shall be final.

71. (1) Notwithstanding anything contained in section 26 of the General

Trial by court-martial, no bar to subsequent trial by criminal Court.

Clauses Act, 1897, or in section 403 of the Code of Criminal Procedure, 1898, a person convicted or acquitted by a court-martial may be afterwards tried by a criminal court for the same offence or on the

same facts.

(2) If a person sentenced by a court-martial in pursuance of this Act to punishment for an offence is afterwards tried by a criminal court for the same offence or on the same facts, that court shall, in awarding punishment, have regard to the military punishment he may already have undergone.

Powers of Courts-martial.

Powers of general and summary general courts-martial.

72. A general or summary general court-martial shall have power to try any person subject to this Act for any offence made punishable therein and to pass any sentence authorized by this Act.

73. A district court-martial shall have power to try any person subject to

Powers of district court-martial.

this Act other than an officer for any offence made punishable therein, and to pass any sentence authorized by this Act other than a sentence of death, or transportation, or imprisonment for a term exceeding two years: ¹[Provided that a district court-martial shall not award to a warrant officer any punishment other than the ²[punishments specified in clauses (g), (gg) and (h) of section 43] either in addition to or in substitution for any such punishment, the punishment specified in clause (d) or the punishment specified in clause (f) of that section].

Offences triable by summary court-martial.

74. A summary court-martial may try any offence punishable under any of the provisions of this Act :

Provided that when there is no grave reason for immediate action, and reference can without detriment to discipline be made to the officer empowered to convene a district court-martial ³[or on active service a summary general court-martial] for the trial of the alleged offender, an officer holding a summary court-martial shall not try without such reference any of the following offences, namely :—

(a) any offence punishable under sections 25, 27, clauses (a), (b) or (c), 33 ⁴[or 41] or,

(b) any offence against the officer holding the court.

75. A summary court-martial may try any

Persons triable by summary court-martial.

person subject to this Act and under the command of the officer holding the court, except an officer or warrant officer.

76. (1) A summary

Sentences awardable by summary court-martial.

court-martial ⁵[* * * *] may pass any sentence which can be passed under this Act, except a sentence of death or transportation, or of imprisonment for a term exceeding one year.

LEG. REF.

¹Proviso added by Act XXXIII of 1934.

²Substituted for words "punishment specified in cl. (h) of Sec. 43 or" by Act VII of 1935.

³These words were inserted by Act XI of 1918.

⁴Substituted by Act XXXIII of 1934.

⁵Words "held by the commanding officer of a corps or department" were repealed by Act, X of 1917.

1[* * * * * *]

Procedure at Trials by Court-martial.

President.

77. At every general, district or summary general court-martial the senior member shall sit as president.

78. Every general court-martial shall, and every district [or summary general]² court-martial may, be attended by a judge

Judge Advocate.

advocate, who shall be either an officer belonging to the department of the Judge Advocate-General in India, or, if no such officer is available, a person appointed by the convening officer.

79. [Superintending officer.] Omitted by Act XXXIII of 1934.

80. (1) At all trials by general, district or summary general courts-martial, as soon as the court is assembled, the names of the president and members shall be read over to the accused,

Challenges.

who shall thereupon be asked whether he objects to being tried by any officer sitting on the court.

(2) If the accused objects to any such officer, his objection, and also the reply thereto of the officer objected to, shall be heard and recorded, and the remaining officers of the Court shall, in the absence of the challenged officer, decide on the objection.

(3) If the objection is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.

(4) When no challenge is made, or when challenge has been made and disallowed, or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or allowed, the court shall proceed with the trial.

81. (1) Every decision of a court-martial shall be passed by an absolute majority of votes; and where there is an equality of

Voting of members.

votes, as to either finding or sentence, the decision

shall be in favour of the accused.

(2) In matters other than a challenge or the finding or sentence, the president shall have a casting vote.

82. An oath or affirmation in the prescribed form shall be administered to every member of every court-martial and to the Judge

Oaths of president and members.

Advocate³ [* * *] before the commencement of the trial.

83. Every person giving evidence at a court-martial shall be examined on oath or affirmation and shall be duly sworn or affirmed

Oaths of witnesses.

in the prescribed form.

84. (1) The convening officer, the president of the court, the judge advocate, or the commanding officer, of the accused person,

Summoning witnesses and production of documents.

may, by summons under his hand, require the attendance⁴ [* * *] at a time and place to be mentioned in the summons of any person either to give evidence

or to produce any document or other thing.

(2) In the case of a witness amenable to military authority, the summons shall be sent to the officer commanding the corps, department or detachment to which he belongs, and such officer, shall serve it upon him accordingly.

(3) In the case of any other witness, the summons shall be sent to the Magistrate within whose jurisdiction he may be or reside, and such Magistrate shall give effect to the summons as if the witness were required in the Court of such Magistrate.

LEG. REF.

¹ Sub-sec. (2) repealed by Act X of 1917.

² Inserted by ordinance XVIII of 1942.

³ Words "or superintending officer" omitted by Act XXXIII of 1934.

⁴ Words "before the Court" omitted by *Id.*

(4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with convenient certainty.

(5) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to any letter, postcard, telegram or other document in the custody of the postal or telegraph authorities.

(6) If any document in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any court-martial, such Magistrate or Court may require the postal or telegraph authorities, as the case may be, to deliver such document to such person as such Magistrate or Court may direct.

(7) If any such document is, in the opinion of any other Magistrate or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the postal or telegraph authorities, as the case may be, to cause search to be made for and to detain such document pending the orders of any such District Magistrate, Chief Presidency Magistrate or Court.

85. (1) Whenever, in the course of a trial by court-martial, it appears to the Court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense, or inconvenience which, in the circumstances of the case, would be unreasonable, such Court may address the Judge Advocate-General in order that a commission to take the evidence of such witness may be issued.

(2) The Judge Advocate-General may then, if he thinks necessary, issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(3) When the witness resides in ¹[any Indian State or tribal area] in which there is an officer representing the ²[Central Government or the Crown Representative] the commission may be issued to ³[that] officer.

(4) The Magistrate or officer to whom the commission is issued, or, if he is the District Magistrate, he or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant cases under the Code of Criminal Procedure, 1898.

(5) Where the commission is issued to such officer as is mentioned in subsection (3), he may delegate his powers and duties under the commission to any officer subordinate to him whose powers are not less than those of a Magistrate of the first class in British India.

(6) When the witness resides out of India, the commission may be issued to any British consular officer, British Magistrate or other British official competent to administer an oath or affirmation in the place where such witness resides.

(7) The prosecutor and the accused person in any case in which a commission is issued may respectively forward any interrogatories in writing which the Court may think relevant to the issue, and the Magistrate or officer to whom the commission is issued shall examine the witness upon such interrogatories.

(8) The prosecutor and the accused person may appear before such Magistrate or officer by pleader, or, except in the case of an accused person in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

(9) After any commission issued under this section has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Judge Advocate-General.

LEG. REF.

¹Substituted by Government of India (Adaptation of Indian Laws) Order, 1937 for "the territories of any prince or Chief in India".

²Substituted by Government of India (Adap-

tation of Indian Laws) Order, 1937 for "British Indian Government".

³Substituted by Government of India (Adaptation of Indian Laws) order, 1937, for "such".

(10) On receipt of a commission and deposition returned under sub-section (9), the Judge Advocate-General shall forward the same to the Court at whose instance the commission was issued, or, if such Court has been dissolved, to any other Court convened for the trial of the accused person; and the commission, the return thereto and the deposition shall be open to the inspection of the prosecutor and the accused person, and may, subject to all just exceptions, be read in evidence in the case by either the prosecutor or the accused, and shall form part of the proceedings of the Court.

(11) In every case in which a commission is issued under this section the trial may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

Explanation.—In this section, the expression “Judge Advocate-General” means the Judge Advocate-General in India, and includes a Deputy Judge Advocate-General.

Conviction of one offence permissible on charge of another.

86. (1) A person charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(2) A person charged before a court-martial with attempting to desert may be found guilty ¹[* * * *] of being absent without leave.

(3) A person charged before a court-martial with any of the following offences specified in section 31, that is to say, theft, dishonest misappropriation or conversion to his own use of property entrusted to him, or dishonestly receiving or retaining property in respect of which any of the aforesaid offences has been committed knowing or having reason to believe it to have been stolen or dishonestly misappropriated or converted, may be found guilty of any other of these offences with which he might have been charged.

(4) A person charged before a court-martial with an offence punishable under section 41 ²[* * *] may be found guilty of any other offence of which he might have been found guilty if the provisions of the Code of Criminal Procedure, 1898, were applicable.

(5) A person charged before a court-martial with any other offence under this Act may, on failure of proof of an offence having been committed in circumstances involving a more severe punishment, be found guilty of the same offences as having been committed in circumstances involving a less severe punishment.

³[(6) A person charged before a court-martial with any offence under this Act may be found guilty of having attempted to commit or of abetment of that offence although the attempt or abetment is not separately charged.]

Majority requisite to sentence of death.

87. No sentence of death shall be passed by any court-martial without the concurrence of two-thirds at the least of the members of the Court.

Evidence before Courts-martial.

General rule as to evidence.

88. The Indian Evidence Act, 1872, shall, subject to the provisions of this Act, apply to all proceedings before a court-martial.

Judicial notice.

89. A court-martial may take judicial notice of any matter within the general military knowledge of the members.

90. In any proceeding under this Act, any application, certificate, warrant, reply or other document purporting to be signed by an officer in the ⁴[service of the Crown] shall, on production, be presumed to have been duly signed by the person and in the character by whom and in which it purports to have been signed, until the contrary is shown.

LEG. REF.

¹ The words “of desertion or” omitted by Act XXI of 1943.

² Omitted by Act XXXIII of 1944.

³ Sub-sec. added by Act (XXI of 1918).

⁴ Substituted for “Civil or military service of the Government” by Government of India, (Adaptation of Indian Laws Order, 1947).

91. Any enrolment paper purporting to be signed by an enrolling officer shall, in proceedings under this Act, be evidence of the person enrolled having given the answers to questions which he is therein represented as having given. ¹[The enrolment of such person may be proved by the production of a copy of his enrolment paper purporting to be certified to be a true copy by the officer having the custody of the enrolment paper.]

²[91-A. (1) A letter, return or other document respecting the service of any person in, or the dismissal or discharge of any person from, any portion of His Majesty's Forces, or respecting the circumstance of any person not having served in, or belonged to, any portion of His Majesty's Forces, if purporting to be signed by or on behalf of the Central Government or the Commander-in-Chief in India or by any prescribed officer, shall be evidence of the facts stated in such letter, return or other document.

(2) An army List or Gazette purporting to be published by authority shall be evidence of the status and rank of the officers or warrant officers therein mentioned, and of any appointment held by such officers or warrant officers and of the corps, battalion or arm or branch of the service to which such officers or warrant officers belong.

(3) Where a record is made in any regimental book, in pursuance of this Act or of any rules made thereunder or otherwise in pursuance of military duty, and purports to be signed by the commanding officer or by the officer whose duty it is to make such record, such record shall be evidence of the facts thereby stated.

(4) A copy of any record in any regimental book purporting to be certified to be a true copy by the officer, having the custody of such book shall be evidence of such record.

(5) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of, or has been apprehended by, a provost-marshal, assistant provost-marshal or other officer, or any portion of His Majesty's Forces, a certificate purporting to be signed by such provost-marshal, assistant provost-marshal or other officer, or by the commanding officer of that portion of His Majesty's Forces and stating the fact, date and place of such surrender or apprehension, shall be evidence of the matters so stated.

(6) When any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of, or has been apprehended by, a police-officer not below the rank of an officer in charge of a police-station, a certificate purporting to be signed by such police-officer and stating the fact, date and place of such surrender or apprehension, shall be evidence of the matters so stated.]

³[(7) Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report may be used as evidence in any proceeding under this Act.]

92. (1) If at any trial for desertion, absence without leave, overstaying leave or not rejoining when warned for service, the person tried states in his defence any sufficient or reasonable excuse for his unauthorized absence, and refers in support thereof to any officer in the [service of the Crown] or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the Court shall address such officer and adjourn until his reply is received.

(2) The written reply of any officer so referred to shall, if signed by him, be received in evidence and have the same effect as if made on oath before the Court.

LEG. REF.

¹Words substituted for words "and of the enrolment of such person" by Act (XI of 1918).

²Section inserted by *Ibid*.

³Sub-section added by Act (XXXIII of 1923).

⁴Substituted for "civil or military service of Government" by Government of India (Adaptation of Indian Laws) Order, 1937.

(3) If the Court is dissolved before the receipt of such reply, or if the Court omits to comply with the provisions of this section, the convening officer, may, at his discretion, annul the proceedings and order a fresh trial by the same or another court-martial.

93. (1) When any person subject to this Act has been convicted by a court-martial of any offence, such court-martial may inquire into, and receive and record evidence, of any previous convictions of such person, either by a Court-martial or by a criminal Court, and may further inquire into and record the general character of such person, and such other matters as may be prescribed.

Evidence of previous conviction and general character. (2) Evidence received under this section may be either oral, or in the shape of entries in, or certified extracts from, court-martial books or other official records; and it shall not be necessary [* * * *] to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

(3) At a summary court-martial the officer holding the trial may, if he thinks fit, record any previous convictions against the offender, his general character and such other matters as may be prescribed, as of his own knowledge, instead of requiring them to be proved under the foregoing provisions of this section.

Confirmation and Revision of Findings and Sentences.

Finding and sentence invalid without confirmation.

94. No finding or sentence of a general or district court-martial shall be valid except so far as it may be confirmed as provided by this Act.

Power to confirm finding and sentence of general court-martial.

95. The findings and sentences of general court-martial may be confirmed by the Commander-in-Chief in India, or by any officer empowered in this behalf by warrant of the Commander-in-Chief in

India.

Power to confirm finding and sentence of district court-martial.

96. The findings and sentences of district courts-martial may be confirmed by any officer having power to convene a general court-martial, or by any officer empowered in this behalf by warrant of any such

officer.

Contents of warrant issued under section 95 or section 96.

97. A warrant issued under section 95 or section 96 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

98. (1) The finding and sentence of a summary general court-martial shall require to be confirmed by the convening officer [or if the convening officer so directs, by an authority superior to the convening officer]

(a) in the case of the trial of an officer,
(b) in the case of an acquittal or a sentence of death or transportation or imprisonment for a term exceeding two years, and

(c) in any other case if so ordered by the [convening] officer.

(2) Save as provided in sub-section (1), a sentence passed by a summary general court-martial shall not require to be confirmed, but may be carried out forthwith.

Power of confirming officer to mitigate, remit or commute sentences.

99. Subject to such restrictions as may be contained in any warrant issued under section 95 or section 96, a confirming officer may when confirming the sentence of a court-martial, mitigate or remit the punishment thereby awarded, or commute that punishment for any less punish-

LEG. REF.

¹Words "to prove the signature to such certified extracts, nor shall it be necessary" repealed

by Act (XI of 1918).

²Inserted by Act (XI of 1918).

³Substituted for word "said" by *ibid.*

ment or punishments to which the offender might have been sentenced by the court-martial :

Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the Court.

¹[99-A. When any person subject to this Act is tried and sentenced by court-martial while on board ship, the finding and sentence so far as not confirmed, and executed on board ship may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation.]

Confirmation of finding and sentence on board ship.

100. (1) Any finding or sentence of a Court-martial which requires confirmation may be once revised by order of the confirming officer ; and on such revision, the Court, if so directed by him, may take additional evidence.

Revision of finding or sentence.

(2) The Court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent.

(3) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the Court shall proceed with the revision, provided that, if a general court-martial, it still consists of five officers, or if a district court-martial, of three officers.

Finding and sentence of a summary court-martial.

101. The finding and sentence of a summary court-martial shall not require to be confirmed, but may be carried out forthwith :

Provided that, if the officer holding the trial is of less than five years' service, he shall not, except on active service, carry into effect any sentence until it has received the approval of an officer commanding not less than a corps.

102. The proceedings of every summary court-martial shall without delay be forwarded to the officer commanding the division or brigade within which the trial was held, or to the prescribed officer ; and such officer, or the Commander-in-Chief in India, or the officer commanding the army, ²[or army corps,] in which the trial was held, may, for reasons based on the merits of the case, but not on any merely technical grounds, set aside the proceedings or reduce the sentence to any other sentence which the Court might have passed.

Transmission of proceedings of summary courts-martial.

[103. (1) Where a finding of guilty by a court-martial, which has been confirmed, or which does not require confirmation, is found for any reason to be invalid or cannot be supported by the evidence, the authority which would have had power under section 112, to commute the punishment awarded by the sentence, if the finding had been valid, may substitute a new finding, if the new finding could have been validly made by the court-martial on the charge and if it appears that the court-martial must have been satisfied of the facts establishing the offence specified or involved in the new finding, and may pass a sentence for the said offence.

Substitution of a valid finding or sentence for an invalid finding or sentence.

(2) Where a sentence passed by a court-martial which has been confirmed, or which does not require confirmation, not being a sentence passed in pursuance of a new finding substituted under sub-section (1), is found for any reason to be invalid, the authority which would have had power under section 112 to commute the punishment awarded by the sentence if it had been valid may pass a valid sentence.

LEG. REF.

¹Section inserted by Act XI of 1918.

²Inserted by Act (XI of 1918).

SEC. 100 (1) : SOLDIER UNDER ARREST—SUBSISTENCE ALLOWANCE IS NOT HIS PAY.—The

subsidence allowance provided to enable a soldier under arrest to live is not his pay; the allotment and other payment not paid at his request is the unilateral act of the military authorities and cannot affect his legal position 1934 L. 845.

(3) The punishment awarded by a sentence passed under sub-section (1) or sub-section (2) shall not be higher in the scale of punishments than, or in excess of the punishment awarded by, the sentence for which a new sentence is substituted under this section.]¹

²[103-A. (1) Whenever, in the course of a trial by court-martial, it appears to the Court that the person charged is of unsound mind and consequently incapable of making his defence, or that such person committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, the Court shall record a finding accordingly, and the President of the Court or the officer holding the trial, as the case may be, shall forthwith report the case to the confirming officer, or, in the case of a court-martial whose finding does not require confirmation, to the prescribed officer.

(2) A confirming officer to whom a case is reported under sub-section (1), may, if he does not confirm the finding take steps to have the accused person tried by the same or another court-martial for the offence with which he was originally charged.

(3) A prescribed officer to whom a case is reported under sub-section (1) and a confirming officer confirming a finding in any case so reported to him shall order the accused person to be kept in custody in the prescribed manner, and shall report the case for the orders of the Central Government.

(4) On receipt of a report under sub-section (3), the Central Government may order the accused person to be detained in a lunatic asylum or other suitable place of safe custody.

(5) Where an accused person, having been found by reason of unsoundness of mind to be incapable of making his defence, is in custody or under detention, the prescribed officer may—

(a) if such person is in custody under sub-section (3), on the report of a medical officer that he is capable of making his defence, or

(b) if such person is detained under sub-section (4), on a certificate such as is referred to in section 473 of the Code of Criminal Procedure, 1898, take steps to have such person tried by the same or another court-martial for the offence with which he was originally charged or provided that the offence is a civil offence, by a criminal Court.

³[(5-A) Where any person is in custody under sub-section (3) or under detention under sub-section (4),—

(a) if such person is in custody under sub-section (3), on the report of a medical officer, or

(b) if such person is detained under sub-section (4), on a certificate from any of the authorities empowered to grant a certificate under section 473 of the Code of Criminal Procedure, 1898,

that, in the judgment of such officer or authority, such person may be released without danger of his doing injury to himself or to any other person, the Central Government may thereupon order such person to be released, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum.

(5-B) Where any relative or friend of any person who is in custody under sub-section (3) or under detention under sub-section (4) desires that he shall be delivered to his care and custody, the Central Government may, upon the application of such relative or friend and on his giving security to the satisfaction of the Central Government that the person delivered shall—

LEG. REF.

¹Sec. 103 substituted by Act XXI of 1943.

²Section inserted by Act (XXXIII of 1923).

³Sub-sections 5-A and 5-B of S. 103-A inserted by Act VII of 1935.

(a) be properly taken care of and prevented from doing injury to himself or to any other person, and

(b) be produced for the inspection of such officer, and at such times and places, as the Central Government may direct,

order such person to be delivered to such relative or friend.]

(6) A copy of every order made by the prescribed officer under sub-section (5) shall forthwith be sent to the Central Government.

CHAPTER IX.

EXECUTION OF SENTENCES.

104. In awarding a sentence of death a court-martial shall, in its discretion, direct that the offender shall suffer death by being hanged by the neck until he be dead, or shall

Form of sentence of death.

suffer death by being shot to death.

105. [*Imprisonment to be in military custody.*] Omitted by Act XXXIII of 1934.

106. Whenever any person is sentenced under this Act to transportation or imprisonment, the term of his sentence shall, whether it has been revised or not, be reckoned to commence on the day on which the original proceedings were signed by the president or, in the case of a summary Court-

Commencement of sentence of transportation or imprisonment.

martial, by the Court.

[107. (1) Whenever any sentence of transportation is passed under this Act or whenever any sentence so passed is commuted to

Execution of sentences of transportation or imprisonment.

transportation, the commanding officer of the person under sentence, or such other officer as may be prescribed, shall forward a warrant in the prescribed form to the officer in charge of the civil prison in which such person is to be confined and shall forward him to such prison with the warrant.

(2) Whenever any sentence of imprisonment is passed under this Act or whenever any sentence so passed is commuted to imprisonment, the confirming officer, or in the case of a sentence which does not require confirmation, the Court or in either case such officer as may be prescribed may direct either that the sentence shall be carried out by confinement in a civil prison or by confinement in a military prison, and the commanding officer of the person under sentence or such other officer, as may be prescribed, shall forward a warrant in the prescribed form to the officer in charge of the prison in which the person under sentence is to be confined and shall forward him to such prison with the warrant:

Provided that, in the case of a sentence of imprisonment for a period not exceeding three months, in lieu of a direction that the sentence shall be carried out by confinement in a civil or a military prison, a direction may be made that the sentence shall be carried out by confinement in military custody :

Provided further that on active service a sentence of imprisonment may be carried out by confinement in such place as the officer commanding the forces in the field may, from time to time, appoint.] [*Substituted by Act XIV of 1943.*]

108. Whenever, in the opinion of an officer commanding an army, army

Execution of sentence of imprisonment in special cases.

[corps], division or independent brigade, any sentence or portion of a sentence of imprisonment cannot, for special reasons, conveniently be carried out in accordance with the provisions of ²[*] section 107, such officer, may direct that such sentence or portion of sentence shall be carried out by confinement in any civil prison or other fit place.

¹[108-A. In every case in which a sentence of transportation is passed under this Act, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be deemed to have been undergoing his sentence of transportation during the term of his imprisonment.]

109. ²[Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil or military prison, a warrant in accordance with such order shall be forwarded by the prescribed officer to the officer in charge of the prison in which such person is confined.]

110. In executing a sentence of solitary confinement such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods, and, when the imprisonment awarded exceeds three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such period.

111. *[Instrument of corporal punishment.] Repealed by the Indian Army (Amendment) Act, 1920 (XXXVII of 1920).*

³[111-A. When a sentence of fine is imposed by a court-martial under section 41 ⁴[* * *] whether the trial was held within British India or not, a copy of such sentence, signed and certified by the president of the court or the officer holding the trial, as the case may be, may be sent to any Magistrate in British India, and such Magistrate shall thereupon cause the fine to be recovered in accordance with the provisions of the Code of Criminal Procedure, 1898, for the levy of fines as if it was a sentence of fine imposed by such Magistrate.]

[111-B. (1) The Central Government may set apart any building or part of a building or any place under its control as a military prison for the confinement of persons sentenced to imprisonment under this Act [or under the Burma Army Act].⁵

(2) The Central Government may make rules providing—

(a) for the government, management and regulation of such military prisons;

(b) for the appointment and removal and powers of inspectors, visitors, governors and officers thereof;

(c) for the labour of prisoners undergoing confinement therein, and for enabling persons to earn, by special industry and good conduct, a remission of a portion of their sentence; and

(d) for the safe custody of prisoners and the maintenance of discipline among them and the punishment, by personal correction, restraint or otherwise, of offences committed by prisoners:

Provided that such rules shall not authorise corporal punishment to be inflicted for any offence nor render the imprisonment more severe than it is under the law for the time being in force relating to civil prisons in British India.

(3) Rules made under this section may provide for the application to military prisons of any of the provisions of the Prisons Act, 1894 (IX of 1894), relating to the duties of officers of prisons and the punishment of persons not prisoners.]⁶

LEG. REF.

¹Section inserted by Act XI of 1918.

²Substituted by Act XIV of 1943.

³Section added by Act XI of 1918.

⁴Omitted by Act XXXIII of 1934.

⁵Added by ordinance V of 1944.

⁶Added by Act XIV of 1943.

CHAPTER X.

PARDONS AND REMISSIONS.

¹[112. (1) When any person subject to this Act has been convicted by a court-martial of any offence, the Central Government

Pardons and remissions.

or the Commander-in-Chief in India, or, in the case of a sentence which he could have confirmed or which did not require confirmation the officer commanding the army, army corps, division or independent brigade in which such person at the time of his conviction was serving, or the prescribed officer may,

(a) either without conditions or upon any conditions which the person sentenced accepts, pardon the person or remit the whole or any part of the punishment awarded ;

(b) mitigate the punishment awarded, or commute such punishment for any less punishment or punishments mentioned in this Act :

Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the Court.

(2) If any condition on which a person has been pardoned or a punishment has been remitted is, in the opinion of the authority which granted the pardon or remitted the punishment, not fulfilled, such authority may cancel the pardon or remission, and thereupon the sentence of the Court shall be carried into effect as if such pardon had not been granted or such punishment had not been remitted :

Provided that, in the case of a person sentenced to transportation or imprisonment, such person shall undergo only the unexpired portion of his sentence.

(3) When under the provisions of section 49 ²[a warrant officer or] a non-commissioned officer is deemed to be reduced to the ranks, such reduction shall, for the purposes of this section, be treated as a punishment awarded by sentence of a court-martial.]

CHAPTER XI.

RULES.

Power to make rules.

¹113. (1) The Central Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the ⁴[removal, retirement or discharge] from the service of persons subject to this Act ;

(b) the amount and incidence of fines to be imposed under section 21 ;

⁵[(bb) the specification of the punishments which may be awarded as field punishments under sections 20 and 45 ;]

(c) the assembly and procedure of courts of inquiry, and the administration of oaths or affirmations by such courts ;

(d) the convening and constituting of courts-martial ;

(e) the adjournment, dissolution and sittings of courts-martial ;

(f) the procedure to be observed in trials by courts-martial ;

(g) the confirmation and revision of the findings and sentences of courts-martial ;

(h) the carrying into effect sentences of courts-martial ;

(i) the forms of orders to be made under the provisions of this Act relating to courts-martial, transportation or imprisonment ; ⁶[*]

⁷[(ii) the constitution of authorities to decide for what persons, to what amounts and in what manner, provision should be made for dependants under section 52-A, and the due carrying out of such decisions] ; 8 [and]

LEG. REF.

¹Section substituted by Act XI of 1918.

²Inserted by Act XXXIII of 1934.

³For Rules under the Act, see General Statutory Rules and Orders, Vol. IV, p. 127.

⁴Substituted by Act XXXIII of 1934.

⁵Clause inserted by Act XXXVII of 1920.

⁶Word "and" omitted by Act VIII of 1930.

⁷Inserted by Act X of 1917.

⁸Inserted by Act VIII of 1930.

(j) any matter in this Act directed to be prescribed.

(3) All rules made under this Act shall be published in the Official Gazette and, on such publication, shall have effect as if enacted in this Act.

CHAPTER XII.

PROPERTY OF DECEASED PERSONS, DESERTERS AND LUNATICS.

¹[114. The following rules are enacted respecting the disposal of the property of every person subject to this Act who dies or deserts :—

Property of deceased persons and deserters.

(1) The commanding officer of the corps, detachment or department to which the deceased person or deserter belonged shall secure all the movable property belonging to the deceased or deserter that is in camp or quarters, and cause an inventory thereof to be made, and draw any pay and allowances due to such person.

(2) In the case of a deceased person who has left in a Government savings bank (including any post office savings Bank, however named) a deposit not exceeding one thousand rupees, the commanding officer may, if he thinks fit require the secretary or other proper officer of the bank to pay the deposit to him forthwith, notwithstanding anything in any departmental rules, and after the payment thereof in accordance with such requisition, no person shall have any right in respect of the deposit except as hereinafter provided.

(3) In the case of a deceased person whose representative is on the spot and has given security for the payment of the regimental or other debts in camp or quarters (if any) of the deceased, the commanding officer shall deliver over any property received under clauses (1) and (2) to that representative.

(4) In the case of a deceased person whose estate is not dealt with under clause (3), and in the case of any deserter, the commanding officer shall cause the movable property to be sold by public auction, and shall pay the regimental and other debts in camp or quarters (if any), and, in the case of a deceased person the expenses of his funeral ceremonies, from the proceeds of the sale and from any pay and allowances drawn under clause (1) and from the amount of the deposit (if any) received under clause (2).

(5) The surplus, if any, shall, in the case of a deceased person, be paid to his representative (if any), or in the event of no claim to such surplus being established within twelve months after the death, then the same shall be remitted to the prescribed person.

(6) In the case of a deserter, the surplus (if any) shall be forthwith remitted to the prescribed person and shall, on the expiry of three years from the date of his desertion, be forfeited to His Majesty, unless the deserter shall in the meantime have surrendered or been apprehended.

[(7) Where the deceased person or deserter is an Indian commissioned officer on active service, the references in the foregoing rules to the commanding officer shall be construed as references to the Standing Committee of Adjustment, if any, appointed in this behalf in the manner prescribed; and the power conferred by rule (2) to require payment of a deposit left in a Government savings bank shall be read as a power to require the payment from any deposit left in any bank, notwithstanding anything in the rules of the bank, of a sum, not exceeding two thousand rupees, equal to the nearest multiple of one hundred rupees above the amount estimated by the Standing Committee of Adjustment as necessary to meet the regimental and other debts in camp or quarters of the deceased.

(8) The decision of the commanding officer or the Standing Committee of Adjustment, as the case may be, as to what are the regimental and other debts in camp or quarters of a deceased person and as to the amount payable therefor shall, subject to the result of any appeal as against an order to the principal court of original civil jurisdiction in the locality, be final.]²

LEG. REF.

¹Sec. 114 substituted by Act, XV of 1914.

²Sub-secs. (7) and (8) and explanation (2) inserted and added by Act VII of 1945.

Explanation 1.—A person shall be deemed to be a deserter within the meaning of this section who has without authority been absent from duty for a period of sixty days and has not subsequently surrendered or been apprehended.

Explanation 2.—The expression ‘regimental and other debts in camp or quarters’ includes for the purposes of this section money due as—military debts, namely, sums due in respect of, or of any advance in respect of—

(a) quarters,

(b) mess, band, and other regimental accounts,

(c) military clothing, appointments and equipments, not exceeding a sum equal to six months’ pay the deceased, and having become due within eighteen months before his death.]

115. Property deliverable and money payable to the representative of a deceased person under section 114, may, if the total value or amount thereof does not exceed one thousand

Disposal of certain property without production of probate, etc.

rupees, and if the prescribed person thinks fit, be delivered or paid to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, without requiring the production of any probate, letters of administration, certificate or other such conclusive evidence, of title; and such delivery or payment shall be a full discharge to those ordering or making the same and to the ¹[Crown] from all further liability in respect of the property or money; but nothing in this section shall affect the rights of any executor or administrator or other representative or of any creditor, of a deceased person against any person to whom such delivery or payment has been made.

116. The provisions of [secs. 114 and 115]² shall, so far as they can be made applicable, apply in the case of a person subject to this

Application of section 114 to lunatics.

Act becoming insane, ³[or, who, being on active service, is officially reported missing:]

Provided that, in the case of a person so reported missing, no action shall be taken under sub-sections (2) to (5), inclusive, [of section 114]² until one year has elapsed from the date of such report].

CHAPTER XIII.

MISCELLANEOUS.

Military Privileges.

117. (1) Any person subject to this Act ⁴[other than an Indian commissioned officer], who deems himself wronged by any superior

Complaints against officers.

or other officer, may, if not attached to a troop or company, complain to the officer under whose command or orders he is serving; and may, if attached to a troop or company, complain to the officer commanding the same.

(2) When the officer complained against is the officer to whom any complaint should, under sub-section (1), be preferred, the aggrieved person may complain to such officer’s next superior officer.

(3) Every officer receiving any such complaint shall examine into it, and, when necessary, refer it to superior authority:

⁴[Provided that a decision by an authority competent to dispose of the matter complained of shall be final.]

(4) Every such complaint shall be preferred through such channels as may be from time to time specified by proper authority.

⁵[117-A. Any Indian commissioned officer who deems himself wronged

LEG. REF.

¹ Substituted for “Secretary of State for India in Council” by A.O., 1937.

² Substituted by Act XXI of 1943.

³ Added by Act II of 1920.

⁴ In sub-section (1), words inserted; and to sub-section (3) proviso added by Act XXXIII of 1934.

⁵ Sec. 117-A added by Act XXXIII of 1934.

Complaints by Indian commissioned officers.

by his Commanding Officer or any superior officer and who on due application made to his Commanding Officer does not receive the redress to which he considers himself entitled, may complain to the Central Government.]

118. (1) No president or member of a court-martial, no judge advocate

Privileges of persons attending courts-martial.

[* * *] no party to any proceeding before a court-martial, or his legal practitioner or agent, and no witness acting in obedience to a summons to attend a court-martial, shall, while proceeding to, attending on or returning from a court-martial, be liable to arrest under civil or revenue process.

(2) If any such person is arrested under any such process, he may be discharged by order of the court-martial.

119. (1) No person subject to this Act shall, so long as he belongs to His Majesty's Indian Forces, be liable to be arrested for

Exemption from arrest for debt.

debt under any process issued by, or by the authority of, any Civil or Revenue Court or revenue-officer.

(2) The Judge of any such Court may examine into any complaint made by such person or his superior officer of the arrest of such person contrary to the provisions of this section, and may, by warrant under his hand, discharge the person, and award reasonable costs to the complainant, who may recover those costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process.

(3) For the recovery of such costs no fee shall be payable to the Court by the complainant.

120. Neither the arms, clothes, equipment, accoutrements or necessities

Property exempted from attachment.

of any person subject to this Act nor any animal used by him for the discharge of his duty, shall be seized, nor shall the pay and allowances of any such person or any part thereof be attached, by direction of any Civil or Revenue Court or any revenue-officer, in satisfaction of any decree or order enforceable against him.

121. Every person belonging to the Indian Reserve Forces shall, when called

Application of the last two foregoing sections to reservists.

out for or engaged upon or returning from training or service, be entitled to all the privileges accorded by sections 119 and 120 to a person subject to this Act.

122. (1) On the presentation to any Court by or on behalf of any person

Priority of hearing by Courts of cases in which Indian officers and soldiers are concerned.

subject to this Act of a certificate, from the proper military authority, of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such Court, the Court shall, on the application of such person, arrange, so far as may be possible, for the hearing and final disposal of such suit or other proceeding within the period of the leave so granted or applied for.

LEG. REF.

¹Words "or superintending officer" omitted by Act XXXIII of 1934.

SEC. 120.—An Army Assistant Surgeon is a warrant officer and his pay is not attachable even if he is recruited in India. 48 A. 73=23 A.L.J. 929=1926 A. 122. Once a person is enrolled under the Act he is protected by sec. 120 in respect of pays and allowances, and the regimental order "although enrolled under the I.A.A. and subject to the provisions of that Act for discipline, they will be serving directly under the Officer Commanding the unit and will in all other respects be treated as civilians and will have no connexion with the Indian Officers and British and other ranks" does not remove that protection. 120 I.C. 676=1930 L. 105. After enrolment of certain store-keepers, the setting

aside of the portion of the pay towards security was continued but subsequently it was directed that store-keepers would be exempted from lodging security deposit and that security deposit taken from them were to be refunded. *Held*, that the refunded amount was pay withheld and still continued to be pay though set apart as security and was not liable to attachment. It did not cease to be pay merely because the military authorities withheld it for a time. 120 I.C. 676=1930 L. 105. Where a person, at the time of his insolvency, has been employed at a military frontier post, in the army under the Army Act, his salary cannot be attached. Even if he has not been so employed in the earlier period when his salary may be liable to be attached, yet it will be exempt from attachment as soon as he is so employed. 146 I.C. 494=1933 A. 153. The pay of a Staff Sergeant in

(2) The certificate from the proper military authority shall state the first and last day of the leave or intended leave, and set forth a description of the case with respect to which the leave was granted or applied for.

(3) No fee shall be payable to the Court in respect of the presentation of any such certificate, or in respect of any application by or on behalf of any such person for priority for the hearing of his case.

(4) Where the Court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid, it shall record its reasons for having been unable to do so, and shall cause a copy thereof to be furnished to such person on his application without any payment whatever by him in respect either of the application for such copy or of the copy itself.

(5) If in any case a question arises as to the proper military authority, qualified to grant such certificate as aforesaid, such question shall be at once referred by the Court to an officer commanding a corps, whose decision shall be final.

Deserters and Military Offenders.

123. (1) Whenever any person subject to this Act deserts, the commanding

Capture of Deserters.

officer of the corps, department or detachment to which he belongs, shall give written information of the desertion to such civil authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a Magistrate, and shall deliver the deserter, when apprehended, to military custody.

(2) Any police-officer may arrest without warrant any person reasonably believed to be subject to this Act and to be travelling without authority, and shall bring him without delay before the nearest Magistrate, to be dealt with according to law.

124. (1) Any person subject to this Act who is charged with an offence may be taken into military custody.

(2) Any such person may be ordered into military custody by any superior officer.

(3) The charge against every person taken into military custody shall, without unnecessary delay, be investigated by the proper military authority, and, as soon as may be, either proceedings shall be taken for punishing the offence, or such person shall be discharged from custody.

125. Whenever any person subject to this Act, who is accused of any offence

Arrest by civil authority.

under this Act, is within the jurisdiction of any Magistrate or police-officer, such Magistrate or officer shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect signed by his commanding officer.

the Army is not attachable under the decree of a Civil Court. 35 Bom.L.R. 1112=1934 B. 31.

SEC. 123 : The procedure for the arrest of a deserter from the army is governed by S. 123 (1) of the Act and the commanding officer has only to send a written report of the desertion to the civil authorities. No warrant is actually issued in such a case, but the deserter is to be arrested as if a warrant is issued, and therefore S. 56, Cr. P. Code, has no application to a case of this kind. S. 80 and the following sections will apply. All that S. 80, Cr. P. Code, requires is that the substance of the warrant shall be notified to the person arrested, and if the police officer be called upon to do so, he must also show him the warrant. But the production of a warrant cannot be insisted upon. Further S.

54 (1), Cr. P. Code, empowers any police officer to arrest without any warrant and without any order from a magistrate any person reasonably suspected of being a deserter from His Majesty's force, and in such a case no question of the production of a warrant or an order can arise. A.I.R. 1943 Mad. 250 = (1943) 1 M.L.J. 59.

SEC. 124 : RETENTION OF SOLDIER FOR HIS TRIAL.—Rule 87 (1) gives a power to retain a soldier in order to have the benefit of his services as a soldier and has no bearing on his retention for the purposes of his trial by court-martial. Before the section can operate it is necessary to have an order of competent military authority in which the period of retention must be specified. 36 C.L.J. 737=A.I.R. 1934 L. 845.

126. (1) When any person subject to this Act has been absent without due authority from his duty for a period of sixty days, a

Inquiry on absence of person subject to Act.

court of inquiry shall, as soon as practicable, be assembled and upon oath or affirmation administered in the prescribed manner, shall inquire respecting the absence of the person, and the deficiency if any, of property of the ¹[Crown] entrusted to his care, or of his arms, ammunition, equipments, instruments, clothing or necessities; and, if satisfied of the fact of such absence without due authority or other sufficient cause, the Court shall declare such absence and the period thereof, and the said deficiency, if any; and the commanding officer of the corps or department to which the person belongs shall enter in the court-martial book of the corps or department a record of the declaration.

(2) If the person declared absent does not afterwards surrender, or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter.

²[* * * * *]

Disposal of Property.

³[126-A. When any property regarding which any offence appears to have been committed, or which appears to have been used

Order for custody and disposal of property pending trial in certain cases.

for the commission of any offence, is produced before a court-martial during a trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the trial, and if the property is subject to speedy or natural decay may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

²[126-B (1) After the conclusion of a trial before any court-martial, the court or the officer confirming the finding or sentence

Order for disposal of property regarding which offence committed.

of such court-martial or any authority superior to such officer, or, in the case of a court-martial whose finding or sentence does not require confirmation, the officer commanding the army, army corps, division or brigade within which the trial was held, may make such order as it or he thinks fit for the disposal by destruction, confiscation, delivery to any person claiming to be entitled to possession thereof, or otherwise, of any property or document produced before the court or in its custody, or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

(2) Where any order has been made under sub-section (1) in respect of property regarding which an offence appears to have been committed, a copy of such order signed and certified by the authority making the same may, whether the trial was held within British India or not, be sent to a Magistrate in any presidency-town or district in which such property for the time being is, and such Magistrate shall thereupon cause the order to be carried into effect as if it was an order passed by such Magistrate under the provisions of the Code of Criminal Procedure, 1898.

Explanation.—In this section the term “property” includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.]

Repeal.

127. [Repeal.] Repealed by S. 2 and Schedule of the Repealing Act, 1927 (XII of 1927).

LEG. REF.

¹Substituted for “Government” by Government of India (Adaptation of Indian Laws) Order, 1937.

²Sub-sec. (3) of sec. 126 repealed by Act XI of 1918.

³Secs. 126-A and 126-B were inserted by Act XI of 1918.

[THE SCHEDULE.]

[Repeal of enactments.] Repealed by S. 2 and Schedule of the Repealing Act, 1927 (XII of 1927).

[N.B. :—Amendments made by the Army and Air Force (Military Prisons and Detention Barracks) Act (XIV of 1943) have been incorporated in their appropriate places.]

**THE INDIAN ARMY (SUSPENSION OF SENTENCES)
ACT (XX OF 1920).¹
EFFECT OF LEGISLATION.**

Year.	No.	Short title.	Repealed or otherwise how affected by Legislation.
1920	XX	The Indian Army (Suspension of Sentences) Act, 1920.	cp. in part by Act XII of 1927.

[23rd March, 1920.

An Act to consolidate and amend the law relating to the suspension of sentences passed by Courts-martial under the Indian Army Act, 1911.

WHEREAS it is expedient to consolidate and amend the law relating to the suspension of sentences of imprisonment or transportation passed by courts-martial on persons subject to the Indian Army Act, 1911 ; It is hereby enacted as follows :—

1. This Act may be called THE INDIAN ARMY
Short title and construction. (SUSPENSION OF SENTENCES) ACT, 1920, and shall be construed as one with the principal Act.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—
(a) “committed” means committed to prison or to confinement in military custody ;

(b) “competent military authority” means superior military authority, or any general or other officer not below the rank of field officer duly authorised by a superior military authority ;

(c) “imprisonment” includes confinement in military custody ;

(d) “principal Act” means the Indian Army Act, 1911 ;

(e) “sentence” means a sentence of transportation or imprisonment, whether originally passed on a person subject to the principal Act, or passed by way of reduction or commutation ; and “sentenced” has the corresponding meaning ; and

(f) “superior military authority” means the Commander-in-Chief in India or any officer empowered under the principal Act to convene general courts-martial or summary general courts-martial.

3. (1) Where a person subject to the principal Act is sentenced, the confirming officer when confirming the sentence, or, in

Suspension of sentences. the case of a sentence which does not require confirmation, the officer holding the trial or the President of the court-martial when passing sentence may, notwithstanding anything in the principal Act, direct that such person be not committed until the orders of a superior military authority have been obtained.

(2) A superior military authority may, in the case of any such offender so sentenced,—

(a) direct that, until his orders have been obtained, such offender shall not be committed ; and

(b) suspend the sentence whether or not the offender has already been committed.

LEG. REF.

¹ For Statement of Objects and Reasons, see Gazette of India, 1920, Pt. V, p. 124 ; and for

Proceedings in Council, see *ibid.*, 1920, Pt. VI, pp. 843 and 955.

(3) Where, in accordance with any order passed under sub-section (2), a sentence is suspended, the offender shall, whether he has been committed or not, forthwith be released.

Calculation of periods of sentence under suspension. 4. Any period during which a sentence is under suspension shall be reckoned as part of the term of such sentence.

Power to set aside suspension or order remission. 5. A superior military authority may, at any time whilst a sentence is suspended under this Act, order—

(a) that the offender be committed to undergo the unexpired portion of the sentence, or

(b) that the sentence be remitted.

6. Where a sentence has been suspended under this Act, the case may at any time, and shall at intervals of not more than four months, be reconsidered by a competent military authority, and if, on any such reconsideration, it appears to such authority that the conduct of the offender since his conviction has been such as to justify a remission of the sentence, he shall, if he is not also a superior military authority, refer the case to a superior military authority.

Procedure on further sentence of offender whose sentence is suspended. 7. Where an offender, while a sentence on him is suspended under this Act, is sentenced for any other offence, then—

(a) if the further sentence is also suspended under this Act, the two sentences shall run concurrently ;

(b) if the further sentence is for a period of three months or more and is not suspended under this Act, the offender shall also be committed on the unexpired portion of the previous sentence, but both sentences shall run concurrently ; and

(c) if the further sentence is for a period of three months or less and is not suspended under this Act, the offender shall be committed on that sentence only, and the previous sentence shall (subject to any order which may be passed under section 5 or section 6) continue to be suspended.

8. The powers conferred by this Act shall be in addition to, and not in derogation of, any powers as to the mitigation, remission or commutation of sentences conferred by the principal Act, and a superior military authority shall, as regards persons subject to that Act, be an authority having power to mitigate, remit or commute sentences under S. 112 of that Act.

9. Where in addition to any other sentence the punishment of dismissal has been awarded by a Court-martial, and such other sentence is suspended under this Act then, notwithstanding anything contained in the principal Act or in any rules made thereunder, such dismissal shall not take effect until so ordered by a superior military authority.

Provided that, if a sentence is remitted under this Act, the punishment of dismissal shall also be remitted.

10. [*Repeal of Act IV of 1917.*] *Repealed by the Repealing Act, 1927 (XII of 1927).*

THE AUXILIARY FORCE ACT (XLIX OF 1920).

Year.	No.	Short title.	Repeals and amendments.
1920	XLIX	The Auxiliary Force Act, 1920.	Repealed in part, XII of 1927 ; VIII of 1930 ; I of 1938. Amended, XXXI of 1923 ; X of 1928 ; VI of 1931 ; X of 1933 and Government of India (Adaptation of Indian Laws) Order, 1937 and Ordinance 27 of 1942.

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SCHEDULE I.—TRAINING.

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[22nd September, 1920]

An Act to constitute an auxiliary force for service in India.

WHEREAS it is expedient to constitute an auxiliary force for service in India ; It is hereby enacted as follows :—

Short title, extent and commencement.

1. (1) This Act may be called THE AUXILIARY FORCE ACT, 1920.¹

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas, and applies also to European British subjects ²[in any Indian State or tribal area].

(3) It shall come into force on the first day of October, 1920.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context—

“Advisory Committee” means an Advisory Committee constituted under section 28 for the prescribed military area, or part of a prescribed military area, within which a person subject to this Act for the time being resides or is serving, as the case may be ;

³[“competent military authority” means the authority prescribed as competent to perform or exercise all or any of the duties imposed or powers conferred on the competent military authority by this Act ;]

“enrolled person” means a person enrolled in the prescribed manner under this Act ;

“enrolling officer” means an officer authorized to enroll persons under this Act ;

“prescribed” means prescribed by rules made under this Act, and “prescribe” has a corresponding meaning ;

“regulation” means a regulation made under section 31 ; and

“training year” means a period of twelve months beginning on the first day of April and ending on the thirty first day of March.

Constitution of an auxiliary force.

3. There shall be raised and maintained in the manner hereinafter provided an auxiliary force for service in India to be designated the Auxiliary Force, India ;

LEG. REF.

¹For Statement of objects and Reasons, see Gazette of India, Pt. V, p. 154 ; for Report of Select Committee, see *ibid.*, 1920, Pt. V, p. 255 and for Proceedings in Council see *ibid.*, 1920,

Pt. VI, pp. 1042 and 1282.

²Substituted for “within the territories of any Prince or Chief in India” by Government of India (Adaptation of Indian Laws) Order, 1937.

³Substituted by Act X of 1933.

Classes who may be enrolled.

4. Every person who—

(a) is a European British subject as defined in the Code of Criminal Procedure, 1898, or

(b) [Omitted by Act X of 1928];

(c) is a British subject of European descent in the male line, [* *]¹.

(d) [Omitted by Act X of 1928]

shall, subject to the provisions of this Act, be eligible for enrolment thereunder.

5. (1) Any male eligible for enrolment under this Act who has attained

Enrolment.

the age of sixteen years and is not a member of His Majesty's regular naval, military or air forces² [* * *

*] may apply to be enrolled in the Auxiliary Force, India, and if he satisfies the prescribed conditions, may be enrolled therein in the prescribed manner and shall thereupon become subject to the provisions of this Act.

(2) ³[Subject to the prescribed conditions], an applicant for enrolment may apply to be enrolled⁴ for service in any particular branch, or in any particular corps or unit⁵ [* * * *].

6. Every enrolled person shall be liable to, ^{Liability to undergo military training.} undergo military training as provided by or under this Act until discharged from the Auxiliary Force, India; as hereinafter provided.

7. Every enrolled person liable to undergo military training under section 6 ^{Liability to perform military service.} shall, on and from the [* * *]⁴ date on which he attains the age of ⁵[seventeen] years, or, if he has already attained the age of [seventeen]⁵ years, on and from any later date on which he is enrolled, be liable to perform military service under this Act.

⁶[A person enrolled before he commencement of the Auxiliary Force (Amendment) Ordinance, 1942, shall be liable to perform military service as provided in this section notwithstanding that at the time of his enrolment his liability thereto was to begin only upon the first day of April next following the date on which he attained the age of eighteen years.]

8. (1) Every enrolled person shall, without unnecessary delay, be appointed by or under the orders of, the competent military authority to a corps or unit of the Auxiliary Force, India, and on receipt of an order so appointing him shall report himself for the purpose of joining such corps or unit at such time and place as may be specified in the order. ^{Appointment to corps or unit.}

(2) Any person who has been enrolled for service in any particular branch, corps or unit shall be appointed to a corps or unit of that branch or to that corps or unit, as the case may be.

9. Every enrolled person liable to perform military service under this Act ^{Preliminary training.} who on becoming so liable ⁷[is included in the Active class] shall, within the training year in which he becomes so liable, under the ⁷[preliminary training of such amount as may be ordered by the competent military authority subject to the limits specified in Schedule I.]

Provided that, if such preliminary training cannot be completed within that training year, it may be completed at the discretion of the ⁷[officer commanding the corps or unit to which such enrolled person belongs] in the training year next following :

⁷[Provided further that any person may be exempted either wholly or

LEG. REF.

¹Word "or" omitted by Act X of 1928.

²Words "or of His Majesty's Royal Indian Marine" omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

³Inserted and omitted by Act X of 1933.

⁴The words "the first day of April next following" omitted by Ord. 27 of 1942.

⁵Substituted for the word "eighteen" by Ord. 27 of 1942.

⁶Added by Ord. 27 of 1942.

⁷Substituted by Act X of 1933.

in part by the officer commanding his corps or unit from the necessity of undergoing preliminary training required by this section, and shall, on the publication in the orders of the corps or unit of such exemption, be deemed to the extent of such exemption to have completed such preliminary training.]

10. [Periodical training of persons entitled to rank as officers.] Omitted by Act X of 1933.

11. Every enrolled person liable to perform military service under this Act ¹[* * * *] shall be included ²[by the officer commanding the corps or unit to which he is appointed] in one or other of the following classes, namely :—

(a) the Active Class ;

²[(b) the Reserve Class] ;

and shall undergo the ²[periodical training of such amount as may be ordered by the competent military authority subject to the limits specified in Schedule I] for the class in which he is for the time being included.

12. (1) Every commissioned officer of the Auxiliary Force, India, shall be included in the Active Class until he relinquishes his commission.

(2) Enrolled persons liable to perform military service under this Act not being commissioned officers of the Auxiliary Force, India, ³[* * *] shall be classified as follows, namely :—

(a) every such person who is required by section 9 to undergo preliminary training ²[or being so required] has completed or is deemed to have completed the same shall be included in the Active Class ²[until he is transferred to the reserve class by order of the officer commanding the corps or unit.]

²[(b) every person who is transferred from the Active Class under the provisions of clause (a) or who on enrolment is assigned to the Reserve Class by order of the Officer commanding the corps or unit shall be included in the Reserve Class.]

(3) Any enrolled person who ceases ³[* * *] to be a commissioned officer of the Auxiliary Force, India, shall thereupon be included in the Class in which he would have been included under this section if the provisions of ³[* * *] sub-section (1), ³[* * *] had not applied to him, and shall undergo periodical training accordingly.

(4) Any person who is under this section included in ²[the Reserve Class] may apply to the competent military authority to be included ²[in the Active Class] and shall thereupon be deemed to be included in that Class.

(5) [Omitted by Act X of 1933.]

13. (1) The competent military authority may, ²by order in writing,—

²[(a) on the recommendation of the Advisory Committee, direct that any enrolled person included in the Active Class shall, for the purposes of periodical training, be included for any stated period in the Reserve Class, or] ;

(b) on his own motion or on the recommendation of the Advisory Committee, reduce the specified amount of training either in individual cases or in the case of any unit or part thereof for any stated period.

(2) The competent military authority shall grant ²[in respect of each individual or unit or part thereof] whose training is reduced under clause (b) of sub-section (1) a certificate setting forth the amount of training to be undergone during the said period.

14. Every enrolled person shall, if and when required by the ²[officer commanding the corps or unit to which he belongs],

Medical examination.

present himself for such medical examination as may

be necessary to determine the extent, if any, to which he is fit to undergo military training or to perform military service, before a medical officer appointed or approved in that behalf by the competent military authority, and for the purposes of such medical examination shall comply with the directions of such medical officer.

15. (1) Every person appointed to a corps or unit under section 8 shall, remain in that corps or unit until transferred to another corps or unit by, or under the orders of, the competent military authority, but no person shall be transferred from the Infantry branch to another branch or from one unit to another unit located in the same prescribed military area except at his own request.

(2) Any person so transferred from the Infantry branch to another branch may be required to undergo such further preliminary training, not exceeding eight days, as may be ordered by the competent military authority, and thereafter shall undergo the periodical training ¹[to which he is liable in] the branch to which he is transferred :

Provided that any periodical training already undergone by such person in the training year in which he is transferred shall be deemed to have been undergone in such other branch.

Explanation.—For the purposes of this section and of Schedule I, a day shall be deemed to consist of four hours of actual military drill or instruction, and may be made up of fractions of a day not more than four in number.

16. (1) Any enrolled persons who leaves his place of residence in India for the time being and thereby leaves the area commanded by one competent military authority for that commanded by another shall, if he does not intend to return to the area which he leaves, notify the competent military authority commanding that area of his change of residence.

(2) If such person having intended to return does not return within three months, he shall notify the competent military authority as aforesaid immediately on the expiry of that period.

(3) The competent military authority on being notified of a change of residence under sub-section (1) or sub-section (2) may, subject to the provisions of section 15, transfer such person from the corps or unit in which he is serving to another corps or unit.

17. (1) Any enrolled person who has attained the age of forty-five years or has completed four years' service from the date of his enrolment shall, on application made by him in the prescribed manner, be entitled to receive his discharge from the Auxiliary Force, India.

(2) An enrolled person who is not entitled to his discharge under sub-section (1) ²[shall] be discharged by the competent military authority on recommendation of the Advisory Committee in this behalf.

³[(3) Any enrolled person may be discharged by such authority, and subject to such conditions, as may be prescribed.

(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), no enrolled person, who is for the time being engaged in military service under the provisions of this Act, shall be entitled to receive his discharge before the termination of such service.]

18. No person liable to perform military service under this Act shall be required to perform such service except—

(a) when called out with any portion of the Auxiliary Force, India, by an order of the senior military officer present either to act in support of the civil power or to provide guards which, in the opinion of such officer, are essential ; or

(b) when any portion of the Auxiliary Force, India, to which he belongs has been embodied to support or supplement His Majesty's regular forces in the event of an emergency by a notification directing such embodiment issued by the

Central Government ¹[* * * * *] and published in the Official Gazette ²[* * * * *]; or

(c) when attached at his own request to any regular forces ; [or,

(d) When required by an order of the senior military officer present to perform for short periods not exceeding three days in duration at any one time military service which in the opinion of such officer is essential.]³

19. No person called out under clause (a), or embodied under clause (b),

Territorial limits of liability to military service on calling out and embodiment.

[or required to perform military service under clause (d)]³ of section 18 shall be required to perform military service beyond the limits of the prescribed military area in which the corps or unit to which he has been

appointed or is for the time being attached is located, save when it is, in the opinion of the senior military officer present necessary to proceed beyond those limits in the course of the military operations upon which the corps or unit or any portion thereof is for the time being engaged.

20. Any portion of the Auxiliary Force, India, which, having been called

Duration of military service on calling out or embodiment.

out or embodied under section 18, is performing, military service, shall be replaced by regular troops or otherwise as soon as circumstances permit, and shall not be required to perform such service after such

replacement has been effected to the satisfaction of the senior military officer present or after the cancellation of the order or notification under clause (a) or (b), as the case may be, of section 18.

[20-A. (1) If, as a consequence of his being required to perform military

Reinstatement in employments.

service under this Act, either when called out under clause (a) or embodied under clause (b) of section 18, or when attached to any regular forces under clause (c)

of that section otherwise than for a course of instruction, the employment of any person is terminated, it shall be the duty of the employer by whom such person was employed at the time he was so required to perform military service to reinstate him in his employment on the termination of such military service under conditions not less favourable to him than those which would have applied to him had his employment not been interrupted by his performance of military service.

(2) If an employer refuses to reinstate any such person as required by sub-section (1) or denies his liability to reinstate such person, or if for any reason the reinstatement of such person is represented by the employer to be impracticable, either party may refer the matter to the tribunal constituted under section 9 of the National Service (European British Subjects) Act, 1940, for the hearing of matters referred to it under the proviso to section 8 of that Act, and that tribunal shall after consideration pass an order, either exempting the employer from the provisions of this section or requiring him to re-employ such person on such terms as it thinks suitable, or requiring him to pay to such person a sum in compensation for failure to re-employ him not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer ; and if any employer fails to obey the order of the tribunal, he shall be punishable with a fine which may extend to one thousand rupees, and the Court by which an employer is convicted under this section may order him (if he has not already been so required by the tribunal) to pay the person whom he has failed to re-employ a sum not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer, and any amount so required by the tribunal to be paid or so ordered by the Court to be paid shall be recoverable as if it were a fine imposed by such Court :

LEG. REF.

¹Words "or any Local Government empowered by the Governor-General in Council" omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

²Words "or the Local Official Gazette, as the case may be" omitted by *ibid.*

³Added and inserted by Ordinance (XXVII of 1942.)

Provided that in any proceedings under this section it shall be a defence for an employer to prove that the person formerly employed by him did not apply to the employer for reinstatement within a period of two months from the termination of the military service he was required to perform under this Act.¹

21. ²[(1)] Every commissioned officer of the Auxiliary Force, India, when doing duty as a commissioned officer, and every non-commissioned officer and man of the said Force—
Application of the Army Act.

(a) when attached to or otherwise acting as part of or with any regular forces, and

(b) when called out ³[or required to perform military service] by an order, or embodied by a notification, under section 18, shall be subject to the provisions of the Army Act and any orders or regulations made thereunder, and the said Act, orders and regulations shall apply to every such person in the circumstances aforesaid as if the same were enacted in this Act, and as if such person held the same rank in His Majesty's Army as he holds for the time being in the said Force, ⁴[subject in the case of an officer, to the terms of his commission and the orders of His Majesty, and, in the case of a non-commissioned officer or man, to the orders of the Governor-General.]⁵

⁶[(2) Where an offence punishable under the Army Act has been committed by any person whilst subject to that Act under the provisions of sub-section (1), such person may be taken into and kept in military custody and tried and punished for such offence, although he has ceased to be so subject as aforesaid, in like manner as he might have been taken into and kept in military custody, tried or punished if he had continued to be so subject ;

Provided that no such person shall be kept in military custody after he has ceased to belong to the Auxiliary Force, India, unless he has been taken into or kept in military custody, on account of the offence, before the date on which he ceased so to belong, nor shall he be kept in military custody or be tried or punished for the offence after the expiry of two months from that date, unless his trial had already commenced before such expiry.]

22. If any person liable to perform military service under this Act fails to comply with an order or notification under section 18 calling him out [or requiring him to perform military service]⁷ or embodying him for military service, any District Magistrate or Chief Presidency Magistrate may, on the application of the competent military authority or of an officer empowered by such authority in writing in that behalf, cause such person to be arrested and brought before him, and, if the Magistrate is satisfied that such person has been duly required to perform military service, the Magistrate may, without prejudice to any penalty which such person may have incurred; make over such person in custody to the military authorities.

23. An enrolled person who refuses or without lawful excuse (the burden of proving which shall lie upon such person) neglects—
Penalties for breach of sections 8, 14 and 16.

(a) to comply with any order under section 8 ; or

(b) to attend for medical examination, or to comply with the directions of the medical officer, as required by section 14 ; or

(c) to notify any change of residence as required by section 16 ;
shall be punishable with fine which may extend to fifty rupees.

LEG. REF.

¹Inserted by Ordinance 27 of 1942.

²Section 21 was renumbered section 21 (1) by Act XXXI of 1923.

³Added and inserted by Ordinance XXVII

of 1942.

⁴Added by Act X of 1928.

⁵The reference to the Governor-General stands unmodified by A.O., 1937.

⁶Sub-section added by Act XXXI of 1923.

24. An enrolled person commits an offence if he, in circumstances when he is not subject to military law, does any of the following acts, namely :—

(1) when on parade or undergoing military training or wearing His Majesty's uniform—

(a) strikes, or uses or offers violence to or uses threatening or insubordinate language to, or behaves with contempt to, his superior officer ; or

(b) disobeys any standing order of, or lawful command given by, his superior officer ; or

(c) neglects to obey a general or garrison order made specially applicable to the Auxiliary Force, India, by the competent military authority ; or

(d) is in a state of intoxication ; or

(e) being a non-commissioned officer strikes or ill-treats any person subject to military law or to this Act, or to the Indian Territorial Force Act, 1920, who is his subordinate in rank or position ;

(2) without sufficient cause fails to appear at the place of parade at the time fixed or to attend at any place in his capacity as a member of the Auxiliary Force, India, when duly required so to attend or when on parade without sufficient cause quits the ranks ;

(3) without sufficient cause fails to perform any part of the training which by or under this Act he is required to perform ;

(4) strikes, or uses or offers violence to, any person whether subject to military law or not in whose military custody he is placed, and whether such person is or is not his superior officer ;

(5) resists an escort whose duty it is to arrest him or detain him in military custody ;

(6) being under arrest or detention or otherwise in lawful military custody escapes or attempts to escape ;

(7) when in charge of any property belonging to ¹[the Crown] or to a corps, or unit of the Auxiliary Force, India, makes away with, or is concerned in making away with, any such property ;

(8) wilfully injures, or by culpable neglect loses or causes injury to, any such property as is mentioned in clause (7) ;

(9) willfully ill-treats a horse or other animal used in the public service ;

(10) knowingly furnishes a false return or report of the number or state of men under his command or charge, or of any money, arms or ammunition, clothing, equipment stores or other property in his charge ;

(11) through design or culpable neglect omits to make or send any return of any matter mentioned in clause (10) which it is his duty to make or send ;

(12) when it is his official duty to make a declaration respecting any matter, makes a declaration respecting such matter which he either knows or believes to be false or does not believe to be true ;

(13) knowingly makes against any person subject to military law or to this Act or to the Indian Territorial Force Act, 1920, an accusation which he either knows or believes to be false or does not believe to be true ;

(14) falsely personates any other person at any parade or on any occasion when such other person is required by or under this Act to do any act or attend at any place, or abets any such act of personation.

25. (1) Any person committing any of the offences specified in sub-clauses (b), (c) and (d) of clause (1) or in clauses (2), (3), (8), (11) and (14) of section 24 shall be punishable with fine which may extend to two hundred rupees.

(2) Any person committing any other offence specified in section 24 shall be punishable with imprisonment which may extend to two months, or with fine which may extend to two hundred rupees, or with both.

Dismissal. 26. The competent military authority may in his discretion dismiss any enrolled person from the Auxiliary Force, India.

Summary and minor punishments. 27. The Central Government may prescribe summary and minor punishment for offences under section 24 or for contravention of any rule or regulation made under this Act to which enrolled persons shall be liable without the intervention of a Criminal Court, and the officer or officers by whom and the circumstances in which and the extent to which such summary and minor punishments may be inflicted, and the manner in which any such punishment may be enforced:

Provided that no punishment involving any kind of imprisonment shall be imposed as a summary or minor punishment:

Provided, further, that no summary punishment shall be inflicted in any case in which the accused claims to be tried by a Criminal Court.

¹[27-A. Where any non-commissioned officer or man of the Auxiliary Force is required, by or in pursuance of any rule, regulation or order made under this Act, to attend at any place, a certificate purporting to be signed by the prescribed officer stating that the person so required to attend failed to do so in accordance with such requirement, shall, without proof of the signature or appointment of such officer, be evidence of the matters stated therein.]

Presumption as to certain documents. 28. (1) The ²[Central Government] shall constitute for each prescribed military area one or more Advisory Committees each consisting of three or more members, of whom one shall be the competent military authority ³[* * *] and the others shall be persons eligible for enrolment in the Auxiliary Force, India, within the meaning of section 4, who shall be appointed annually by, or under the orders of, the ⁴[Central Government].

(2) Any Advisory Committee constituted for a prescribed military area or a part thereof, as the case may be, which includes a Presidency town or any other place to which the Central Government may, by order in writing, declare this sub-section to apply, ⁴ shall consist of not less than five members, of whom not more than two shall be persons in the service of ⁵[the Crown].

(3) The Central Government shall prescribe the duties, powers and procedure of Advisory Committees, and, in particular, the matters in respect of which the competent military authority shall be bound to give effect to a recommendation of an Advisory Committee unless the ²[Central Government] otherwise directs.

Constitution and disbandment of units. 29. The Central Government may constitute ⁶ any corps or unit and may disband any corps or unit constituted under this Act.

Power to make rules. 30. (1) The Central Government may make rules ⁷ to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers such rules may—

(a) provide for the appointment of enrolling officers;

⁸[(aa) prescribed the authority which shall be the competent military authority for any purpose under this Act];

(b) prescribe military areas for the purposes of this Act;

(c) prescribe the manner in which and the conditions subject to which European British subjects ⁹[* * * *] may offer themselves for enrolment

LEG. REF.

¹Sec. 27-A added by Act X of 1928.

²Substituted for "Local Government" by Government of India (Adaptation of Indian Laws) Order, 1937.

³Omitted by Act X of 1933.

⁴For notification applying the provisions of this sub-section to the towns of Rangoon and Karachi, see Gen. R. and O., Vol. IV, p. 599.

⁵Substituted for "Government" by A.O., 1937.

⁶For notification under this section, see Gen. R. and O., Vol. IV, pp. 599-607.

⁷For notification publishing The Auxiliary Force Rules, 1920, see *ibid.*, p. 607.

⁸Cl. (aa) and portion at the end of cl. (c) added by Act X of 1933.

⁹Omitted by Act VIII of 1930.

under this Act ¹[and the conditions governing applications to the enrolled in a particular branch, corps or unit];

(d) define the manner in which and the conditions under which persons or any class of persons liable to military service under this Act may be excused from [such service]².

(e) prescribe the military training to be undergone by persons liable to military training under section 6 but not to military service under section 7;

(f) prescribe the ³[conditions governing the grant of, and the] rates of pay for, and provide for the grant of allowances, ⁴[enrolled persons];

(g) prescribe for any military area which is a railway area or for any area beyond the limits of British India the ⁵[authority] which shall be deemed [^{*} ^{*}]⁶ to be ⁷[^{*} ^{*} ^{*} ^{*} ^{*}] the District Magistrate for all or any of the purposes of this Act; and

(h) provide for any other matter which under this Act is to be or may be prescribed.

(3) Any rule made under this section may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees.

(4) The power to make rules conferred by this section shall except on the first occasion of the exercise thereof, be subject to the condition of previous publication.

(5) All rules made under this section shall be published in the Official Gazette, and on such publication shall have effect as if enacted in this Act.

31. The Commander-in-Chief of His Majesty's Forces in India may make

Power to make regulations. regulations consistent with this Act and the rules made thereunder providing generally for details connected with the organisation and personnel of the Auxiliary Force, India, and for the duties, equipment, military training, allowances and leave of enrolled persons.

32. For the purposes of sections 128, 130 and 131 of the Code of Criminal Procedure, 1898, all officers, non-commissioned officers

Certain persons subject to this Act to be deemed part of His Majesty's Army for certain purposes. and men liable to perform military service under this Act who have been appointed to a corps or unit shall be deemed to be officers, non-commissioned officers and soldiers, respectively of His Majesty's Army.

33. Save as otherwise provided by section 27, no offence under this Act shall be tried save by a Court not inferior to that of a Presidency Magistrate or a Magistrate of the first class.

34. No enrolled person shall be liable to pay any municipal or other tax in respect of a horse, bicycle, motor-bicycle, motor car

Exemption from local taxation. or other means of conveyance which he is authorised by a general or special order of the competent military authority to maintain in his capacity as a member of the Auxiliary Force, India.

35. [Amendment of section 1, Act XI of 1878.] Repealed by Act I of 1938.

36. [Repeals.] Repealed by the Repealing Act, 1927 (XII of 1927).

SCHEDULE I.

(See sections 9, 11, 12 and 15.)

TRAINING.

1. Preliminary—

(a) for infantry 32 days, and the annual musketry course as laid down in regulations.

LEG. REF.

¹Vide Footnote (8), p. 121.

²Substituted by Ordinance XXVII of 1942.

³Inserted by Act X of 1933.

⁴Substituted for the words "persons liable to perform military service under this Act" by Act VI of 1931.

⁵Substituted for "authorities" by Government of India (Adaptation of Indian Laws) Order, 1937.

⁶Word "respectively" omitted by *ibid*.

⁷Words "the Local Government and" omitted by *ibid*.

(b) for other branches	40 days, and the annual musketry or gun course as laid down in regulations.
2. Periodical—	
(1) Active class—	
(a) for infantry	16 days in each training year, and the annual musketry course as laid down in regulations.
(b) for other branches	20 days in each training year, and the annual musketry or gun course as laid down in regulations.
¹ [* * * *]	
¹ [(2) [Reserve Class]—	
(a) for infantry	} The annual musketry course as laid down ¹ [* *] in regulations.
(b) for other branches	

NOTE (cf. section 15).—A day consists of four and may be made up of fractions of a day hours of actual military drill or instruction not more than four in number.

[SCHEDULE II.]

[Enactments repealed.] Repealed by the Repealing Act, 1927 (XII of 1927).

THE BANKERS' BOOKS EVIDENCE ACT (XVIII OF 1891).²

EFFECT OF LEGISLATION.

Year.	No.	Short title.	Repealed or otherwise how affected by Legislation.
1891	XVIII	The Bankers' Books Evidence Act, 1891.	Repealed in part, Act X of 1914. Amended, Acts I of 1893; XII of 1900; Govt. of India (Adaptation of Indian Laws) Order, 1937.

[1st October, 1891.

An Act to amend the Law of Evidence with respect to Bankers' Books.

WHEREAS it is expedient to amend the Law of Evidence with respect to Bankers' books; It is hereby enacted as follows:—

Title and extent. 1. (1) This Act may be called THE BANKERS' BOOKS EVIDENCE ACT, 1891.

(2) It extends to the whole of British India.

³[(3) * * * *].

Definitions.

2. In this Act, unless there is something repugnant in the subject or context—

⁴[(1) "company" means a company registered under any of the enactments relating to companies for the time being in force in ⁵[any part of His Majesty's dominions] or incorporated by an Act of Parliament or ⁶[by an Indian Law] or by Royal Charter or ⁷[by] Letters Patent];

(2) "bank" and "banker" mean—

(a) any company carrying on the business of bankers,

(b) any partnership or individual to whose books the provisions of this Act shall have been extended as hereinafter provided,

LEG. REF.

¹In Schedule I, in item No. 2,—

(a) sub-item (2) has been omitted; and

(b) sub-item (3) has been re-numbered as sub-item (2), and in that sub-item, as so re-numbered, in the first column, for the words "Second (B) Class Reserve" the words "Reserve Class" have been substituted, and in the second column, the words "for this class" have been omitted by Act X of 1914, sec. 13.

²For Statement of Objects and Reasons, see *Gazette of India*, 1891, Pt. V, p. 24; for Report

of Select Committee, see *ibid.*, p. 189; and for Proceedings in Council, see *ibid.*, Pt. VI, pp. 15, 25, 117, 135 and 140.

³Repealed by Act X of 1914, Sch. II.

⁴Substituted by Act XII of 1900, sec. 2.

⁵Substituted for "the United Kingdom or in any of the colonies or dependencies thereof or in British India" by A.O., 1937.

⁶Substituted for "of the Governor-General in Council" by *ibid.*

⁷Inserted by *ibid.*

1[(c) any post office savings bank or money order office;]

(3) "bankers' books" include ledgers, day-books, cash-books, account-books and all other books used in the ordinary business of a bank;

(4) "legal proceeding" means any proceeding or inquiry in which evidence is or may be given, and includes an arbitration;

(5) "the Court" means the person or persons before whom a legal proceeding is held or taken;

(6) "Judge" means a Judge of a High Court;

(7) "trial" means any hearing before the Court at which evidence is taken; and

(8) "certified copy" means a copy of any entry in the books of a bank together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business, and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title.

3. The Provincial Government may, from time to time, by notification² in the Official Gazette, extend the provisions of the Act

Power to extend provisions of Act.

to the books of any partnership or individual carrying on the business of bankers within the territories under

its administration, and keeping a set of not less than three ordinary account-books, namely, a cash-book, a day-book, or journal, and a ledger, and may in like manner rescind any such notification.

4. Subject to the provisions of this Act, a certified copy of any entry in a bankers' book shall in all legal proceedings be received

Mode of proof of entries
banker's books,

as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters,

transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.

5. No officer of a bank shall in any legal proceeding to which the bank is

LEG. REF.

¹ Added by Act I of 1893, sec. 2.

² For notifications, see *Bombay Government Gazette*, 1902, Pt. I, p. 1289 and as to Madras, see *Mad. R. and O.*, Vol. I (List).

SEC. 2 (2) (c): BANK.—See 58 I.C. 893.

SEC. 2 (3): "BANKERS' BOOKS"—MEANING OF.—As to whether Loan Register in Public Debt Office in the Bank of Bengal is a Bankers' book, see 31 C. 284=8 C.W.N. 125.

SEC. 2 (8).—As to who can inspect and obtain *certified copies*, see 31 C. 284=8 C.W.N. 125. An extract was prepared from the ledger books of the bank. It was not a true copy and it was signed by the sub-accountant for the manager. The certificate read as follows: "We certify that this is a true extract from the books of the bank." *Held*, that it was not a certified copy as defined in S. 2 (8). A.I.R. 1941 Rang. 344.

SEC. 4.—See as to copy of entry in the books of a Bank not falling within the definition of company. 4 C.W.N. 433 (F.B.); 18 A. at pp. 94-95. As to who could order production of books, see 32 C. 498.

SEC. 5.—Sec. 94 (3) of Cr. P. Code does not exempt Bankers' books from production before the Police, and an officer in charge of a Police-station conducting an investigation is entitled to inspect them even without an order of Court.

Sec. 5 of this Act does not prevent him from doing so, as proceedings before him are not legal proceedings as defined in the Act. 17 L. 593=38 P.L.R. 1042. There is really no conflict between S. 94 of the Cr.P. C. and the Bankers' Books Evidence Act. S. 5 of the latter Act is the only section which can be relied upon as containing anything inconsistent with S. 94, Cr. P. Code. But all that S. 5 of that Act enacts is that no officer of the Bank shall in any legal proceeding to which the Bank is not a party be compellable to produce any bankers' book the contents of which can be proved under the Act or to appear as a witness to prove the matters, transactions and accounts, etc., unless by order of the Court or Judge made for special cause. "Court" includes a Magistrate trying a criminal case, so that a Bank cannot be compelled to produce its books without an order of the Court "for special cause." But there is no reason at all why an order made under S. 94, Cr. P. Code, should not be regarded as a sufficient order for the purpose of S. 5 of the Bankers' Books Evidence Act. There is nothing in that Act which prevents an order being made under S. 94, Cr. P. Code, in the proper case. In a prosecution against the auditors of a Bank for offences in respect of false statements in the balance-sheet of the Bank certified by them as correct, an order for production can law-

Case in which officer of banks not compellable to produce books. not a party be compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause.

6. (1) On the application of any party to a legal proceeding, the Court or a Judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceeding, or may order the bank to prepare and produce, within a time to be specified in the order, certified copies of all such entries, accompanied by a further certificate that no other entries are to be found in the books of the bank relevant to the matters in issue in such proceeding, and such further certificate shall be dated and subscribed in manner hereinbefore directed in reference to certified copies.

(2) An order under this or the preceding section may be made either with or without summoning the bank, and shall be served on the bank three clear days (exclusive of bank holidays) before the same is to be obeyed, unless the Court or Judge shall otherwise direct.

(3) The bank may at any time before the time limited for obedience to any such order as aforesaid either offer to produce their books at the trial or give notice of their intention to show cause against such order, and thereupon the same shall not be enforced without further order.

7. (1) The costs of any application to the Court or a Judge under or for the purposes of this Act and the costs of anything done or to be done under an order of the Court or a Judge made under or for the purposes of this Act shall be in the discretion of the Court or Judge, who may further order such costs or any part thereof to be paid to any party by the bank if they have been incurred in consequence of any fault or improper delay on the part of the bank.

(2) Any order made under this section for the payment of costs to or by a bank may be enforced as if the bank were a party to the proceeding.

(3) Any order under this section awarding costs may, on application to any Court of Civil Judicature designated in the order, be executed by such Court as if the order were a decree for money passed by itself:

Provided that nothing in this sub-section shall be construed to derogate from any power which the Court or Judge making the order may possess for the enforcement of its or his directions with respect to the payment of costs.

fully be made under S. 94, Cr. P. Code, but it should be made, in the case of bankers' books, very cautiously and carefully drafted. A routine order ex parte is generally undesirable. The prosecutor who applies for an order and for inspection of the books produced should be required to state before the issue of the order not only what books he requires to be produced but also why their production is necessary with specific reference to the allegations in his complaint. Anything in the nature of a roving or fishing inspection of the books of a Bank should be prevented. But the prosecution cannot be denied the right of inspection of documents the production of which has been held to be necessary or desirable for the purpose of the trial and which have been held to be relevant after considering the objections of the party producing. I.L.R. (1938) Bom. 31.

Sec. 6.—An order under the section cannot, ordinarily in the absence of special cir-

cumstances, be made without notice to the other side. 5 Bom.L.R. 865; 1932 B. 428. See also 20 M. 189 (196). A Bank has under S. 6, sub-S. (3) of the Act statutory right to object to any order directing inspection to be given of its books. It is not the practice of the Court to allow inspection of bankers' books under the Act, unless a *prima facie* case is made out for thinking that there is some matter on which the books of the Bank are bound to be relevant. Courts have no doubt very wide powers of ordering production and directing inspection of documents but such an order against a person, not a party to the proceedings involves a serious inroad upon his normal rights as a citizen. Courts are always averse to giving anything in the nature of a roving or fishing commission to inspect documents. I.L.R. (1938) B. 119=39 Bom. L. R. 1187=A.I.R. 1938 B. 33 (S.B.). No revision from order under the section. 237 P.L.R. 1900.

THE INDIAN BAR COUNCILS ACT (XXXVIII OF 1926).¹

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EFFECT OF SUBSEQUENT LEGISLATION.

Year.	No.	Short title.	Repealed or otherwise how affected by Legislation.
1926	XXXVIII	The Indian Bar Councils Act, 1926.	Amended by Act XIII of 1927.

An Act to provide for the constitution of Bar Councils in British India and for other purposes.

WHEREAS it is expedient to provide for the constitution and incorporation of Bar Councils for certain Courts in British India, to confer powers and impose duties on such Bar Councils, and to consolidate and amend the law relating to legal practitioners entitled to practise in such Courts; it is hereby enacted as follows:—

Preliminary.

Short title, extent, application and commencement.

1. (1) This Act may be called THE INDIAN BAR COUNCILS ACT, 1926.

(2) It extends to the whole of British India, and shall apply to the High Court of Judicature at Fort William in Bengal, and at Madras, Bombay, Allahabad²[and] Patna³ [* * *] and to such other High Courts within the meaning of clause (24) of section 3 of the General Clauses Act, 1897, as the⁴[Provincial Government] may, by notification⁵ in the Official Gazette declare to be High Courts to which this Act applies.

(3) This section and sections 2, 17, 18 and 19 shall come into force at once; and the Central Government may, by notification⁶ in the Official Gazette

LEG. REF.

¹For Statement of Objects and Reasons, see *Gazette of India*, 1926, Pt. V, p. 5; and for Report of Select Committee, see *ibid.*, p. 119.

²Inserted by A.O., 1937.

³Words "and Rangoon" omitted by *ibid.*

⁴Substituted for "Governor-General in Council" by *ibid.*

⁵For notification declaring the Chief Court of Oudh to be a High Court to which this Act applies, see *Gazette of India*, 1928, Pt. I, p. 325.

⁶For such notification appointing the 1st March, 1928, as the date on which the rest of the Act will come into force in respect of the Chief Court of Oudh and secs. 3 to 7 in respect of Calcutta High Court, see *Gazette of India*, 1928, Pt. I, p. 325.

Provisions of secs. 8-16 came into force from the 1st July, 1928, in respect of Calcutta High Court, see *Gazette of India*, 1928, Pt. I, p. 382.

The rest of the Act came into force from the 16th July, 1928, in respect of Madras High Court, see *Gazette of India*, 1928, Pt. I, p. 382; in respect of Allahabad High Court from 1st June, 1928, see *Gazette of India*, 1928, Pt. I, p. 400; in respect of Patna High Court, from 1st January, 1929, see *ibid.*, p. 703; in respect of Bombay and Rangoon High Courts, from 1st January, 1929, see *ibid.*, p. 714.

—SEC. 1: (Per Sulaiman, Banerjee and Sen, JJ.).—Independently of this Act, the High Court does no longer possess any inherent jurisdiction to punish an advocate for *professional misconduct* or to adopt a procedure for enquiry other than that laid down in the Act or to pass an order for costs against him or to impose a fine not contemplated by the Act. 1930 A. 225=52 A. 619=1930 A.L.J. 402 (F.B.).

direct that the other provisions of this Act, or any provision thereof specified in the notification, shall come into force in respect of any High Court to which this Act applies on such date as he may by notification appoint.

Interpretation.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) “advocate” means an advocate entered in the roll of advocates of a High Court under the provisions of this Act ;

(b) “Advocate-General” includes where there is no Advocate-General, the Government Advocate and, where there is no Advocate-General or Government Advocate, such officer as the Provincial Government may declare to be the Advocate-General for the purposes of this Act ;

(c) “High Court” means a High Court to which this Act applies, and

(d) “prescribed” means prescribed by rules made under this Act.

¹[(2) In this Act “the Provincial Government” means, in relation to any High Court, the Provincial Government of the Province in which the High Court has its principal seat.]

Constitution of Bar Councils.

Constitution and incorporation of Bar Councils.

3. (1) For every High Court a Bar Council shall be constituted in the manner hereinafter provided.

LEG. REF.

¹ Sub-sec. (2) of sec. 2 inserted by A.O., 1937.

The High Court has power to refuse admission to the Bar to any person at its discretion. But weight should be attached to the recommendation of the Bar Council which represents the view of the legal profession. 1930 A. 22=1929 A.L.J. 1105=123 I.C. 683 ; 124 I.C. 659=5 Luck. 615.

Advocates enrolled in the Madras High Court under the provisions of the Act, are entitled to act and plead in the insolvency jurisdiction of the High Court. 52 M. 92=1928 M. 1182=55 M.L.J. 551.

All judicial officers should keep a vigilant eye on the conduct of legal practitioners of whatever status and should in proper cases institute inquiries under the Act according to the status of the legal practitioner concerned ; but legal practitioners are entitled also to the protection of the Court and inquiries should not be instituted or complaints made without having given very grave consideration to the reasonable probability of the case against the legal practitioner being well founded. As much injustice may be done to a legal practitioner by ill-conceived proceedings against him as may be done to the public interest and to the general body of legal practitioners by failure to keep a vigilant eye upon and take proper and strong action against cases of misconduct. Complaint rejected. 1931 A.L.J. 678=1931 A. 580.

In a proceeding against a legal practitioner under the Act it is open to the High Court to consider the case on the evidence and arrive at a different conclusion to that of the Bar Tribunal. 1930 M.W.N. 216. An advocate convicted for an offence of perjury although struck off the roll of vakils must be dealt with under the Act, he having been enrolled as the Advocate of the High Court under the provisions of the Act. 131 I.C. 67=8 O.W.N. 267=1931 O. 161.

Where the High Court went into the report

of the Bar Council and inflicted punishment on a legal practitioner, and a counsel appeared on behalf of the Bar Council all the time, held, that the legal practitioner should be directed to pay a fee to the counsel. 1930 M.W.N. 216. Where a complaint against legal practitioner is made before the Act came into force but the enquiry takes place under the Act, the High Court has the power to direct the practitioner to pay the costs of the proceedings before the Tribunal and before the High Court. 54 M. 857=134 I.C. 33=61 M.L.J. 148 (F.B.).

Before the Court will set aside a bar council election because of certain irregularities in the conduct of the election, it must be satisfied that the election was not an election in substance conducted under existing law according to the rules framed for the holding of the election. An election ought not to be held void by reason of transgressions of the law committed without any corrupt motive in the conduct of the election, if the Court is satisfied that the result of the election was not and could not have been affected by those transgressions. 1935 A. 295=157 I.C. 220.

An advocate who has once been consulted by a party is not thereby debarred from appearing for the opposite party for all times. He is free to accept a brief against him, if he has not received any information of a confidential nature from the party who consulted him. The onus of proving that such information was conveyed lies and lies heavily on the party seeking to restrain the advocate's appearance. I.L.R. (1940) All. 262=1940 A.L.J. 170=A.I.R. 1940 All. 233. See also 11 O.W.N. 23=1934 Oudh 58 (S.B.).

SEC. 2 (c) : HIGH COURT.—High Court referred to in the Act is a chartered High Court. Benares State Chief Court is neither a High Court within the meaning of the Act nor subordinate to the Allahabad High Court. 1930 A. 91 (1)=27 A.L.J. 1195.

(2) Every Bar Council so constituted shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property, both movable and immovable and to contract, and shall by the name of the Bar Council of the High Court for which it has been constituted sue and be sued.

Composition of Bar Councils. 4. (1) Every Bar Council shall consist of fifteen members, of whom—

- (a) one shall be the Advocate-General;
- (b) four shall be persons nominated by the High Court, of whom not more than two may be Judges of that Court; and
- (c) ten shall be elected by the advocates of the High Court from amongst their number.

(2) Of the elected members of every Bar Council not less than five shall be persons who have for not less than ten years been entitled as of right to practice in the High Court for which the Bar Council has been constituted.

(3) Of the elected members of the Bar Councils to be constituted for the High Courts of Judicature at Fort William in Bengal and at Bombay such proportion as the High Court may direct in each case shall be persons who have, for such minimum period as the High Court may determine, been entitled to practice in the High Court in the exercise of its original jurisdiction, and such number as may be fixed by the High Court out of the said proportion shall be barristers of England or Ireland or members of the Faculty of Advocates in Scotland.

(4) There shall be a Chairman and Vice-Chairman of each Bar Council elected by the Council in such manner as may be prescribed:

Provided that the Advocate-General of Bengal, Madras and Bombay shall be Chairman *ex-officio*, respectively, of the Bar Councils constituted for the High Courts of Judicature at Fort William in Bengal, at Madras and at Bombay.

5. (1) Notwithstanding anything contained in clause (c) of sub-section (1) of section 4, the elected members of the first Bar Council constituted under this Act for any High Court shall be elected by and from amongst the advocates, vakils and pleaders who are on the date of the election entitled as of right to practise in the High Court.

(2) The terms of office of the nominated and elected members of any such first Bar Council shall be three years from the date of the first meeting of the Council.

Power to make rules regarding constitution and procedure of Bar Councils. 6. (1) Rules, consistent with this Act, may be made to provide for the following matters, namely:—

(a) the manner in which elections of members of the Bar Council shall be held; the method of determining; in accordance with the provisions of sub-sections (2) and (3) of section 4, the candidates who shall be declared to have been elected; the manner in which the result of elections shall be published; and the manner in which and the authority by which doubts and disputes as to the validity of an election shall be finally decided;

(b) the terms of office of nominated and elected members of the Council;

(c) the filling of casual vacancies in the Council;

(d) the convening of meetings of the Council, and the quorum necessary for the transaction of business thereat;

(e) the manner of election and the respective terms of office of the Chair-

SECS. 4 to 8.—These secs. 4 to 8 must be read together. 163 I.C. 510=1936 Sind 75 (S.B.).

SEC. 5 (2).—There is nothing in the section which prevents rules being framed whereby certain members elected to the first Bar Council may continue in office thereafter so that a certain continuity may be maintained between that Council and its successor. 163 I.C. 510=1936

Sind 75 (S.B.).

SEC. 6 (1) (b) AND (4).—The powers conferred by this section to provide for retirement of members from office by rotation, relate to the first Bar Council also, and are not confined to its successors alone. 163 I.C. 510=A.I.R. 1936 Sind 75 (S.B.).

men, in cases where the Chairman is to be elected, and of the Vice-Chairman ; and ;

(f) any matter incidental or ancillary to any of the foregoing matters.

(2) The first rules under this section shall be made by the High Court, but the Bar Council may thereafter, with the previous sanction of the High Court, add to, amend or rescind any rules so made.

(3) No election of a member or members to the Council shall be called in question on the ground that due notice thereof has not been given to any person entitled to vote thereat, if notice of the date fixed for the election has, not less than thirty days before that date, been published in the Official Gazette of the Province, or of each province as the case may be, in which the High Court exercises jurisdiction.

(4) Rules made under clause (b) of sub-section (1) may provide for the retirement of members from office by rotation and for the manner in which the order of such retirement shall be determined.

Power of Bar Councils to make bye-laws. 7. The Bar Council may make bye-laws consistent with this Act and any rules made thereunder to provide for any of the following matters, namely :—

(a) the appointment of such ministerial officers and servants as the Bar Council may deem necessary, and the pay and allowances and other conditions of service of such officers and servants ; and

(b) the appointment and constitution of Committees of the Council, the procedure of such Committees, and the determination of the powers or duties of the Council which may be delegated to such Committees.

Admission and enrolment of advocates.

8. (1) No person shall be entitled as of right to practise in any High Court,

Enrolment of Advocates. unless his name is entered in the roll of the advocates of the High Court maintained under this Act :

Provided that nothing in this sub-section shall apply to any attorney of the High Court.

(2) The High Court shall prepare and maintain a roll of advocates of the High Court in which shall be entered the names of—

(a) all persons who were, as advocates, vakils or pleaders, entitled as of right to practise in the High Court immediately before the date on which this section comes into force in respect thereof ; and

(b) all other persons who have been admitted to be advocates of the High Court under this Act :

Provided that such persons shall have paid in respect of enrolment the stamp duty, if any, chargeable under the Indian Stamp Act, 1899, and a fee, payable to the Bar Council, which shall be ten rupees in the case of the persons referred to in clause (a) and in other cases such amount as may be prescribed.

[(3) Entries in the roll shall be made in the order of seniority, and such seniority shall be determined as follows, namely :—

(a) all such persons as are referred to in clause (a) of sub-section (2) shall be entered first in the order in which they were respectively entitled to seniority *inter se* immediately before the date on which this section comes into force in respect of the High Court ; and

SEC. 6 (2).—Where in framing the rules, there is substantial compliance with the provisions of the Act, the omission on the part of the Bar Council strictly to follow the procedure enjoyed in sec. 6 (2) does not amount to an illegality and it is no more than an irregularity. 157 I.C. 220=1935 A. 295.

SEC. 8 : PRACTICE—MEANING OF.—Advocates enrolled in the High Court of Madras are entitled not only to appear and plead but also to act in the insolvency jurisdiction of the High Court. 52 M. 92=55 M.L.J. 551=1928 M. 1182. An

agent with a power-of-attorney to appear and conduct judicial proceedings has no right of audience in Court. Nor is he entitled to notice if his principal wants to appear and conduct the proceedings himself in person or appoints an advocate to appear for him. Such a power-of-attorney agent cannot carry on business as a solicitor or attorney against drafting, engrossing and filing plaint, Judge's summons, affidavits and generally issuing legal process and charge fees to the principal. 46 L.W. 734=1937 M.W. N. 1060.

(b) the seniority of any other person admitted to be an advocate of the High Court under this Act after the date shall be determined by the date of his admission, or, if he is a barrister, by the date of his admission or the date on which he was called to the Bar, whichever date is earlier :

Provided that, for the purposes of clause (b), the seniority of a person who before his admission to be an advocate was entitled as of right to practise in another High Court shall be determined by the date on which he became so entitled.

(4) The respective rights of pre-audience of advocates of the High Court shall be determined by seniority :

Provided that the Advocate-General shall have pre-audience over all other advocates and King's Counsel shall have pre-audience over all advocates except, the Advocate-General.]¹

¹(5) The High Court shall issue a certificate of enrolment to every person enrolled under this section.

¹(6) The High Court shall send to the Bar Council a copy of the roll as prepared under this section, and shall thereafter communicate to the Bar Council all alterations in, and additions to, the roll as soon as the same have been made.

¹(7) The Bar Council shall enter in the copy of the roll all alterations and additions so communicated to it.

LEG. REF.

¹Sub-secs. (3) and (4) inserted and Sub-secs. (5), (6) and (7) re-numbered by Act XIII of 1927.

SEC. 8 (4) : ACTING ADVOCATE-GENERAL—RIGHT OF PRE-AUDIENCE.—The Acting Advocate-General is entitled as much as the Advocate-General, to a right of pre-audience over all other advocates in respect of all business whether for the Crown or of a private nature. 196 I.C. 793=33 Bom.L.R. 1500 (F.B.).

SECS. 8 AND 9.—The petitioner, an advocate of the Rangoon High Court, who had obtained the law degree of the Rangoon University, was enrolled as an advocate of the Rangoon High Court long before the province of Burma was separated from British India under the Government of India Act of 1935. As a result of the invasion of Burma by the Japanese, the petitioner came over to Madras where he was born, and applied to the High Court at Madras for enrolment as an advocate of that High Court. The Bar Council of Madras passed a resolution under the proviso to R. 16 of the Madras Bar Council Rules, recommending exemption from strict compliance with the rules requiring study for one year as a pupil in the chambers of an advocate practising in Madras and the passing of the prescribed examination etc. The petitioner who had already paid the stamp fee under Art. 30 of the Indian Stamp Act to the Rangoon High Court for his enrolment there also applied for exemption from paying the stamp fee over again for his enrolment in the High Court at Madras. *Held*, (1) that the case was a fit one for granting an exemption from strict compliance with the Madras Bar Council Rules relating to enrolment; (2) that the petitioner, having once paid the stamp fee, as required by Art. 30 of the Stamp Act to the Rangoon High Court, which had the status of

an "Indian High Court" at that time, came within the exemption contained in that Article, and was not therefore bound to pay fresh stamp fee on his enrolment in the High Court of Madras. I.L.R. (1942) Mad. 663=55 L.W. 327=A.I.R. 1942 Mad. 455=(1942) 1 M.L.J. 599 (F.B.). The applicant passed his law examination in 1919; he was enrolled as a pleader in 1920 and as a pleader of the first grade in 1922. He applied for admission as an advocate of the Chief Court, which application was objected to by the Bar Council. It was found from record that in a suit wherein he had appeared, even though he had received a payment of a sum which was due on a decree passed in favour of the decree-holder he had retained the money from August 1924 till April 1926, and had then paid to the decree-holder, under circumstances not free from suspicion. *Held*, that in this instance the Bar Council had not acted otherwise than honestly, fairly and without prejudice and therefore the applicant was refused admission as an advocate of the Chief Court. 6 O.W.N. 1080=1930 Oudh 121=5 Luck. 615.

If the Bar Council can establish that as fair-minded men, who have treated the application for admission as advocate on its merits and in a reasonable manner, they are convinced that a certain member of the profession does not deserve to be enrolled as an advocate and that his enrolment will be prejudicial to the credit of the body of advocates their objections should prevail. It may not be that the conduct in question deserves suspension or removal. Such conduct may not be such as to debar the applicant from practising in the Courts subordinate to the Chief Court. It may well be said that a man is not good enough to be an advocate, although he may be allowed to practise in such Courts. 6 O.W.N. 1080=1930 Oudh 121. *See also* 1930 A. 22=123 I.C. 683.

9. (1) The Bar Council may, with the previous sanction of the High Court, make rules to regulate the admission of persons to be advocates of the High Court :

Qualification and admission of advocates.

Provided that such rules shall not limit or in any way affect the power of the High Court to refuse admission to any person at its discretion.

(2) In particular and without prejudice to the generality of the foregoing power, such rules shall provide for the following matters, namely :—

(a) the qualifications to be possessed by persons applying for admission as advocates ;

(b) the form and manner in which applications shall be made to the High Court for admission ;

(c) the giving of notice by the High Court to the Bar Council of all such applications ;

(d) the hearing by the High Court of any objection preferred on behalf of the Bar Council to the admission of any applicant ; and

(e) the charging of fees payable to the Bar Council in respect of enrolment.

(3) Rules made under this section shall provide that no women shall be disqualified for admission to be an advocate by reason only of her sex.

(4) Nothing in this section or in any other provision of this Act shall be deemed to limit or in any way affect the powers of the High Court of Judicature at Fort William in Bengal and at Bombay to prescribe the qualifications to be possessed by persons applying to practise in those High Courts respectively in the exercise of their original jurisdiction or the powers of those High Courts to grant or refuse, as they think fit, any such application [or to prescribe the conditions under which such persons shall be entitled to practise or plead.]¹

Misconduct.

10. (1) The High Court may, in the manner hereinafter provided, reprimand, suspend or remove from practice any advocate of the High Court whom it finds guilty of professional or other misconduct.

Punishment of advocate for misconduct.

LEG. REF.

¹Inserted by Act XIII of 1927.

SEC. 9.—Under Rules framed by Karachi Bar Council, an application for enrolment will be dismissed in the absence of the receipt for the payment of fees attached to it. 158 I.C. 57=1935 Sind 180 (S.B.). Under Rules framed by Sind Court, the applicant should be accompanied by a certificate or other proof that the applicant has taken the degree; and a mere certificate from the District Court that he has been allowed to practise there is not sufficient. 158 I.C. 707=1935 Sind 196.

SEC. 9 (4).—"High Court" referred to in Bar Councils Act, R. 1 (All.) is a Chartered High Court. 1929 A.L.J. 1195=1930 A. 91 (1).

BENARES STATE CHIEF COURT is neither a High Court within the meaning of Bar Council, R. 1, nor is it subordinate to the Allahabad High Court, and hence, a legal practitioner who enrolls himself as a pleader in Allahabad District Court and practises in the Benares State Courts cannot be treated as having practised in any High Court or a Court subordinate to Allahabad High Court and as such he is not entitled to be enrolled as an advocate of the Allahabad High Court. 1929 A. L.J. 1195=1930 A. 91 (1). See also 1930 A.L.J. 899=1930 A. 887.

The Subordinate Courts referred to in the proviso to R. 1 (All.) are Courts within the province. Courts in Ajmera are not Courts

subordinate to the Allahabad High Court. 1930 A.L.J. 899=128 I.C. 388=1930 A. 887.

Rule 10 of the Appellate Side Rules of the Bombay High Court is not *ultra vires*. Advocates on the Appellate Side did not come within the definition of "pleader" as defined in sec. 4 of the Cr. P. Code for the purposes of the Sessions Court because they are not authorised by law for the time being in force to practise in that Court. So, they have no right of audience in the Sessions side of that Court. 36 Bom.L.R. 1=1934 B. 70=58 B. 456 (F.B.).

SEC. 10.—Unprofessional conduct—Notice issued by High Court after the Act came into force—*Ultra vires*. See 51 A. 79. See also 1930 A. 225=52 A. 619 (F.B.).

The jurisdiction under the Bar Councils Act is one which ought to be circumspectly exercised. Though it is true that a deliberate fraud of a criminal character committed on a client must necessarily amount to professional misconduct in an advocate, it does not follow that the special tribunal created by the Bar Councils Act is one which ought necessarily to deal, at any rate in the first place, with every case in which an advocate is charged with committing a fraud or other crime in relation to his professional practice. A distinction should be drawn between misconduct which is of a purely professional character and misconduct which also lies within the ambit of the criminal law.

(2) Upon receipt of a complaint made to it by any Court or by the Bar Council, or by any other person that any such advocate has been guilty of misconduct, the High Court shall, if it does not summarily reject the complaint, refer the case for inquiry either to the Bar Council, or, after consultation with the Bar Council, to the Court of a District Judge (hereinafter referred to as a District Court) and may of its own motion so refer any case in which it has otherwise reason to believe that any such advocate has been so guilty.

In the former case the special tribunal contemplated by the Act is a proper one to deal exclusively with purely professional delinquencies. But in the latter class of misconduct, the special tribunal under the Act will not in all cases usurp the functions of a Civil or Criminal Court and simple cases such as a charge of misappropriation should be dealt with under S. 10 only, after the complainant has taken such steps, if any, as he may be advised to take to establish either the guilt of the practitioner in question in a Criminal Court or his liability in a Civil Court. Should either of those proceedings be taken and terminate in the framing of the charges levelled by the complainant against the advocate in question, then it will be possible for him to approach the High Court again under the Bar Councils Act. I.L.R. (1941) All. 592=1941 A.L.J. 390=A.I.R. 1941 All. 280 (S.B.) It is obligatory on the part of a District Judge who is directed by the High Court under S. 10 (2) to hold an inquiry into the conduct of an Advocate practising in the district, who has been accused of misappropriation of client's money, to hold the inquiry after framing a charge. The failure on the part of the District Judge to frame a charge vitiates the whole of the proceedings. 57 L.W. 97=I.L.R. (1944) Mad. 397=A.I.R. 1944 Mad. 247=(1944) 1 M.L.J. 124 (F.B.).

LOCUS STANDI TO MAKE COMPLAINT.—It is open to any person to complain to the Court as to the undesirability of certain remarks made by a Counsel during the course of a trial. Where a Mahamadan counsel made some communal remarks during the course of a trial, it is open to the Hindu Association to make a complaint to the High Court to take action in the matter. 162 I.C. 919=37 Cr.L.J. 783=1936 Sind 49.

CONTEMPT OF COURT.—In *re Wallace* (L.R. 1 P.C. 283) is no authority for holding that an advocate should never be punished professionally for contempt of Court committed by him in his personal capacity, however gross the offence may be. Each case must be dealt with according to the circumstances. Where a pleader in his capacity as a suitor in the Small Cause Court made a grossly improper remark reflecting upon the Judges of the High Court who at that stage had no concern whatever with the suit and a gratuitous hit at the Chief Justice without the slightest justification and was fined Rs. 75 for contempt of Court, *held*, that the fine was not under the circumstances sufficient and that he should be suspended from practice for six months. 55 A. 148=1933 A. 224. But *see also* 1932 A. 492 (S.B.). An Advocate deliberately making false allegations involving imputations upon the fairness and impartiality of judicial officers in proceedings connected with an execution case to which he was himself a party cannot be punished under the disciplinary side

under this Act. 1932 A.L.J. 773=1932 A. 492 (S.B.).

WHAT IS MISCONDUCT—DISCRETION OF COURT.—The words "professional or other misconduct" in sec. 10 (1) should be read in their plain and natural meaning. The legislature intended by the aforesaid words to confer on the High Court jurisdiction to take action in all cases of misconduct in a professional or other capacity. 63 C. 867=37 Cr.L.J. 534=40 C.W.N. 366=1936 C. 158 (S.B.). The word "may" in sec. 10 (1) makes it plain that while the High Court has unrestricted jurisdiction in all cases of misconduct, a discretion is left to the Court to take action in suitable cases only. It is not possible to lay down any hard and fast rule or any general principles with regard to exercise of such discretion. It must be exercised judicially. *Ibid*. The test that the Court has to apply in considering whether an advocate should be struck off the roll is whether his proved misconduct is such that he must be regarded as unworthy to remain a member of the profession and unfit to be entrusted with the responsible duties that an advocate is called upon to perform. *Ibid. See also* 59 B. 57=36 Bom.L.R. 1136; 59 B. 676 (P.C.) *Cl. 10 of the Letters Patent* which empowers the High Court to remove or suspend from practice advocates, vakils, or attorneys on "reasonable cause" gives a wide discretion to the Court in regard to the exercise of this disciplinary authority. "Reasonable cause" in the clause means the same as professional or other misconduct under S. 10 of the Bar Councils Act. "Misconduct" is a sufficiently wide expression; it is not necessary that it should involve moral turpitude. Any conduct which in any way renders a man unfit for the exercise of his profession or is likely to hamper or embarrass the administration of justice by the High Court or any of the Courts subordinate thereto may be considered to be misconduct calling for disciplinary action. What the Court has to consider is the conduct of the Advocate or Attorney as it affects his position as an Advocate or Attorney and his relations to the Court. 43 Bom. L.R. 250. An advocate was convicted for submitting a false return of his income to the income-tax authorities and for taking up a false defence and maintaining it even up to the High Court, even though he knew such defence to be false. *Held*, that his conduct involved moral turpitude and that his name should be struck off the roll. 12 R. 110=1934 R. 33=149 I.C. 856. An advocate was guilty of misconduct involving moral turpitude by falsely verifying an application and endeavouring to deceive the Court and to deprive the decree-holder of money due to him. But the complainant did not file his complaint out of any high sense of public duty. A third person, who had been engaged in litigation with the advocate in his personal capacity, was behind the appli-

11. (1) Where any case is referred for inquiry to the Bar Council under

cation and had paid the expenses. The application was made out of a desire further to harass the advocate. The advocate was not acting for a client in this matter but was engaged in his own litigation, and that in the end no one had suffered by his action. He was subjected to heavy expenses in defending himself upon all these charges. *Held*, that an order suspending the advocate from practice for the term of three calendar months would be sufficient in the peculiar circumstances. 1932 A.L.J. 773=1932 A. 492 (S.B.). It is extremely necessary that advocates having to withdraw money or to accept serious responsibility of the kind from and on behalf of a client should even if there be no apparent circumstances to justify a suspicion do everything in their power to verify the form of the *Vakalatnama*, and further more should not accept a *Vakalatnama* unless they have satisfied themselves of the *bona fides* of the person who offers it to them. 16 P. 488=17 P.L.T. 407=A.I.R. 1937 P. 493 (S.B.). *Agreement with client to receive payment only in the event of success* is professional misconduct. 50 L.W. 234=A.I.R. 1939 Mad. 772=(1939) 2 M.L.J. 320 (F.B.). As to being engaged in money-lending business, see 1939 A.W.R. (H.C.) 828=1939 A.L.J. 957 (F.B.).

ADVOCATE ENTERING INTO PARTNERSHIP.—An advocate entering into a partnership business or trade as partner is guilty of misconduct. 158 I.C. 278=1935 O.W.N. 1029; 159 I.C. 561=1935 A. 1023. See also I.L.R. (1940) All. 60=A.I.R. 1940 All. 1 (F.B.).

THE PURCHASE OF A SPECULATIVE INTEREST IN A CONTEMPLATED LITIGATION by an Advocate benami in the name of his mother, by concealing his identity as the real purchaser, denial of the fact of the benami purchase and assertion that the mother was the real purchaser and production of false evidence in support thereof amount to misconduct which upon a strict view of professional ethics renders him unfit to be a member of the legal profession. 1942 O.W.N. 756=1943 Oudh 159.

NEGLECT OF ADVOCATE.—Where negligence on the part of an advocate, however gross, does not amount to misconduct, professional or otherwise, when it is not accompanied by moral delinquency. 62 C. 158=157 I.C. 374=1935 C. 484. But it would constitute misconduct if negligence be accompanied by suppression of truth or by deliberate misrepresentation. *Ibid*. An advocate was engaged to file a suit. The advocate employed an unregistered clerk and left the plaint with him for presentation. The clerk failed to file the plaint and thus the suit was not filed. The advocate however did not take care to see whether the suit had been filed by looking into the cause list and thus allowed his clerk to cheat his client. Besides this the advocate did not return or account for the money he had taken from his client for stamps and other incidental purposes. *Held*, that the conduct of the advocate amounted to gross misconduct. 178 I.C. 398=A.I.R. 1938 Rang. 423 (S.B.). It is manifest that it is improper for an advocate to address a letter to a clerk in a *Magistrate's office* asking that an application filed by him should be dealt with urgently. The

proper course for an advocate, if there was any delay, to bring the matter to the notice of the Magistrate himself. 1941 M.W.N. 56=53 L.W. 62=(1941) 1 M.L.J. 128 (F.B.)=I.L.R. (1941) Mad. 354=A.I.R. (1941) Mad. 230.

BREACH OF TRUST.—An advocate who was convicted for two offences of criminal breach of trust in respect of a large amount and of attempt to cheat and who dishonestly induced a lady to part with a security, is guilty of misconduct and his name should be removed from the rolls. 159 I.C. 1036=1935 R. 458.

ATTEMPT TO BRIBE JUDGE.—An advocate attempting to bribe a judge to obtain judgement in his client's favour is guilty of grossest misconduct. 19 R. 518=26 Cr.L.J. 961=156 I.C. 582=1935 R. 178 (S.B.).

When a complaint is made, the Court under the Act can only dismiss it summarily or else refer it to the Bar Tribunal to inquire into. The Court would not generally be justified in dismissing a petition summarily unless it was satisfied that, even if the allegations made in the petition be proved, there would be no case for taking action. 138 I.C. 543=34 Bom.L.R. 443=1932 B. 199. The question whether a particular advocate has violated the recognized canons of professional etiquette is primarily a matter that concerns the Bar Council and consequently the High Court ordinarily will accept findings on questions of fact recorded by the Bar Tribunal provided they are not perverse. 1939 A.L.J. 957 (F.B.).

PUNISHMENT.—(Per C. J. and Gentile, J.). An advocate who misappropriates his client's moneys is not fit to remain a member of an honourable profession of advocates of the High Court, and the High Court should be failing in its duty if it does not direct the advocate's name to be removed from the rolls. The advocate is guilty of a criminal offence and such conduct cannot be condoned as to do so would encourage crimes of that nature and might have a harmful effect on the profession as a whole. The fact that the misappropriation is only temporary does not lessen the offence or the gravity of the misconduct. *Varadachariar, J.*—Though the conduct of an advocate who misappropriates the moneys belonging to his client must be strongly disapproved and though the members of the profession should observe the highest standard of professional conduct, the Court when dealing with the question of punishment, cannot shut its eyes to the fact that those standards have not unfortunately yet come to be generally observed and the way that advocates and clients carry on their pecuniary dealings sometimes leads advocates to imagine that they can persuade their clients to condone the faults on their part in dealing with their client's money. the possibility or even the fact of condonation by the client is, however, no justification for such conduct. 1937 M.W.N. 1322 (F.B.).

SECS. 10 AND 11: "PROFESSIONAL OR OTHER MISCONDUCT".—Merely having been member, or assisted the operation or managed the affairs, of an unlawful association does not render an advocate unfit to exercise his profession. Nor does such conduct necessarily involve any moral turpitude, or any attack upon the system of which the Court forms part, or embarrass in

section 10, the case shall be inquired into by a Committee of the Bar Council (hereinafter referred to as the Tribunal of Bar Council. Tribunal).

(2) The Tribunal shall consist of not less than three and not more than five members of the Bar Council appointed for the purpose of the inquiry by the Chief Justice or Chief Judge of the High Court, and one of the members so appointed shall be appointed to be the President of the Tribunal.

any way the administration of justice by the Court. No action is therefore called for in such a case. 59 B. 57=1935 B. 1=36 Bom.L.R. 1136 (F.B.). An advocate took a prominent part in Labour and Trade Union Movements and delivered a number of speeches advocating certain reforms. For some of these speeches he was bound over for one year under sec. 107, Cr. P. Code. For others, he was prosecuted under sec. 124-A, I. P. Code, and convicted thrice. There was no indication that he made any organised or persistent attempt to create a breach of the peace or to incite acts tending to subvert law and order. The general tenor of the speeches was inoffensive. *Held*, no further action was called for in the case. 63 C. 867=37 Cr.L.J. 534=40 C.W.N. 366=1936 C. 158 (S.B.). It is not part of the duty of the High Court to impose penalties for misconduct, unconnected with the exercise of the profession, which is either not punishable or has been, or can be, punished under the law of the land. The State imposes suitable penalties for the infringement of its laws, and provides proper sanctions for the enforcement of such penalties; and there is no reason why the Court's disciplinary jurisdiction should be employed merely in aid of the criminal law. 59 B. 57; 63 C. 867. In cases of misconduct involving moral turpitude, the Court has to see whether the advocate has shown himself to be unworthy of the confidence of the Court, or unfit to be entrusted with the business of his client or a person with whom his professional brethren cannot be expected to associate. But these are not the only cases in which the High Court may be called upon to take action. An advocate might engage in *revolutionary activities designed to destroy the system of which the Court forms part*, or activities likely to hamper or embarrass the administration of justice by the Courts. What has to be considered in such cases is the conduct of the advocate as it affects his position as an advocate and his relations to the Court. It will not tolerate on its rolls an advocate who is trying to undermine or destroy the authority of the Court. Anyone electing to engage in activities of that nature must do so without the authority and prestige attached to the position of an advocate. 36 Bom.L.R. 1136=59 B. 57=1935 B. 1 (F.B.). A conviction for the offence of sedition under sec. 124-A, I. P. Code, cannot be regarded as such misconduct as would, in all circumstances, require action to be taken under the Courts' disciplinary jurisdiction and as would demand the removal of the advocate from practice. 63 C. 867.

EVIDENCE OF MISCONDUCT.—The fact that an advocate has been convicted of a criminal offence is evidence of his misconduct within the meaning of this section. 59 B. 676=1935 P. C. 168=69 M.L.J. 431 (P.C.). It is not incumbent on

the Advocate-General to adduce evidence of the grounds on which the conviction is based. It is for the Court to decide whether the conviction is evidence of such misconduct as to call for disciplinary action by it. *Ibid*. Where the High Court in its discretion proceeded to consider whether in the circumstances the misconduct proved called for any disciplinary action, the Privy Council will not interfere. *Ibid*. The judgment and evidence in a Civil suit are admissible as evidence in an inquiry under this section, but they are not conclusive proof. (*Iqbal Ahmed, J.*, dissenting). 159 I.C. 561=1935 A. 1023.

SECS. 10 to 13.—Where a complaint has been made to the Chief Justice and the Judges of the High Court under sec. 10, and such complaint has been referred to the Bar Council to be enquired into by a tribunal, it is incumbent upon the tribunal to come to some finding or other and it cannot abandon the proceeding merely because the complainant withdrew the complaint. 1930 C. 574=57 C. 724. It is highly unsatisfactory from the point of view of advocates and of the public that any one should make a solemn complaint against one of them to the High Court and have the matter referred to the tribunal and that then, without any finding which could clear the advocate, the enquiry should be dropped. The complainant after the matter has been referred to the tribunal is not in any way a person who is like a plaintiff *dominus lites* and if such complainant withdraws the complaint, and if from circumstances and evidence the tribunal is of opinion that there is no need to investigate and the charge preferred has no substance it can so report. In other circumstances it is open to the tribunal to exercise its own discretion whether to employ its power to summon the complainant personally or other people. The Act requires that the tribunal should come to a finding. 57 C. 724=1930 C. 574 (*Per Rankin C.J.*). *See also* 1931 A. 580. The Bar Council is in the position of a trustee and guardian of the dignity and privileges of the Bar and the rights and duties of its members and it is to the interest of the profession that when a charge is made against an advocate it should either be cleared or brought home to him. The rules are so designed that on a charge of misconduct, there should be a finding one way or the other. 57 C. 724=1930 C. 574 (*Per Buckland, J.*).

SECS. 10 and 19.—A notice was issued on the 13th June, 1928, by the High Court against a pleader calling upon him to show cause why he should not be dealt with under the Legal Practitioners Act for professional misconduct. Objection was taken by the pleader in view of the Bar Councils Act which had come into force on 1st June, 1928. *Held*, that the provisions of the Letters Patent in so far as they may conflict with the provisions of the Act, were abrogated

12. (1) The High Court shall make rules to prescribe the procedure to be followed by Tribunals and by District Courts, respectively, in the conduct of inquiries referred under

Procedure in inquiries.

section 10.

(2) The finding of a Tribunal on an inquiry referred to the Bar Council under section 10 shall be forwarded to the High Court through the Bar Council, and the finding of a District Court on such an inquiry shall be forwarded direct to the High Court, which shall cause a copy thereof to be sent to the Bar Council.

(3) On receipt of the finding, the High Court shall fix a date for the hearing of the case and shall cause notice of the day so fixed to be given to the Advocate concerned and to the Bar Council and to the Advocate-General, and shall afford the advocate concerned and the Bar Council and the Advocate-General an opportunity of being heard before orders are passed in the case.

(4) The High Court may thereafter either pass such final orders in the case as it thinks fit or refer it back for further inquiry to the Tribunal through

by sec. 19 (2), and therefore it was necessary for the case to be either referred to the Bar or at any rate for the Bar Council to be consulted. The Court was not properly seized of the case and that the notice issued to show cause was, as framed, *ultra vires* and a nullity. 51 A. 76=26 A.L.J. 1039=1928 A. 439 (F.B.).

SEC. 12.—Where the High Court refers to the District Judge an inquiry as to an advocate's alleged misconduct, he cannot delegate the same to one of his assistants. 168 I.C. 992=38 Cr.L.J. 664 (1)=1937 Sind 98. In order to prevent counsel appearing for the other party, he must have a definite retainer, with a fee paid, or he must have such confidential instructions from one of the parties as would make it improper for him to appear for the other party. In the absence of either, it cannot be said to be unprofessional on the part of the counsel, to appear for the other party. 147 I.C. 1080=11 O.W.N. 23=1934 Oudh 58 (S.B.). See also I.L.R. (1940) All. 262=1940 A.L.J. 170=A.I.R. 1940 All. 233.

The High Court in considering what orders ought to be passed in a case that falls within sec. 12, is not in any way fettered by the report of the tribunal or of the District Court, and although no doubt the greatest weight ought to be attached to the findings contained in such a report, it is competent to the Court to go into the facts for itself and to decide whether or not it agrees with those findings. 1935 A.L.J. 759=1935 A. 425; 35 C.W.N. 293=1931 C. 680; 155 I.C. 1054=1935 A. 503. See also 1939 A.L.J. 957=I.L.R. 1940 All. 60=1940 All. 1 (F.B.). The value of the report of the tribunal in a case is lessened where, in respect of the more serious charges, it is not unanimous and to some extent ambiguous. The finding of the Tribunal can be reversed by a Bench of the High Court even though all the judges constituting the Bench are not unanimous, and an order of the majority of the judges reversing such finding is not *ultra vires*. 159 I.C. 653=1935 A. 1037. The value of the report of the tribunal in a case is lessened where, in respect of the more serious charges, it is not unanimous and to some extent ambiguous. Where the report of the tribunal is ambiguous and not explicit on findings it is not necessary to send it back to the tribunal if after investigating the facts itself the Court is in no doubt as to the order that ought to be passed in the case. 1933 R. 10.

The Court's decision must rest not upon suspicion, but upon legal grounds established by legal

testimony. [58 M.L.J. 635 (P.C.) rel. on.] 147 I.C. 1080=11 O.W.N. 23=1934 Oudh 58 (F.B.); 58 M.L.J. 635 (P.C.).

SEC. 12 (2).—The members of the Tribunal can record separate findings and make more than one report and the High Court is entitled to consider the report and findings of the minority as well as the majority of the Tribunal. 54 M. 857=61 M.L.J. 148=1932 M. 131 (F.B.). See also 42 C.W.N. 1111; 1939 A.L.J. 957 (F.B.).

The offence of perjury always involves moral turpitude in varying degree according to the particular facts of each case. Although the High Court in proceedings under sec. 12 against an Advocate convicted of perjury, cannot question the propriety of the conviction, it can, with a view to fix the quantum of punishment, look into the circumstances of the case and ascertain the degree of moral turpitude and extenuating circumstances if any. Thus, the absence of direct evidence can be taken into account as also testimonials speaking highly of the character of the Advocate. Advocate suspended for six months. 131 I.C. 67=8 O.W.N. 267=1931 Oudh 161.

SEC. 12 (3).—Sub-sec. (3) provides that on receipt of the finding of the Tribunal, the Court shall fix a date for hearing and cause notice of the day so fixed to the Advocate concerned and to the Advocate-General. It follows that the original petitioner is not entitled to be served with notice or to be heard on the hearing before the Court. The Bar Council is there in order to assist the Court in any way it can and the Advocate concerned is of course entitled to be heard. The correct course is for the Advocate-General to open by submitting the report of the tribunal to the Court. Then the Advocate is entitled to be heard and, if necessary, the Advocate-General will have a right of reply. 33 Bom.L.R. 1215=1931 B. 557. Sec. 12 (3) cannot be intended to exclude the right of the Court to hear any person other than the persons mentioned therein when the object of it is to ensure that certain people shall have notice. Where the finding of the tribunal is considered by the High Court, it is in the power of the High Court to hear the complainant. 35 C.W.N. 293=134 I.C. 1270=1931 C. 680 (S.B.); 42 C.W.N. 1111.

SEC. 12 (4).—It would need very good reasons to induce the High Court to throw over the findings of fact which have been arrived at by a Tribunal after a careful and elaborate enquiry.

the Bar Council or to the District Court, as the case may be, and, upon receipt of the finding after such further inquiry, deal with the case in the manner provided in sub-section (3) and pass final orders thereon.

(5) In passing final orders the High Court may pass such order as regards the payment of the costs of the inquiry and of the hearing in the High Court as it thinks fit.

(6) The High Court may, of its own motion or on application made to it in this behalf, review any order passed under sub-section (4) or sub-section (5) and maintain, vary or rescind the same, as it thinks fit.

(7) When any advocate is reprimanded or suspended under this Act, a record of the punishment shall be entered against his name in the roll of advocates of the High Court and when an advocate is removed from practice his name shall forthwith be struck off the roll; and the certificate of any advocate so suspended or removed shall be recalled.

13. (1) For the purposes of any such inquiry as aforesaid, a Tribunal or a District Court shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

- (a) enforcing the attendance of any person and examining him upon oath,
- (b) compelling the production of documents, and
- (c) issuing commissions for the examination of witnesses:

Provided that the Tribunal shall not have power to require the attendance of the presiding officer of any Court save with the previous sanction of the High Court, or, in the case of an officer of a Criminal or Revenue Court, of the Provincial Government.

(2) Every such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code; and a Tribunal shall be deemed to be a Civil Court for the purposes of sections 480, 482 and 485 of the Code of Criminal Procedure, 1898.

(3) For the purpose of enforcing the attendance of any person and examining him upon oath or of compelling the production of documents or of issuing commissions—

(a) the local limits of the jurisdiction of Tribunal shall be those of the jurisdiction of the High Court by which the tribunal has been constituted; and

(b) a Tribunal may send to any Civil Court having jurisdiction in the place where the Tribunal is sitting any summons or other process for the attendance of a witness or the production of a document required by the Tribunal, or any commission which it desires to issue, and the Civil Court shall serve such process or issue such commission, as the case may be, and may enforce any such process as if it were a process for attendance or production before itself.

35 C.W.N. 293=1931 C. 680; 42 C.W.N. 1111. The exact extent of the rights of the complainants in such a matter may be left to be considered as occasion arises. (*Ibid.*) See also 1930 M.W. N. 216; 147 I.C. 139. See Notes under sec. 1.

SEC. 12 (5).—The Rules framed under the Act empower the High Court to assess the costs directed to be paid to the Advocate by the complainant. At the same time it is open to the Court to direct an enquiry by the Registrar as to what sums had been paid by the complainant and the Advocate and pass final orders after the amount spent has been ascertained. 35 C.W.N. 293=134 I.C. 1270=1931 C. 680 (S.B.). See also 54 M. 857 (F.B.). In a case where the complainant was unsuccessful before the tribunal whose findings were confirmed by the Court, the complainant was ordered to pay the costs of the Advocate both in the enquiry before the tribunal and in the hearing before the Court. He was also ordered to pay the fees of the short-

hand writer and the interpreter in the inquiry before the Bar Council. The costs were directed to be taxed by the Registrar of the original side as of a hearing. 42 C.W.N. 1113=A.I.R. 1938 Cal. 766.

SEC. 12 (6).—The power of review conferred upon High Courts under sub-sec. (6) of sec. 12, cannot be extended to an order passed under sec. 41, Legal Practitioners Act. 148 I.C. 299=1934 Oudh 140=11 O.W.N. 368 (S.B.).

SEC. 13.—Inherent powers of the Supreme Court of Calcutta were not conferred on the Allahabad High Court by the Indian High Courts Act of 1861, and no power to exercise inherent disciplinary jurisdiction over legal practitioners independently of the Legal Practitioners Act and the Indian Bar Councils Act now exists in the Allahabad High Court in respect of their professional or other misconduct. 52 A. 619=1930 A.L.J. 402=1930 A. 225 (F.B.).

(4) Proceedings before a Tribunal or a District Court in any such inquiry shall be deemed to be civil proceedings for the purposes of section 132 of the Indian Evidence Act, 1872, and the provisions of that section shall apply accordingly.

Miscellaneous.

Right of advocates to practise.

14. (1) An Advocate shall be entitled as of right to practise—

(a) subject to the provisions of sub-section (4) of section 9, in the High Court of which he is an advocate, and

(b) Save as otherwise provided by sub-section (2) or by or under any other law for the time being in force, in any other Court in British India and before any other Tribunal or person legally authorised to take evidence, and

(c) before any other authority or person before whom such advocate is by or under the law for the time being in force entitled to practise.

(2) Where rules have been made by any High Court within the meaning of clause (24) of section 3 of the General Clauses Act, 1897, or in the case of a High Court for which a Bar Council has been constituted under this Act, by such Bar Council under section 15, regulating the conditions subject to which advocates of other High Courts may be permitted to practise in the High Court, such advocates shall not be entitled to practise therein otherwise than subject to such conditions.

(3) Nothing in this section shall be deemed to limit or in any way affect the power of the High Court of Judicature at Fort William in Bengal or of the High Court of Judicature at Bombay to make rules determining the persons who shall be entitled respectively to plead and to act in the High Court in the exercise of its original jurisdiction.

15. A Bar Council may, with the previous sanction of the High Court for which it is constituted, make rules consistent with this Act to provide for and regulate any of the following matters, namely:—

(a) the rights and duties of the advocates of the High Court and their discipline and professional conduct;

(b) the conditions subject to which advocates of other High Courts may be permitted to practise in the High Court;

SEC. 14: ENTRY IN THE ROLL OF ADVOCATES—EFFECT OF.—An ex-judge of the Patna High Court, after his retirement as a Judge, applied to have his name entered on the roll of advocates. It was allowed with a condition refusing him the permission to appear in the Courts of the Province. *Held*, that the applicant's name being entered on the roll of advocates, he was entitled as of right to practise in the Courts of the Province. 58 I.A. 38=1931 P.C. 22 (2)=60 M.L.J. 179 (P.C.). Sec. 14 (1) (b) cannot be invoked to enable a Government servant in a departmental inquiry, the rules of which provide for his being "heard in person", to claim the right to be represented by Counsel. The question has to be determined *not by the counsel's right of audience in inferior Courts*, but by the right of the client to be represented by him. 46 L.W. 531=1937 M. 735=(1937) 2 M.L.J. 189.

SECS. 14 (2) AND 15 (b).—Where an application is made on behalf of an advocate of one High Court for permission to appear in case in another High Court under the rules framed under this Act, good reasons must be shown for the grant of such permission. The permission cannot be granted on mere application or as a matter of course, nor claimed as a matter of right. No

question of reciprocity is involved in the matter. The Chief Justice will apply his mind to the circumstances of the application and see whether good reasons have been made out for the grant of permission in any particular case. 167 I.C. 486=38 Cr.L.J. 392=17 P.L.T. 861=A.I.R. 1937 P. 122. As to when consultation of counsel debars appearance for the other side, see I.L.R. (1940) All. 262=1940 A.L.J. 170=A.I.R. 1940 All. 233; 1934 Oudh 58.

SEC. 15.—*Investment of his savings by an advocate* do not necessarily amount to an engagement in money-lending business, the more so when such investments are few and far between and are mostly made to relations and friends. Nevertheless if *investments by way of loan are made as a matter of regular business* and for gain there can be no escape from the conclusion that such investments constitute engagement in money-lending business. It depends on the facts of each case and is a mixed question of fact and law, as to whether certain transactions amount to a money-lending business. 1939 A.L.J. 957 (F.B.).

The direction in R. 7 of the rules of procedure under the Bar Councils Act that all members of the tribunal shall sign their findings is mandatory. If a member of the tribunal dies before

(c) the giving of facilities for legal education and training and the holding and conduct of examinations by the Bar Council ;

(d) the charging of fees payable to the Bar Council in respect of the enjoyment of educational facilities provided, or of the right to appear at examinations held, by the Bar Council ;

(e) the investment and management of the funds of the Bar Council ; and

(f) any other matter in respect of which the High Court may require rules to be made under this section.

16. The High Court shall make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in

Power to fix fees payable
as costs.

respect of the fees of his adversary's advocate upon all proceedings in the High Court or in any Court

subordinate thereto.

17. No suit or other legal proceeding shall lie against a Bar Council or any Committee, Tribunal or member of a Bar Council for

Indemnity against legal pro-
ceedings.

any act in good faith done or intended to be done in pursuance of the provisions of this Act or of any rule

made thereunder.

18. All rules made under this Act shall be published in the Official Gazette of the province or of each province, as the case may

Publication of rules.

be, in which the High Court by which or with whose

sanction the rules are made exercises jurisdiction.

19. (1) When sections 8 to 16 come into force in respect of any High Court,

Amendment of enact-
ments, etc.

any enactment mentioned in the first column of the Schedule which is in force in any province in which the High Court exercises jurisdiction shall, for the

purpose of its application to that province, be amended to the extent and in the manner specified in the second column of the Schedule.

(2) When sections 8 to 16 come into force in respect of any High Court of Judicature established by Letters Patent, this Act shall have effect in respect of such Court notwithstanding anything contained in such Letters Patent and such Letters Patent shall, in so far as they are inconsistent with this Act or any rules made thereunder, be deemed to have been repealed.

(3) When sections 8 to 16 come into force in respect of the High Court of Judicature at Bombay, the Bombay Pleaders' Act, 1920, except section 7 thereof, shall cease to apply to or in respect of any person enrolled as an advocate of the High Court under this Act, and nothing in that Act shall be deemed to authorise the admission or enrolment of any person as a vakil or pleader of the High Court.

(4) When this Act has come into force in respect of any High Court, any provision of any other enactment or any order, scheme, rule, form or bye-law made thereunder, which was before that date applicable to advocates, vakils or pleaders entitled to practise in such High Court, shall, unless such a construction is repugnant to the context or to any provision made by or under this Act, be construed as applying to advocates of the High Court enrolled under this Act.

the report has been completed, that is, drawn up and signed, the tribunal ceases to be properly constituted. In such circumstances the report of the surviving members of the tribunal cannot be taken into consideration by the Court, and a new tribunal must be constituted and the investigation proceeded with *de novo*. I.L.R. (1942) Mad. 428=A.I.R. 1942 Mad. 267=(1942) 1 M.L.J. 160 (F.B.).

Sec. 18.—Sec. 18 does not make the publi-

cation of the Rules in official gazette a condition precedent to their coming into force and it merely provides for the manner of their publication. 1935 A.W.R. 110=157 I.C. 220=1935 A. 295.

Sec. 19 (2).—See 51 A. 76, cited under sec. 10. As to the effect of this Act on rules 128 and 129 of the Madras High Court Insolvency Rules, see 52 Mad. 92=113 I.C. 876 (F.B.).

THE SCHEDULE.

(See Section 19.)

AMENDMENT OF ENACTMENTS.

Enactments amended.

The Legal Practitioners' Act, 1879.

Extent and manner of amendment.

- (1) In section 4, after the words "with the permission of the Court" the words and figures "or, in the case of a High Court in respect of which the Indian Bar Councils Act, 1926, is in force, subject to rules made under that Act" shall be inserted.
- (2) In section 6, clauses (a) and (b) after the words "Royal Charter" the words and figures "in respect of which the Indian Bar Councils Act, 1926, is not in force" shall be inserted.
- (3) To section 38 the following words and figures shall be added, namely :—
"and, except as provided by section 36, nothing in this Act applies to persons enrolled as advocates of any High Court under the Indian Bar Councils Act, 1926."
- (4) In section 41, sub-section (1), after the words "Royal Charter" the words and figures "in respect of which the Indian Bar Councils Act, 1926, is not in force" shall be inserted.

The Indian Stamp Act, 1899.

In Article 30 of the First Schedule, after the words "High Court," where they first occur, the words and figures "under the Indian Bar Councils Act, 1926, or" shall be inserted.

The Madras Stamp (Amendment) Act, 1922.

In Article 25 of Schedule 1-A, after the words "High Court," where they first occur, the words and figures "under the Indian Bar Councils Act, 1926, or" shall be inserted.

The Bengal Stamp (Amendment) Act, 1922.

In Article 30 of Schedule 1-A after the words "High Court," where they first occur, the words and figures "under the Indian Bar Councils Act, 1926, or" shall be inserted.

The Indian Stamp (Punjab Amendment) Act, 1922.

In Article 30 of Schedule 1-A, after the words "High Court," where they first occur, the words and figures "under the Indian Bar Councils Act, 1926, or" shall be inserted.

The Assam Stamp (Amendment) Act, 1922.

In Article 30 of Schedule 1-A, after the words "High Court," where they first occur, the words and figures "under the Indian Bar Councils Act, 1926, or" shall be inserted.

THE BOILERS ACT (V OF 1923).

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THE SCHEDULE.

EFFECT OF LEGISLATION.

Year.	No.	Short title.	Repealed or otherwise how affected by Legislation.
1923	V	The Boilers' Act, 1923.	Rep. in part, Act XII of 1927; Act IX of 1929; Act XXXIV of 1939. Amended Act XI of 1937; Act V of 1942; Act XVII of 1943; Govt. of India (Adaptation of Indian Laws) Order, 1937.

N.B.—*The amendments introduced by Act XI of 1937 has application to British India including British Baluchistan and the Sonthal Parganas, but excluding Burma. (Vide sec. 2 of Act XI of 1937.)*

[23rd February, 1923.

An Act to consolidate and amend the law relating to steam-boilers.

WHEREAS it is expedient to consolidate and amend the law relating to steam-boilers; It is hereby enacted as follows:—

Short title, extent, and commencement. 1. (1) This Act may be called ¹THE BOILERS ACT, 1923.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) It shall come into force on such date as the Central Government may, by notification² in the Official Gazette, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “accident” means an explosion of a boiler or steam-pipe or any damage to a boiler, or steam-pipe which is calculated to weaken the strength thereof so as to render it liable to explode;

³[(aa) “Board” means the Central Boilers Board constituted under section 27-A.]

(b) “boiler” means any closed vessel exceeding five gallons in capacity which is used expressly for generating steam under pressure for use outside such vessel, and includes any mounting or other fitting attached to such vessel, which is wholly or partly under pressure when steam is shut off;

(c) “Chief Inspector” and “Inspector” mean, respectively, a person appointed to be a Chief Inspector and an Inspector under this Act;

⁴[(cc) “Feed pipe” means any pipe or connected fitting, wholly or partly under pressure through which feed water passes directly to a boiler.]

(d) “owner” includes any person using a boiler as agent of the owner thereof and any person using a boiler which he has hired or obtained on loan from the owner thereof;

(e) “prescribed” means prescribed by regulations or rules made under this Act;

LEG. REF.

¹For Statement of Objects and Reasons, see Gazette of India, 1922, Pt. V, p. 249; and for Report of Joint Committee, see *ibid.*, 1923, Pt. V, p. 15.

²This Act came into force from 1st January, 1924, see Notification No. A. 61, dated 4th December, 1923, Gen. R. and O., Vol. V, p. 134.

³Clause (aa) of sec. 2 inserted by Act XI of 1937.

⁴Sec. 2, cl. (cc) inserted by Act XVII of 1943.

SEC. 2 (b).—The meaning of the definition of ‘boiler’ in S. 2 (b) is, that the definite and clear object of the contrivance should be to generate steam under pressure. The fact that in a particular contrivance though steam is generated under pressure, the steam is used only for sterilizing some vessels, cannot take it away from the definition of a ‘boiler’ for the use to which the steam is ultimately put is quite irrelevant to the issue. I.L.R. (1939) All. 883=1939 A.L.J. 806=A.I.R. 1939 All. 697.

(f) "steam-pipe" means any main pipe exceeding three inches in internal diameter through which steam passes directly from a boiler to a prime mover or other first user, and includes any connected fitting of a steam-pipe; and

(g) "structural alteration, addition or renewal" shall not be deemed to include any renewal or replacement of a petty nature when the part or fitting used for replacement is not inferior in strength, efficiency or otherwise to the replaced part or fitting.

¹[2-A. Every reference in this Act, [except where the word "steam pipe"

Application of Act to feed-pipes.

is used in cl. (f) of sec. 2], to a steam pipe or steam pipes shall be deemed to include also a reference to a feed pipe or feed pipes respectively.]

Limitation of application.

3. (1) Nothing in this Act shall apply in the case of any boiler or steam-pipe—

(a) in any steam-ship as defined in section 3 of the ²Indian Steam-ships Act, 1884, or in any steam-vessel as defined in section 2 of the Inland Steam-vessels Act, 1917; or

(b) belonging to or under the control of His Majesty's Navy or the Royal Indian ³[Navy], [or

(c) appertaining to any sterilizer or disinfector of a type such as is commonly used in hospitals, if the boiler does not exceed twenty gallons in capacity].⁴

(2) The ⁵[safety Controlling Authority] may, by notification in the Official Gazette, declare that the provisions of this Act shall not apply in the case of boilers or steam-pipes or of any specified class of boilers or steam-pipes belonging to or under the control of any railway⁶ administered by the ⁷[Federal Railway Authority or by any Provincial Government] or by any railway company as defined in clause (5) of section 3 of the Indian Railways Act, 1890. ⁸[In this sub-section "safety Controlling Authority" has the same meaning as in the Indian Railways Act, 1890].

4. The ⁹[Provincial Government] may, by notification in the Official

Power to limit extent.

Gazette, exclude¹⁰ any specified area from the operation of all or any specified provisions of this Act.

5. (1) The [Provincial Government] may appoint¹¹ such persons as it thinks

Appointment of Chief Inspectors and Inspectors.

fit to be inspectors for the province for the purposes of this Act, and may define the local limits within which each Inspector shall exercise the powers and perform

the duties conferred and imposed on Inspectors by or under this Act.

(2) The Provincial Government shall likewise appoint¹² a person to be Chief Inspector for the Province, who may, in addition to the powers and duties conferred or imposed on the Chief Inspector by or under this Act, exercise any power or perform any duty so conferred or imposed on Inspectors.

(3) Every Chief Inspector and every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Prohibition of use of unregistered or uncertificated boiler.

6. Save as otherwise expressly provided in this Act, no owner of a boiler shall use the boiler or permit it to be used—

(a) unless it has been registered in accordance with the provisions of this Act;

LEG. REF.

¹ Inserted by Act XVII of 1943.

² See now the Indian Merchant Shipping Act, 1923 (XXI of 1923), sec. 2.

³ Substituted for 'Marine service' by A.O., 1937.

⁴ Inserted by Act V of 1942.

⁵ Substituted for 'Governor-General in Council' by A.O., 1937.

⁶ For list of Railways notified under this section, see Gen. R. and O., Vol. V, p. 134.

⁷ Substituted for 'Government' by A.O., 1937.

⁸ Inserted by *ibid.*

⁹ Substituted for 'Governor-General in Council' by *ibid.*

¹⁰ The Andaman and Nicobar Islands have been excluded from the operation of the provisions of this Act, see Notification No. G. (B)—10, dated 21st June, 1924, Gen. R. and O., Vol. V, p. 135.

¹¹ For such appointment in Coorg, see Coorg District Gazette, 1925, Pt. I, p. 31, and *ibid.* 1926, Pt. I, p. 94.

¹² For appointment under this sub-section in Coorg, see *ibid.*

(b) in the case of any boiler which has been transferred from one province to another, until the transfer has been reported in the prescribed manner ;

(c) unless a certificate or provisional order authorising the use of the boiler is for the time being in force under this Act ;

(d) at a pressure higher than the maximum pressure recorded in such certificate or provisional order ;

(e) where the Provincial Government has made rules requiring that boiler shall be in charge of persons holding certificates of competency, unless the boiler is in charge of a person holding the certificate required by such rules :

Provided that any boiler registered, or any boiler certified or licensed, under any Act, hereby repealed shall be deemed to have been registered or certified, as the case may be, under this Act.

[* * *]¹

7. (1) The owner of any boiler which is not registered under the provisions of this Act may apply to the Inspector to have the boiler registered. Every such application shall be accompanied by the prescribed fee.

(2) On receipt of an application under sub-section (1), the Inspector shall fix a date, within thirty days or such shorter period as may be prescribed from the date of the receipt, for the examination of the boiler and shall give the owner thereof not less than ten days' notice of the date so fixed.

(3) On the said date the Inspector shall proceed to measure and examine the boiler and to determine in the prescribed manner the maximum pressure, if any, at which such boiler may be used, and shall report the result of the examination of the Chief Inspector in the prescribed form.

(4) The Chief Inspector, on receipt of the report, may—

(a) register the boiler and assign a register number thereto either forthwith or after satisfying himself that any structural alteration, addition or renewal which he may deem necessary has been made in or to the boiler or any steam-pipe attached thereto, or

(b) refuse to register the boiler :

Provided that where the Chief Inspector refuses to register a boiler, he shall forthwith communicate his refusal to the owner of the boiler together with the reasons therefor.

(5) The Chief Inspector shall, on registering the boiler, order the issue to the owner of a certificate in the prescribed form authorising the use of the boiler for a period not exceeding twelve months at a pressure not exceeding such maximum pressure as he thinks fit and as is in accordance with the regulations made under this Act.

(6) The Inspector shall forthwith convey to the owner of the boiler the orders of the Chief Inspector and shall in accordance therewith issue to the owner any certificate of which the issue has been ordered, and, where the boiler has been registered, the owner shall, within the prescribed period, cause the register number to be permanently marked thereon in the prescribed manner.

8. (1) A certificate authorising the use of a boiler shall cease to be in force—

(a) on the expiry of the period for which it was granted ; or

(b) when any accident occurs to the boiler ; or

(c) when the boiler is moved, the boiler not being a vertical boiler the heating surface of which is less than two hundred square feet, or a portable or vehicular boiler ; or

(d) when any structural alteration, addition or renewal is made in or to the boiler ; or

(e) if the Chief Inspector in any particular case so directs, when any structural alteration, addition, or renewal is made in or to any steam-pipe attached to the boiler ; or

(f) on the communication to the owner of the boiler of an order of the Chief Inspector or Inspector, prohibiting its use on the ground that it or any steam-pipe attached thereto is in a dangerous condition.

(2) Where an order is made under clause (f) of sub-section (1), the grounds on which the order is made shall be communicated to the owner with the order.

(3) When a certificate ceases to be in force, the owner of the boiler may apply to the Inspector for a renewal thereof for such period not exceeding twelve months as he may specify in the application.

(4) An application under sub-section (3) shall be accompanied by the prescribed fee and, on receipt thereof, the Inspector shall fix a date within thirty days or such shorter period as may be prescribed from the date of the receipt, for the examination of the boiler and shall give the owner thereof not less than ten days' notice of the date so fixed :

Provided that, where the certificate has ceased to be in force owing to the making of any structural alteration, addition or renewal, the Chief Inspector may dispense with the payment of any fee.

(5) On the said date the Inspector shall examine the boiler in the prescribed manner, and if he is satisfied that the boiler and the steam-pipe or steam-pipes attached thereto are in good condition shall issue a renewed certificate authorising the use of the boiler for such period not exceeding twelve months and at a pressure not exceeding such maximum pressure as he thinks fit and as is in accordance with the regulations made under this Act :

Provided that if the Inspector—

(a) proposes to issue any certificate—

(i) having validity for a less period than the period entered in the application, or

(ii) increasing or reducing the maximum pressure at which the boiler may be used, or

(b) proposes to order any structural alteration, addition or renewal to be made in or to the boiler or any steam-pipe attached thereto, or

(c) is of opinion that the boiler is not fit for use, the Inspector shall, within forty-eight hours of making the examination, inform the owner of the boiler in writing of his opinion and the reasons therefor, and shall forthwith report the case for orders to the Chief Inspector.

(6) The Chief Inspector, on receipt of a report under sub-section (5), may, subject to the provisions of this Act and of the regulations made hereunder, order the renewal of the certificate in such terms and on such conditions, if any, as he thinks fit, or may refuse to renew it :

Provided that where the Chief Inspector refuses to renew a certificate, he shall forthwith communicate his refusal to the owner of the boiler, together with the reasons therefor.

(7) Nothing in this section shall be deemed to prevent an owner of a boiler from applying for a renewed certificate therefor at any time during the currency of a certificate.

9. Where the Inspector reports the case of any boiler to the Chief Inspector under sub-section (3) of section 7 or sub-section (5) of section 8, he may, if the boiler is not a boiler the use of which has been prohibited under clause (f) of sub-section (1) of section 8, grant to the owner thereof a provisional order in writing permitting the boiler to be used at a pressure not exceeding such maximum pressure as he thinks fit and as is in accordance with the regulations made under this Act pending the receipt of the orders of the Chief Inspector. Such provisional order shall cease to be in force—

(a) on the expiry of six months from the date on which it is granted, or

(b) on receipt of the orders of the Chief Inspector, or

(c) in any of the cases referred to in clauses (b), (c), (d), (e) and (f) of sub-section (1) of section 8,

and on so ceasing to be in force shall be surrendered to the Inspector.

10. (1) Notwithstanding anything hereinbefore contained, when the

Use of boiler pending grant of certificate. period of a certificate relating to a boiler has expired the owner shall, provided that he has applied before the expiry of that period for a renewal of the certificate, be entitled to use the boiler at the maximum pressure entered in the former certificate pending the issue of orders on the application.

(2) Nothing in sub-section (1) shall be deemed to authorise the use of a boiler in any of the cases referred to in clauses (b), (c), (d), (e) and (f) of sub-section (1) of section 8 occurring after the expiry of the period of the certificate.

Revocation of certificate or provisional order. 11. The Chief Inspector may at any time withdraw or revoke any certificate or provisional order on the report of an Inspector or otherwise—

(a) if there is reason to believe that the certificate or provisional order has been fraudulently obtained or has been granted erroneously or without sufficient examination ; or

(b) if the boiler in respect of which it has been granted has sustained injury or has ceased to be in good condition ; or

(c) where the Provincial Government has made rules requiring that boilers shall be in charge of persons holding certificates of competency, if the boiler is in charge of a person not holding the certificate required by such rules ; or

(d) where no such rules have been made, if the boiler is in charge of a person who is not, having regard to the condition of the boiler in the opinion of the Chief Inspector competent to have charge thereof :

Provided that where the Chief Inspector withdraws or revokes a certificate or provisional order on the ground specified in clause (d), he shall communicate to the owner of the boiler his reasons in writing for the withdrawal or revocation, and the order shall not take effect until the expiry of thirty days from the receipt of such communication.

Alterations and renewals to boilers. 12. No structural alteration, addition or renewal shall be made in or to any boiler registered under this Act unless such alteration, addition or renewal has been sanctioned in writing by the Chief Inspector.

Alterations and renewals to steam-pipes. 13. Before the owner of any boiler registered under this Act makes any structural alteration, addition or renewal in or to any steam-pipe attached to the boiler, he shall transmit to the Chief Inspector a report in writing of his intention, and shall send therewith such particulars of the proposed alteration, addition or renewal as may be prescribed.

Duty of owner at examination. 14. (1) On any date fixed under this Act for the examination of a boiler, the owner thereof shall be bound—

(a) to afford to the Inspector all reasonable facilities for the examination and all such information as may reasonably be required of him ;

(b) to have the boiler properly prepared and ready for examination in the prescribed manner ; and

(c) in the case of an application for the registration of a boiler, to provide such drawings, specifications, certificates and other particulars as may be prescribed.

(2) If the owner fails, without reasonable cause, to comply with the provisions of sub-section (1), the Inspector shall refuse to make the examination and shall report the case to the Chief Inspector who shall, unless sufficient cause to the contrary is shown, require the owner to file a fresh application under section 7 or section 8, as the case may be and may forbid him to use the boiler notwithstanding anything contained in section 10.

Production of certificates, etc. 15. The owner of any boiler who holds a certificate or provisional order relating thereto, shall, at all reasonable times during the period for which the certificate or order is in force, be bound to produce the same when called upon to do so by a District Magistrate, Commissioner of Police or Magistrate of the

first class having jurisdiction in the area in which the boiler is for the time being, or by the Chief Inspector or by an Inspector or by any Inspector appointed under the Indian Factories Act, 1911, or by any person specially authorised in writing by a District Magistrate or Commissioner of Police.

16. If any person becomes the owner of a boiler during the period for which a certificate, or provisional order relating thereto is in force, the preceding owner shall be bound to make over to him the certificate or provisional order.

17. An Inspector may, for the purpose of inspecting or examining a boiler or any steam-pipe attached thereto or of seeing that any provision of this Act or of any regulation or rule made hereunder has been or is being observed, at all reasonable times, enter any place or building within the limits of the area for which he has been appointed in which he has reason to believe that a boiler is in use.

18. (1) If any accident occurs to a boiler or steam-pipe, the owner or person in charge thereof shall, within twenty-four hours of the accident, report the same in writing to the Inspector. Every such report shall contain a true description of the nature of the accident and of the injury, if any, caused thereby to the boiler or to the steam-pipe or to any person, and shall be in sufficient detail to enable the Inspector to judge of the gravity of the accident.

(2) Every person shall be bound to answer truly to the best of his knowledge and ability every question put to him in writing by the Inspector as to the cause, nature or extent of the accident.

Appeals to Chief Inspector. 19. Any person considering himself aggrieved by—

(a) an order made or purporting to be made by an Inspector in the exercise of any power conferred by or under this Act, or

(b) a refusal of an Inspector to make any order or to issue any certificate which he is required or enabled by or under this Act to make or issue, may, within thirty days from the date on which such order or refusal is communicated to him, appeal against the order or refusal to the Chief Inspector.

Appeals to appellate authority. 20. Any person considering himself aggrieved by an original or appellate order of the Chief Inspector—

(a) refusing to register a boiler or to grant or renew a certificate in respect of a boiler; or

(b) refusing to grant a certificate having validity for the full period applied for; or

(c) refusing to grant a certificate authorising the use of a boiler at the maximum pressure desired; or

(d) withdrawing or revoking a certificate or provisional order; or

(e) reducing the amount of pressure specified in any certificate or the period for which such certificate has been granted; or

(f) ordering any structural alteration, addition or renewal to be made in or to a boiler or steam-pipe or refusing sanction to the making of any structural alteration, addition or renewal in or to a boiler, may, within thirty days of the communication to him of such order, lodge with the Chief Inspector an appeal to an appellate authority to be constituted by the Provincial Government under this Act.

21. An order of an appellate authority under section 20 and, save as otherwise provided in sections 19 and 20, an order of the Chief Inspector or of an Inspector shall be final and shall not be called in question in any Court.

Minor penalties.

22. Any owner of a boiler who refuses or without reasonable excuse neglects—

(i) to surrender a provisional order as required by section 9, or

(ii) to produce a certificate or provisional order when duly called upon to do so under section 15, or

(iii) to make over to the new owner of a boiler a certificate or provisional order as required by section 16, shall be punishable with fine which may extend to one hundred rupees.

23. Any owner of a boiler who, in any case in which a certificate or provisional order is required for the use of a boiler under this Act, uses the boiler either without any such certificate or order being in force or at a higher pressure than that allowed thereby, shall be punishable with fine which may extend to five hundred rupees, and, in the case of a continuing offence, with an additional fine which may extend to one hundred rupees for each day after the first day in regard to which he is convicted of having persisted in the offence.

Other penalties.

24. Any person who—

(a) uses or permits to be used a boiler of which he is the owner and which has been transferred from one province to another without such transfer having been reported as required by section 6, or

(b) being the owner of a boiler fails to cause the registered number allotted to the boiler under this Act to be marked on the boiler as required by sub-section (6) of section 7, or

(c) makes any structural alteration, addition or renewal in or to a boiler without first obtaining the sanction of the Chief Inspector when so required by section 12, or to a steam-pipe without first informing the Chief Inspector, when so required by section 13, or

(d) fails to report an accident to a boiler or steam-pipe when so required by section 18, or

(e) tampers with a safety valve of a boiler so as to render it inoperative at the maximum pressure at which the use of a boiler is authorised under this Act, shall be punishable with fine which may extend to five hundred rupees.

25. (1) Whoever removes, alters, defaces, renders invisible or otherwise tampers with the register number marked on a boiler in accordance with the provisions of this Act or any Act repealed hereby, shall be punishable with fine which may extend to five hundred rupees.

(2) Whoever fraudulently marks upon a boiler a register number which has not been allotted to it under this Act or any Act repealed hereby, shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

26. No prosecution for an offence made punishable by or under this Act shall be instituted except within six months from the date of the commission of the offence, and no such prosecution shall be instituted without the previous sanction of the Chief Inspector.

27. No offence made punishable by or under this Act shall be tried by a Court inferior to that of a Presidency Magistrate or a Magistrate of the first class.

1[27-A. (1) A Board to be called the Central Boilers Board shall be constituted to exercise the powers conferred by section 28.

(2) The Board shall consist of fourteen members, namely:—

(a) a chairman to be nominated by the Central Government ;

LEG. REF.

¹Sec. 27-A inserted by Act XI of 1937.

Sec. 23.—The word 'owner' in sec. 23, has been used in its dictionary meaning and also includes an agent or other persons mentioned in sec. 2. The question whether an owner who is absent should or should not be prosecuted, and,

if prosecuted, how he should be dealt with, is one which depends upon the facts and circumstances of each particular case. As a mere proposition of law an absentee owner of a boiler, which is being used for his work comes within the purview of sec. 23. 16 P. 495=38 Cr.L.J. 1054=1937 P. 500.

(b) one member to be nominated by each of the Provincial Governments of Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces, ¹[and Berar] Assam, the North-West Frontier Province, Sind, and Orissa ;

(c) one member, holding office for a period of three years, to be nominated alternatively by the Provincial Government of Delhi and the Provincial Government of Ajmer-Merwara ; and

(d) one member to be nominated by the Chief Commissioner of Railways.

(3) Any vacancy occurring in the Board, otherwise than by the expiry of the term of office of the member referred to in clause (c) of sub-section (2) shall be filled as soon as may be by a nomination made by the authority by whom the member vacating office was nominated.

(4) The Board shall have full power to regulate by by-laws or otherwise its own procedure and the conduct of all business to be transacted by the Board.

(5) The powers of the Board may be exercised notwithstanding any vacancy in the Board.]

28. The ²[Board] may, by notification in the ³[Gazette of India] make regulations⁴ consistent with this Act for all or Power to make regulations. any of the following purposes, namely :—

(a) for laying down the standard conditions in respect of material, design and construction which shall be required for the purpose of enabling the registration and certification of a boiler under this Act ;

⁵[(aa) for prescribing the circumstances in which, the extent to which, and the condition subject to which variations from the standard conditions laid down under clause (a) may be permitted;]

(b) for prescribing the method of determining the maximum pressure at which a boiler may be used ;

(c) for regulating the registration of boilers, prescribing the fees payable therefor, the drawings, specifications, certificates and particulars to be produced by the owner, the method of preparing a boiler for examination, the form of the Inspector's report thereon, the method of marking the register number and the period within which such number is to be marked on the boiler ;

(d) for regulating the inspection and examination of boilers and steam-pipes, and prescribing forms of certificates therefor ;

(e) for ensuring the safety of persons working inside a boiler ; [and]

(f) for providing for any other matter which is not in the opinion of the ²[Board], a matter of merely local or provincial importance.⁶

29. The Provincial Government may, by notification in the Official Gazette, make rules⁷ consistent with this Act and the regulations made thereunder for all or any of the following Power to make rules. purposes, namely :—

LEG. REF.

¹ Inserted by A.O., 1937.

² Substituted by Act XI of 1937, sec. 5 for Governor-General in Council.

³ Substituted by Government of India (Adaptation of Indian Laws) Supplementary Order, 1937.

⁴ For Indian Boiler Regulations, 1924 see Gen. R. and O., Vol. v, p. 136.

Rules made before the 31st day of March, 1937, Continuance in under sec. 37 of the Indian Electricity Act, 1910, and regulations made under Act IX of 1910 and Act V of 1923.

before the 28th day of March, 1937, under sec. 28 of the Indian Boilers Act, 1923, by the Governor-General in Council, shall, on and from the

said dates respectively, be deemed to have been made under the said sections of the said Acts by the authority substituted for the Governor-General in Council by the Indian Electricity (Amendment) Act, 1937, and the Indian Boilers (Amendment) Act, 1937, respectively, and shall continue to be in force until superseded by rules or regulations made under the said sections of the said Acts by the Central Electricity Board or the Central Boilers Board, as the case may be (sec. 2 of Act XXIV of 1937).

⁵ Clause (aa) to sec. 28 inserted by Act XI of 1937.

⁶ See A.O. Supplementary, 1937.

⁷ For such rules for Coorg, see Notification No. 37, dated 31st March, 1925, in the Coorg District Gazette, 1925, Pt. I, p. 26.

(a) for prescribing the qualifications and duties of the Chief Inspector and of Inspectors, ¹[* * * * *] for prescribing or constituting authorities to which they shall respectively be subordinate and the limits of the administrative control to be exercised by such authorities ;

(b) for regulating the transfer of boilers ;

(c) for providing for the registration and certification of boilers in accordance with the regulations made under this Act ;

(d) for requiring boilers to be in charge of persons holding certificates of competency, and for prescribing the conditions on which such certificates may be granted ;

(e) for prescribing the times within which Inspectors shall be required to examine boilers under section 7 or section 8 ;

(f) for prescribing the fees payable for the issue of renewed certificates and the method of determining the amount of such fees in each case ;

(g) for regulating inquiries into accidents ;

(h) for constituting the appellate authority referred to in section 20, and for determining its powers and procedure.

(i) for determining the mode of disposal of fees, costs, and penalties levied under this Act ; and

²[(j) generally to provide for any other matter.]

³[* * * * *]

30. Any regulation or rule made under section 28 or section 29 may provide that a contravention thereof shall be punishable with fine which may extend to one hundred rupees.

31. (1) The power to make regulations and rules conferred by sections 28 and 29 shall be subject to the condition of the regulations and rules being made after previous publication.

(2) Regulations and rules so made shall be published in the Gazette of India and the Local Official Gazette, respectively and on such publication, shall have effect as if enacted in this Act.

Recovery of fees, etc.

32. All fees, costs and penalties levied under this Act shall be recoverable as arrears of land revenue.

Applicability to the Crown.

33. Save as otherwise expressly provided, this Act shall apply to boilers and steam-pipes belonging to the Crown.

34. In case of any emergency, the Provincial Government may, by general or special order in writing, exempt, any boiler or steam-pipe from the operation of all or any of the provisions of this Act.

35. [Repeal of Enactments.] Repealed by Sec. 2 and Sch. of the Repealing Act (XII of 1927).

THE SCHEDULE.

[Enactments Repealed] Repealed by Sec. 2 and such of the Repealing Act (XII of 1927).

LEG. REF.

¹ Words "for regulating their salary, allowances and conditions of service" omitted by A.O., 1937.

² Clause (j) substituted by *ibid.*

³ Proviso omitted by *ibid.* But see also *ibid.*, Supplementary Order 1937.

THE CANTONMENTS ACT (II OF 1924).

[Extracts].

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EFFECT OF LEGISLATION.

Year.	No.	Short title.	How repealed or otherwise affected by Legislation.
1924	II	The Cantonments Act, 1924.	Am., Act VII of 1925; Act XXXV of 1926; Act X of 1927; Act XXVI of 1927; Act VIII of 1930; Act VII of 1931; Act XVII of 1932; Act XXIV of 1934; Act XII of 1935; Act XXIV of 1936; Act XXXIV of 1939; Act XXXI of 1940; Act XXXII of 1940; Act XV of 1942; Act VIII of 1944; Government of India (Adaptation of Indian Laws) Order, 1937. Rep. in pt., Act XII of 1927.

An Act to consolidate and amend the law relating to the administration of cantonments.

WHEREAS it is expedient to consolidate and amend the law relating to the administration of cantonments; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement. 1. (1) This Act may be called THE CANTONMENTS, ACT, 1924.

(2) It extends to the whole of British India, including British Baluchistan.

LEG. REF.

¹ For statement of objects and Reasons, see *Gazette of India*, 1923, Pt. V, p. 220, and for Report of Select Committee, see *ibid.*, p. 270.

SEC. 1.—The Secretary of State is absolute owner of all Cantonment lands, unless it can be proved that he parted with it. There can be no adverse possession against him. A person occupying land in Cantonments not specifically transferred to him by the Secretary of State, can only hold it as a licensee from him, who could eject him at will by revoking his licence. 66 I.C. 582 = 1922 All. 57. The mere fact that certain lands are declared by Government to be within a Cantonment area does not vest their ownership in the Government unless it is shown that the lands were acquired by the Government for that purpose. 81 C.W.N. 1033 = 1927 Cal. 786. All land within Cantonment area does not necessarily belong to Government. (*Ibid.*) It is not the necessary implication of the second paragraph of cl. (6) of Ben. Cantonment Regulations, though the rules suggest that the greater part of the land was at that time Government property. 57 I.A. 339 = 58 C. 858 = 60 M.L.J. 142 (P.C.). Where subsequent to the establishment of a Cantonment the ownership of the land within it becomes vested in the Secretary of State and the prior owners of the land were compensated for the loss of such rights as they may have actually suffered, it is a fair presumption that the amount of compensation would vary according to whether the prior ownership

was deprived wholly of ownership and possession or whether he was deprived only of ownership and allowed to remain in possession as licensee without the payment of any rent. 1930 All. 587 = 128 I.C. 441. The Peshawar Cantonment Board, as representing the Secretary of State who acquired the Peshawar Cantonment by purchase, is the owner of all the lands situate within the Cantonment and is entitled to eject a licensee in possession on payment of compensation in respect of structures or improvements, if any, made by him. 142 I.C. 657 = 1933 Pesh. 56. See also 1944 Pesh. 34. Subsequent to the establishment of Cantonment possession of one enclosed plot of land was found to be with original owner described as 'malick' in official records, who subsequently built on portion of land with permission of Cantonment authorities and let out buildings for shops. Permission to build is not licence with regard to site for shops only but original owner continued to be licensee of whole plot of land. 1930 All. 587. Where Army Regulations were in force by which a house could not be sold at all to Civilians and later on it was allowed to be sold with the sanction of the Commanding Officer, *held*, in the absence of evidence as to the actual terms, it must be presumed that the permission was subject to a reservation about sanction. 46 A. 427 = 1924 All. 415. Therefore every transfer made with the permission of the military authority must be treated as indicating an admission of a new licence upon the prevailing conditions. (*Ibid.*) A transfer without sanction furnishes a cause of action for a de-

(3) The Central Government may, by notification in the Official Gazette, direct that this Act, or any provisions thereof which he may specify, shall come into force on such date as he may appoint in this behalf.

* * * *

CHAPTER IV.

SPIRITUOUS LIQUORS AND INTOXICATING DRUGS.

56. If within a cantonment, or within such limits adjoining a cantonment

Unauthorised sale of spirituous liquor or intoxicating drug.

as the Central Government may, by notification in the Official Gazette, define, any person not subject to military or air-force law or any person subject to military or air-force law otherwise than as a military officer or a soldier knowingly barter, sells or supplies, or offers or attempts to barter, sell or supply, any spirituous liquor or intoxicating drug to or for the use of any soldier or follower or soldier's wife or minor child without the written permission of the ¹[Officer Commanding the station] or of some person authorised by the ¹[Officer Commanding the station] to grant such permission, he shall be punishable with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

Unauthorised possession of spirituous liquor.

57. If within a cantonment, or within any limits defined under section 56,—

(a) any person subject to military or air-force law or otherwise than as a military officer or a soldier, or

(b) the wife or servant of any such person or of a soldier, has in his or her possession, except on behalf of the ²[Central] Government or for the private use of a military officer, more than one quart of any spirituous liquor, other than fermented malt-liquor, without the written permission of the ¹[Officer Commanding the station] or of some person authorised by the ¹[Officer Commanding the station] to grant such permission, he or she shall be punishable, in the case of a first offence, with the fine which may extend to fifty rupees, and, in the case of a subsequent offence, with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees.

58. (1) Any police officer or excise officer may, without an order from a

Arrest of persons and seizure and confiscation of things for offences against the two last foregoing sections.

Magistrate and without a warrant, arrest any person whom he finds committing an offence under section 56 or section 57, and may seize and detain any spirituous liquor or intoxicating drug in respect of which such an offence has been committed and any vessels or coverings in which the liquor or drug is contained.

(2) Where a person accused of an offence under section 56 has been previously convicted of an offence under that section, an officer in charge of a police station may, with the written permission of a Magistrate, seize and detain any spirituous liquor or intoxicating drug within the cantonment or within any limits defined under that section which, at the time of the alleged commission of the subsequent offence, belonged to, or was in the possession of, such person.

(3) The Court convicting a person of an offence under section 56 or sec-

LEG. REF.

¹ Substituted by Act VII of 1925.

² Word 'Central' inserted by A.O., 1937.

claration that it was not binding on the Secretary of State. (*Ibid.*) The rights of the occupier to sell the materials of the house are not affected by the Regulation, 46 A. 427=1924 All. 415.

Sites in cantonments are normally held under the Governor-General's Order No. 179 of 1936. This order does not confer upon the licensee the ownership of the trees stan-

ding thereon, though such trees can be cut lawfully under orders from the Executive. *RTD 95* "Spirituuous liquor" *enq* *to* *sepproqups* 266=A.I.R. 1944 Pesh. 34.

Sec. 56.—Meaning of terms—"Barter" or "Sells". 9 Bom.L.R. 703=31 B. 523; "Supplies"—Servant supplying liquor to *master* is no offence, *ibid.*; "Soldier", who is. 3 A. 214, "Spirituuous liquor," Beer not such. 7 M.H.C. (App.) 15; "Sentences", whipping not proper under the section. *Est.* 682.

tion 57 may order the confiscation of the whole or any part of anything seized under sub-section (1) or sub-section (2).

(4) Subject to the provisions of Chapter XLIII of the Code of Criminal Procedure, 1898, anything seized under sub-section (1) or sub-section (2) and not confiscated under sub-section (3) shall be restored to the person from whom it was taken.

59. The foregoing provisions of this Chapter shall not apply the sale or supply of any article in good faith for medicinal purposes by a medical practitioner, chemist or druggist authorised in this behalf by a general or special order of the ¹[Officer Commanding the station].

* * * * *

CHAPTER XIV.

REMOVAL AND EXCLUSION FROM CANTONMENTS AND SUPPRESSION OF SEXUAL IMMORALITY.

235. The ²[Officer Commanding the station] may, on receiving information that any building in the cantonment is used as a brothel or for purposes of prostitution, by order in writing setting forth the substance of the information received, summon the owner, lessee, tenant or occupier of the building to appear before him either in person or by an authorised agent, and, if the ³[Officer Commanding the station], is then satisfied as to the truth of the information, he may, by order in writing, direct the owner, lessee, tenant or occupier, as the case may be, to discontinue such use of the building within such period as may be specified in the order.

236. (1) Whoever in a cantonment loiters for the purpose of prostitution or importunes any person to the commission of sexual immorality, shall be punishable with imprisonment which may extend to one month, or with fine which may extend to two hundred rupees.

Penalty for loitering and importuning for purposes of prostitution.

(2) No prosecution for an offence under this section shall be instituted except on the complaint of the person importuned, or of a military officer in whose presence the offence was committed, or of a member of the Military or Air Force Police, being employed in the cantonment and authorised in this behalf by the ³[Officer Commanding the station], in whose presence the offence was committed, or of a police officer not below the rank of a sub-inspector, ⁴[or a sergeant] who is employed in the cantonment and authorised in this behalf by the ³[Officer Commanding the station] ⁴[with the concurrence of the District Magistrate].

LEG. REF.

¹ Substituted by Act VII of 1925.

² These words were substituted by sec. 10 of the Cantonments (Amendment) Act, 1925 (VII of 1925).

³ Substituted by sec. 14, *ibid*.

⁴ In sub-sec. (2) of sec. 236, after the word "sub-inspector" the words "or a sergeant" have been inserted and after the words "Officer commanding the station" where they occur the second time, the words "with the concurrence of the District Magistrate" have been added by Act VII of 1931.

SEC. 236 (1).—There is nothing in the wording of sec. 236 (1) which requires that the person importuning must importune to the commission of sexual immorality with himself or herself. 37 Cr.L.J. 372=1936 A.

L.J. 193=1936 AIL 129. A Magistrate can convict a male of the offence of loitering for the purpose of prostitution under sec. 236 (1). 28 Bom.L.R. 298=27 Cr.L.J. 555=1926 Bom. 227.

SEC. 236 (2): PROSECUTION BY EXECUTIVE OFFICER—LEGALITY OF.—In order that a person can be legally convicted under sec. 236, it is necessary that it should be instituted strictly in accordance with the provisions laid down in sub-sec. (2), sec. 236. An Executive Officer of a Cantonment launched a prosecution under sec. 236 against the accused and the accused was convicted under that section. The Executive Officer was not the person importuned, nor did the prosecution allege that the offence was committed in his presence or that he had been authorized in this behalf by the Officer Commanding the

237. If the ¹[Officer Commanding the station] is, after such inquiry as he thinks necessary, satisfied that any person residing in or frequenting the cantonment is a prostitute or has been convicted of an offence under section 236, or of the abatement of such an offence, he may cause to be served on such person an order in writing requiring such person to remove from the cantonment within such time as may be specified in the order and prohibiting such person from re-entering it without the permission in writing of the ¹[Officer Commanding the station].

Removal and exclusion from cantonments of disorderly persons.

238. (1) A Magistrate of the first class, having jurisdiction in a cantonment, on receiving information that any person residing in or frequenting the cantonment—

(a) is a disorderly person who has been convicted more than once of gaming or who keeps or frequents a common gaming house, a disorderly drinking shop or a disorderly house of any other description, or

(b) has been convicted more than once, either within the cantonment or elsewhere, of an offence punishable under Chapter XVII of the Indian Penal Code, or

(c) has been convicted, either within the cantonment or elsewhere; of any offence punishable under section 156 of the Army Act, or

(d) has been ordered under Chapter VIII of the Code of Criminal Procedure, 1898, either within the cantonment or elsewhere, to execute a bond for his good behaviour,

may record in writing the substance of the information received, and may issue a summons to such person requiring such person to appear and show cause why he should not be required to remove from the cantonment and be prohibited from re-entering it.

(2) Every summons issued under sub-section (1) shall be accompanied by a copy of the record aforesaid, and the copy shall be served along with the summons on the person against whom the summons is issued.

(3) The Magistrate shall, when the person so summoned appears before him, proceed to inquire into the truth of the information received and take such further evidence as he thinks fit, and if, upon such inquiry, it appears to him that such person is a person of any kind described in sub-section (1) and that it is necessary for the maintenance of good order in the cantonment that such person should be required to remove therefrom and be prohibited from re-entering the cantonment, the Magistrate shall report the matter to the ¹[Officer Commanding the station], and, if the ¹[Officer Commanding the station] so directs, shall cause to be served on such person an order in writing requiring him to remove from the cantonment within such time as may be specified in the order and prohibiting him from re-entering it without the permission in writing of the ¹[Officer Commanding the station].

239. (1) If any person in a cantonment causes or attempts to cause or does any act which he knows is likely to cause disloyalty, disaffection or breaches of discipline amongst any portion of His Majesty's forces or is a person who, the ¹[Officer Commanding the station] has reason to believe, is likely to do any such act, the ¹[Officer Commanding the station] may make an order in writing setting forth the reasons for the making of the same and requiring such person to remove from the cantonment within such time as may be specified in the order and prohibiting him from re-entering it without the permission in writing of the ¹[Officer Commanding the station]:

Provided that no order shall be made under this section against any

LEG. REF.

¹Substituted by Act VII of 1925.

person unless he has had a reasonable opportunity of being informed of the grounds on which it is proposed to make the order and of showing cause why the order should not be made.

(2) Every order made under sub-section (1) shall be sent to the Superintendent of Police of the district, who shall cause a copy thereof to be served on the person concerned.

(3) Upon the making of any order under sub-section (1), the ¹[Officer Commanding the station] shall forthwith send a copy of the same to the Central Government.

(4) The Central Government may, of its own motion, and shall, on application made to it in this behalf within one month of the date of the order by the person against whom the order has been made, call upon the District Magistrate to make, after such inquiry as the Central Government may prescribe, a report regarding the justice of the order and the necessity therefor. At every such inquiry the person against whom the order has been made shall be given an opportunity of being heard in his own defence.

(5) The Central Government may, at any time after the receipt of a copy of an order sent under sub-section (3) or, where a report has been called for under sub-section (4), on receipt of that report, if it is of opinion that the order should be varied or rescinded, ²[make] such orders thereon as ³[it] thinks fit.

(6) Any person who has been excluded from a cantonment by an order made under this section may, at any time after the expiry of one month from the date thereof, apply to the Officer Commanding-in-Chief, the Command, for the rescission of the same and, on such application being made, the said Officer may, after making such inquiry, if any, as he thinks necessary, either reject the application or rescind the order.

Penalty. 240. Whoever—

(a) fails to comply with an order issued under this Chapter within the period specified therein, or, whilst an order prohibiting him from re-entering a cantonment without permission is in force, re-enters the cantonment without such permission, or

(b) knowing that any person has, under this Chapter, been required to remove from the cantonment and has not obtained the requisite permission to re-enter it, harbours or conceals such person in the cantonment, shall be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing offence with an additional fine which may extend to twenty rupees for every day after the first during which he has persisted in the offence.

CHAPTER XV.

POWERS, PROCEDURE, PENALTIES AND APPEALS.

Entry and Inspection.

241. It shall be lawful for the President or the Vice President of a Board, or the Executive Officer, or the Health Officer or

¹Powers of entry. Assistant Health Officer, or any person specially authorised by the Health Officer or the Assistant Health Officer, or for any other person authorised by general or special order of a Board in this behalf, to enter into or upon any building or land with or without assistants or workmen in order to make any inquiry, inspection, measurement, valuation or survey, or to execute any work, which is authorised by or under this Act or which it is necessary to make or execute for any of the purposes or in pursuance of any of the provisions of this Act or of any rule, bye-law or order made thereunder:

LEG. REF.

¹ Substituted by Act VII of 1925.

² Substituted for words "refer the case to

the Governor-General in Council, who shall pass" by A.O., 1937.

³ Substituted for word 'he' by A.O., 1937.

Provided that nothing in this section shall be deemed to confer upon any person any power such as is referred to in section 207 or section 215 or to authorise the conferment upon any person of any such power.

242. With the previous sanction of the President, any member of a Board

Powers of inspection by member of a Board. may inspect any work or institution constructed or maintained, in whole or part, at the expense of the Board, and any register, book, accounts or other document belonging to, or in the possession of, the Board.

Power of inspection, etc. 243. (1) A Board may, by general or special order, authorise any person—

(a) to inspect any drain, privy, latrine, urinal, cesspool, pipe, sewer or channel in or on any building or land in the cantonment, and, in his discretion, to cause the ground to be opened for the purpose of preventing or removing any nuisance arising from the drain, privy, latrine, urinal, cesspool, pipe, sewer or channel, as the case may be;

(b) to examine works under construction in the cantonment, to take levels or to remove, test, examine, replace or read any meter.

(2) If, on such inspection, the opening of the ground is found to be necessary for the prevention or removal of a nuisance, the expenses thereby incurred shall be paid by the owner or occupier of the land or building, but if it is found that no nuisance exists or but for such opening would have arisen, the ground or portion of any building, drain or other work opened, injured or removed for the purpose of such inspection shall be filled in, reinstated, or made good, as the case may be, by the Board.

244. (1) The Executive Officer of a cantonment may, with or without assistants or workmen, enter on any land within fifty yards of any work authorised by or under this Act for the purpose of depositing thereon any soil, gravel, stone or other materials, or of obtaining access to such work, or for any other purpose connected with the carrying on of the same.

(2) The Executive Officer shall, before entering on any land under subsection (1), give the occupier, or, if there is no occupier, the owner not less than three days' previous notice in writing of his intention to make such entry, and shall state the purpose thereof, and shall, if so required by the occupier or owner, fence off so much of the land as may be required for such purpose.

(3) The Executive Officer shall, in exercising any power conferred by this section, do as little damage as may be, and compensation shall be payable, by the Board to the owner or occupier of such land, or to both for any such damage whether permanent or temporary.

245. It shall be lawful for any person, authorised by or under this Act to

Breaking into premises. make any entry into any place, to open or cause to be opened any door, gate or other barrier—

(a) if he considers the opening thereof necessary for the purpose of such entry; and

(b) if the owner occupier is absent, or being present refuses to open such door, gate or barrier.

246. Save as otherwise expressly provided in

Entry to be made in the day time. this Act, no entry authorised by or under this Act shall be made except between the hours of sunrise and sunset.

247. Save as otherwise expressly provided in this Act, no building or land

SEC. 247.—The entry which is contemplated in sec. 247 is one without the consent of the occupier or the owner. Where the entry is with the implied consent of such occupier

or owner, no question of written notice arises. 153 L.C. 469=36 Cr.L.J. 356=1935 All. 160.

Owner's consent ordinarily to be obtained. shall be entered without the consent of the occupier, or if there is no occupier, of the owner thereof, and no such entry shall be made without giving the said occupier or owner, as the case may be, not less than four hours' written notice of the intention to make such entry:

Provided that no such notice shall be necessary if the place to be inspected is a stable for horses or a shed for cattle, or a latrine, privy or urinal or a work under construction.

248. When any place used as a human dwelling is entered under this Act, due regard shall be paid to the social and religious customs and usages of the occupants of the place entered, and no apartment in the actual occupancy of a female shall be entered or broken open until she has been informed that she is at liberty to withdraw and every reasonable facility has been afforded to her for withdrawing.

249. Whoever obstructs or molests any person employed by a Board who is not a public servant within the meaning of section 21 of the Indian Penal Code or any person with whom the Board has lawfully contracted, in the execution of his duty or of anything which he is empowered or required to do by virtue or in consequence of any of the provisions of this Act or of any rule, by-law or order made thereunder, or in fulfilment of his contract, as the case may be, shall be punishable with fine which may extend to one hundred rupees.

Powers and Duties of Police Officers.

250. Any member of the police force employed in a cantonment may, without a warrant, arrest any person committing in his view a breach of any of the provisions of this Act which are specified in Schedule IV:

Provided that—

(a) in the case of the breach of any provision as is specified in Part B of Schedule IV, no person shall be so arrested who consents to give his name and address, unless there is reasonable ground for doubting the accuracy of the name or address so given, the burden of proof of which shall lie on the arresting officer, and no person so arrested shall be detained after his name and address have been ascertained; and

(b) no person shall be so arrested for an offence under section 236 except—

(i) at the request of the person importuned or of a military officer in whose presence the offence was committed; or

(ii) by or at the request of a member of the Military or Air Force Police, who is employed in the cantonment and authorised in this behalf by the ¹[Officer Commanding the station], and in whose presence the offence was committed or by or at the request of any police officer not below the rank of a Sub-Inspector who is employed in the cantonment and authorised in this behalf by the ¹[Officer Commanding the station].

251. It shall be the duty of all police officers to give immediate information to the Board of the commission of any offence against the provisions of this Act or of any rule or bye-law made thereunder, and to assist all cantonment officers and servants in the exercise of their lawful authority.

LEG. REF.

¹ Substituted by Act VII of 1925.

SEC. 249: OBSTRUCTION—REFUSAL TO PAY RENT.—Where a tenant, who is liable to pay rent to a contractor of the Cantonment Committee who has been duly authorized to col-

lect rent from him, refuses to pay rent either to him or to his servant, the mere refusal to pay rent does not amount to an obstruction within the purview of sec. 249. Therefore an action for malicious prosecution lies against the complainant: 188 I.C. 282=1932 All. 386.

Notices.

252. Where any notice, order or requisition made under this Act or any rule or bye-law made thereunder requires anything to be done for the doing of which no time is fixed in this Act or in the rule or bye-law, the notice, order or requisition shall specify a reasonable time for doing the same.

Authentication and validity of notices issued by Board. 253. Every notice, order or requisition issued by a Board under this Act or any rule or bye-law made thereunder shall be signed—

(a) ¹[* * * *] either by the President of the Board or by the Executive Officer, ²[* * * *]; or

(b) by the members of any committee especially authorised by the Board in this behalf.

254. (1) Every notice, order or requisition issued under this Act or any rule or bye-law made thereunder shall, save as otherwise expressly provided, be served or presented—

(a) by giving or tendering the notice, order or requisition, or sending it by post, to the person for whom it is intended; or

(b) if such person cannot be found, by affixing the notice, order or requisition on some conspicuous part of his last known place of abode or business, if within the cantonment, or by giving or tendering the notice, order or requisition to some adult male member or servant of his family, or by causing it to be affixed on some conspicuous part of the building or land, if any, to which it relates.

(2) When any such notice, order or requisition is required or permitted to be served upon an owner, lessee or occupier of any building or land, it shall not be necessary to name the owner, lessee or occupier therein, and the service thereof shall, save as otherwise expressly provided, be effected either—

(a) by giving or tendering the notice, order or requisition, or sending it by post, to the owner, lessee or occupier, or, if there are more owners, lessees or occupiers than one, [to any one of them]³, or

(b) if no such owner, lessee or occupier can be found, by giving or tendering the notice, order or requisition to the authorised agent, if any, of any such owner, lessee or occupier or to an adult male member of servant of the family of any such owner, lessee or occupier, or by causing it to be affixed on some conspicuous part of the building or land to which it relates.

(3) When the person on whom a notice, order or requisition is to be served is a minor, service upon his guardian or upon an adult male member or servant of his family shall be deemed to be service upon the minor.

255. Every notice which, by or under this Act, is to be given or served as a public notice or as notice which is not required to be given to any individual therein specified shall, save as otherwise expressly provided, be deemed to have been sufficiently given or served if a copy thereof is affixed in such conspicuous part of the office of the Board, or in such other public place, during such period or is published in such local newspaper or in such other manner, as the Board may direct.

256. In the event of non-compliance with the terms of any notice, order or requisition issued to any person under this Act, or any rule or bye-law made thereunder, requiring such person to execute any work or to do any act, it shall be lawful for the Board whether or not the person in default is liable to punishment for such default or has been prosecuted or sen-

LEG. REF.

¹ Words 'where there is a Board' omitted by Act XXIV of 1936.

² Words 'or, where there is no Board, etc.' omitted by *ibid.*

³ Substituted by Act XXXII of 1940.

tenced to any punishment therefor, after giving notice in writing to such person, to take such action or such steps as may be necessary for the completion of the act or work required to be done or executed by him and all the expenses incurred on such account shall be recoverable by the Board. .

Recovery of Money.

257. (1) If any such notice as is referred to in section 256 has been given

Liability of occupier to pay in default of owner. to any person in respect of property of which he is the owner, the Board may require any occupier of such property or of any part thereof to pay to it, instead of to the owner, any rent payable by him in respect of such property, as it falls due, up to the amount recoverable from the owner under section 256:

Provided that, if the occupier, on application made to him by the Board, refuses truly to disclose the amount of his rent or the name or address of the person to whom it is payable, the Board may recover from the occupier the whole amount recoverable under section 256.

(2) Any amount recovered from an occupier instead of from an owner under sub-section (1) shall, in the absence of any contract between the owner and the occupier to the contrary, be deemed to have been paid to the owner.

258. (1) Where any person, by reason of his receiving the rent of immovable property as an agent or trustee, or of his being as an agent or trustee the person who would receive the rent if the property were let to a tenant, would under this Act be bound to discharge any obligation imposed on the owner of the property for the discharge of which money is required, he shall not be bound to discharge the obligation unless he has, or but for his own improper act or default might have had, funds in his hands belonging to the owner sufficient for the purpose.

(2) The burden of proving any fact entitling an agent or trustee to relief under sub-section (1) shall lie upon him.

(3) Where any agent or trustee has claimed and established his right to relief under this section, the Board may, by notice in writing, require him to apply to the discharge of such obligation as aforesaid the first monies which may come to his hands on behalf, or for the use, of the owner, and, on failure to comply with the notice, he shall be deemed to be personally liable to discharge the obligation.

¹[259. (1) Notwithstanding anything elsewhere contained in this Act, arrears of any tax and any other money recoverable by a Board under this Act may be recovered together with the cost of recovery either by suit or, on application to a Magistrate having

LEG. REF.

¹Sec. 259 substituted for old section by Act XXIV of 1936.

SEC. 259.—The expression “recoverable by the Cantonment Authority under the Act” does not include the case of money due under ordinary contract between that authority and others. It merely applies to such dues as are recoverable by the Cantonment Authority under the express provisions of certain sections of this Act which entitle it to levy fees for permitting certain acts to be done. Where therefore the Cantonment Authority proceeds to recover arrears of rent due from a tenant by distress and sale of his immovable property its action is illegal and makes the Authority liable to pay damages to the tenant for its illegal action. 150 I.C. 682 =1933 Lah. 517. A magistrate acting under

sec. 259 has jurisdiction to decide whether the conditions under which the Cantonment Authority can resort to him are fulfilled or not. But he is not entitled to go into questions for which a separate remedy exists under the Act to the person from whom recovery is sought. 1938 A.M.L.J. 18. Where there is a revocation of certain remission of tax and the Cantonment Board applies under sec. 259 of the Act for recovery of the amounts due, its claim is only for arrears of taxes. The circumstance that the amount was once remitted does not change the nature of the claim. 1938 A.M.L.J. 18. Sec. 259 is not necessarily confined to arrears of tax due prior to the amendment. The amendment creates no fresh liability to pay, nor does it enlarge the liability. It merely provides a machinery for recovery. 1938 A.M. L.J. 18.

jurisdiction in the cantonment¹ or in any place where the person from whom such tax or money is recoverable may for the time being be residing, by the distress and sale of any movable property of, or standing timber, growing crops or grass belonging to, such person which is within the limits of such Magistrate's jurisdiction, and shall, if payable by the owner of any property as such, be a charge on the property until paid:

Provided that the tools of artisans shall be exempt from such distress or sale.

(2) An application to a Magistrate under sub-section (1) shall be in writing and shall be signed by the President or Vice-President of the Board or by the Executive Officer, but shall not require to be personally presented.]

Committees of Arbitration.

260. In the event of any disagreement as to the liability of a Board to pay any compensation under this Act, or as to the amount of any compensation so payable, the person claiming such compensation may apply to the Board for the reference of the matter to a Committee of Arbitration, and the Board shall forthwith proceed to convene a Committee of Arbitration to determine the matter in dispute.

261. When a Committee of Arbitration is to be convened, the Board shall cause a public notice to be published stating the matter to be determined, and shall forthwith send copies of the order to the District Magistrate, and to the other party concerned, and shall, as soon as may be, nominate such members of the Committee as it is entitled to nominate under section 262, and, by notice in writing call upon the other persons who are entitled to nominate a member or members of the Committee to nominate such member or members in accordance with the provisions of that section.

262. (1) Every Committee of Arbitration shall consist of five members, namely:—

(a) a Chairman who shall be a person not in the service of the ¹[Crown] or the Board, and who shall be nominated by the ²[Officer Commanding the station];

(b) two persons nominated by the Board; and

(c) two persons nominated by the other party concerned ³[* * *].

(2) If the Board or the other party concerned or the ²[Officer Commanding the station] fails within seven days of the date of issue of the notice referred to in section 261 to make any nomination which it or he is entitled to make or, if any member who has been so nominated neglects or refuses to act and the Board or other person by whom such member was nominated fails to nominate another member in his place within seven days from the date on which it or he may be called upon to do so by the District Magistrate, the District Magistrate shall forthwith appoint a member or members, as the case may be, to fill the vacancy or vacancies.

263. (1) No person who has a direct interest in the matter under reference, or whose services are not immediately available for the purposes of the Committee, shall be nominated a member of a Committee of Arbitration.

(2) If, in the opinion of the District Magistrate, any person who has been nominated has a direct interest in the matter under reference, or is other-

LEG. REF.

¹ Substituted for 'Government' by A.O., 1937.

² Substituted by Act VII of 1925.

³ Words 'who shall be persons liable to pay taxes in the Cantonment and ordinarily resident therein or in the immediate vicinity thereof' omitted by Act XXIV of 1936.

wise disqualified for nomination, or if the services of any such person are not immediately available as aforesaid, and if the Board or other person by whom any such person was nominated fails to nominate another member within seven days from the date on which it or he may be called upon to do so by the District Magistrate, such failure shall be deemed to constitute a failure to make a nomination within the meaning of section 262.

264. (1) When a Committee of Arbitration has been duly constituted, the Board shall, by notice in writing, inform each of the members of the fact, and the Committee shall meet as soon as may be thereafter.

Meetings and powers of Committees of Arbitration.

(2) The Chairman of the Committee shall fix the time and place of meetings, and shall have power to adjourn any meeting from time to time as may be necessary.

(3) The Committee shall receive and record evidence, and shall have power to administer oaths to witnesses, and, on requisition in writing signed by the Chairman of the Committee, the District Magistrate shall issue the necessary processes for the attendance of witnesses and the production of documents required by the Committee, and may enforce the said processes as if they were processes for attendance or production before himself.

265. (1) The decision of every Committee of Arbitration shall be in accordance with the majority of votes taken at a meeting at which the Chairman and at least three of the other members are present.

Decisions of Committees of Arbitration.

(2) If there is not a majority of votes in favour of any proposed decision, the opinion of the Chairman shall prevail.

(3) The decision of a Committee of Arbitration shall be final and shall not be questioned in any Court.

Prosecutions.

266. ¹[(1)] Save as otherwise expressly provided in this Act, no Court shall proceed to the trial of any offence made punishable by or under this Act, other than an offence specified in Schedule IV, except on the complaint of, or upon information received from, the Board concerned or a person authorised by the Board by a general or special order in this behalf.

Prosecutions.

¹[(2) No offence made punishable under this Act shall be tried by any Magistrate or by any Bench, if such Magistrate or any of the Magistrates composing the Bench is a member of the Board.]

LEG. REF.

¹Sec. 266 renumbered as sub-sec. (1) of sec. 266 and sub-sec. (2) of sec. 266 inserted by Act XXIV of 1936.

SEC. 266: INTERPRETATION.—Sec. 266 only lays down that no Court shall proceed to the trial of any offence under the Act unless moved by the persons mentioned therein and if the persons mentioned therein initiate the proceedings as provided in the section, the Court must follow the procedure laid down in Cr. P. Code. 109 I.C. 607=29 Cr. L.J. 591 (Nag.). Where the prosecution of a person for an offence not specified in Sch. IV of this Act is instituted on a letter which is a personal application by the Executive Officer of the Cantonment Authority for his prosecution, and it is not shown that the Executive Officer is authorised by the Cantonment Authority by a general or special

order to act on its behalf in such a proceeding, the complaint is not made in the manner required by sec. 266 of the Act and a conviction thereon is liable to be set aside. 158 I.C. 1010=36 Cr.L.J. 1493=1935 A. 905. A complaint was lodged by the Cantonment Board through a Sub-Overseer, signed by the Executive Officer of the Board. The Executive Officer never appeared before the Magistrate. Sub-Overseer did not hold any power of attorney on behalf of the Board. No power of authority was filed to show that the Executive Officer had any authority to lodge such a complaint. On conviction the accused filed a revision. The Executive Officer filed an affidavit that he had an authority to file the complaint. *Held*, that failure to file the authority is an omission curable under sec. 537, Cr. P. Code. 29 Cr.L.J. 822 =1928 Lah. 946.

267. (1) A Board, or any person authorised by it, by general or special order in this behalf, may, either before or after the institution of the proceedings, compound any offence made punishable by or under this Act other than an offence under Chapter XIV:

Provided that no offence shall be compoundable which is committed by failure to comply with a notice, order or requisition issued by or on behalf of the Board, unless and until the same has been complied with in so far as compliance is possible.

(2) Where an offence has been compounded, the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of the offence so compounded.

General Penalty Provisions.

268. Whoever, in any case in which a penalty is not expressly provided by this Act, fails to comply with any notice, order or requisition issued under any provision thereof, or otherwise contravenes any of the provisions of this Act, shall be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing failure or contravention, with an additional fine which may extend to twenty rupees for every day after the first during which he has persisted in the failure or contravention.

269. Where any person to whom a licence has been granted under this Act or any agent or servant of such person commits a breach of any of the conditions thereof, or of any bye-law made under this Act for the purpose of regulating the manner or circumstances in, or the conditions subject to, which anything permitted by such licence is to be or may be done, the Board may, without prejudice to any other penalty which may have been incurred under this Act, by order in writing, cancel the licence or suspend it for such period as it thinks fit:

Provided that no such order shall be made until an opportunity has been given to the holder of the licence to show cause why it should not be made.

270. Where any person has incurred a penalty by reason of having caused any damage to the property of a Board, he shall be liable to make good such damage, and the amount payable in respect of the damage shall, in case of dispute, be determined by the Magistrate by whom the person incurring such penalty is convicted, and, on non-payment of such amount on demand, the same shall be recovered by distress and sale of the movable

SEC. 268.—The Executive Officer of the Cantonment is not a member of the "Cantonment Authority" as defined in sec. 2 (v) and a notice issued by him for the removal of an encroachment is invalid. Consequently a person cannot be convicted for disobeying a notice issued by the Executive Officer for removal of encroachment on Government land. Subsequent confirmation of the action of the Executive Officer by the Cantonment Board is of no avail as the notice disobeyed is the notice from the Executive Officer. 35 Cr.L.J. 612=1933 Lah. 545 (1). The Cantonment Authority gave a qualified sanction to A to proceed with the construction of his building at his own risk in that the site on which the construction was being built was claimed by the Government, but there was no "Municipal objection". As soon as A proceeded to build, the Cantonment Authority served him with a notice "to demolish the unauthorised construction." A having failed to comply with this notice, he was

prosecuted under sec. 187 read with sec. 268. *Held*, that there was no unauthorized construction because A had sanction from the Board to build the room, that it was preposterous to suggest that when A had had the sanction of the Board in writing under sec. 181, he did not have the permission in writing of the Cantonment Authority, and that the question between the parties was a purely civil one and as a matter of fact A had not exceeded the authority given him by the Board in sanctioning his application for building. 146 I.C. 2=34 Cr.L.J. 1191=1933 All. 436. A merchant who is selling bamboos, rafters, wooden boards and beams within the limits of the Cantonment without any licence is liable to prosecution under sec. 268 for being a dealer in wood within the meaning of 'sec. 210 (f). 1934 All. 987 (1)=36 Cr.L.J. 261. On this section, *see also* 1934 Oudh 29=148 I.C. 420 cited under sec. 184, *supra*.

property of such person, and the Magistrate shall issue a warrant for its recovery accordingly.

Limitation.

271. No Court shall try any person for an offence made punishable by or under this Act, after the expiry of six months from the date of the commission of the offence, unless complaint in respect of the offence has been made to a Magistrate within the six months aforesaid.

Suits.

272. No suit or prosecution shall be entertained in any Court against any Board ¹[* *] or against any ²[Officer Commanding a station], or against any member of a Board, or against any officer or servant of a Board, for anything in good faith done, or intended to be done, under this Act or any rule or bye-law made thereunder.

273. (1) No suit shall be instituted against any Board or against any member of a Board, or against any officer or servant of a Board, in respect of any act done, or purporting to have been done, in pursuance of this Act or of any rule or bye-law made thereunder, until the expiration of two months after notice in writing has been left at the office of the Board, and, in the case of such member, officer or servant, unless notice in writing has also been delivered to him or left at his office or place of abode, and unless such notice states explicitly the cause of action, the nature of the relief sought, the amount of compensation claimed, and the name and place of abode of the intending plaintiff, and unless the plaint contains a statement that such notice has been so delivered or left.

(2) If the Board, member, officer or servant has, before the suit is instituted, tendered sufficient amends to the plaintiff, the plaintiff shall not recover any sum in excess of the amount so tendered, and shall also pay all costs incurred by the defendant after such tender.

(3) No suit, such as is described in sub-section (1), shall, unless it is an action for the recovery of immovable property or for a declaration of title thereto, be instituted after the expiry of six months from the date on which the cause of action arises.

(4) Nothing in sub-section (1) shall be deemed to apply to a suit in which the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the institution of the suit or proceeding.

Appeals and Revision.

274. (1) Any person aggrieved by any order described in the second column of Sch. V may appeal to the authority specified in that behalf in the third column thereof.

(2) No such appeal shall be admitted if it is made after the expiry of the

LEG. REF.

¹ Words "or authority appointed under sub-sec. (2) of sec. 10" omitted by Act XXIV of 1936.

² Substituted by Act VII of 1925.

SEC. 271: LIMITATION.—When there is nothing to show that any new building was done by the accused within limitation but what was done in that connexion had been completed more than six months before the date of the complaint, the accused cannot be tried for the offence. 148 I.C. 420=35 Cr.L.J. 666=1934 Oudh 20.

SEC. 273.—Sec. 273 (1) does not contemplate the class of suits of private contracts

for which specific rules of evidence are prescribed by the Limitation Act. It contemplates actions brought against the Board in respect of acts done in pursuance of any rule or bye-law that has the force of law. Hence a suit against the Board for the price of goods supplied is not governed by sec. 273 but by Art. 52, Limitation Act. 149 I.C. 49=1934 A.L.J. 805=1934 All. 436. If a plaintiff sues only for injunction and if the purpose of the suit is liable to be defeated by delay then under sec. 273 (4) the necessity for the 2 months' notice may not arise. 1942 A.M.L.J. 60.

period specified in that behalf in the fourth column of the said Schedule.

(3) The period specified as aforesaid shall be computed in accordance with the provisions of the Indian Limitation Act, 1908, with respect to the computation of periods of limitation thereunder.

275. (1) Every appeal under section 274 shall be made by petition in writing accompanied by a copy of the order appealed against.

(2) Any such petition may be presented to the authority which made the order against which the appeal is made, and that authority shall be bound to forward it to the appellate authority, and may attach thereto any report which it may desire to make by way of explanation.

276. On the admission of an appeal from an order, other than an order contained in a notice issued under clause (a) of section 137, section 140, section 176, or section 238, all proceedings to enforce the order and all prosecutions for any contravention thereof shall be held in abeyance pending the decision of the appeal, and, if the order is set aside on appeal, disobedience thereof shall not be deemed to be an offence.

277. ¹[* * * * *].

²[(1)] Where an appeal from an order made by the Board has been disposed of by the District Magistrate, ³[either party to the proceedings] may, within thirty days from the date thereof, apply, through the ⁴[Officer Commanding-in-Chief, the Command], to the Central Government, or to such authority as the Central Government may appoint in this behalf, for a revision of the decision.

⁵[(2)] The provisions of this Chapter with respect to appeals shall apply, as far as may be, to applications for revision made under this section.

278. Save as otherwise provided in section 277, every order of an appellate authority shall be final.

279. No appeal shall be decided under this Chapter unless the appellant has been heard, or has had a reasonable opportunity of being heard in person or through a legal practitioner.

CHAPTER XVI.

RULES AND BYE-LAWS.

280. (1) The Central Government may, after previous publication, make rules⁶ to carry out the purposes and objects of this Act.

(2) In particular, and without prejudice to the generality of the fore-

LEG. REF.

470-611.

¹ The original sub-sec. (1) omitted by Act XXXV of 1926.

² Sub-sec. (2) was re-numbered (1) by *ibid.*

³ Substituted for 'the Cantonment Authority' by Act XXIV of 1936.

⁴ These words were substituted by Act XXXV of 1926.

⁵ Sub-sec. (3) was re-numbered (2) by *ibid.*

⁶ For rules made under this section and called the Cantonment Account Code, 1924, the Cantonment Land Administration Rules, 1925, and the Cantonment Fund Servants Rules, 1925, see *Gen. R. and O.*, Vol. V, pp.

SEC. 280.—Extension of Rules outside Cantonment limits, see 2 P.R. 1885 (Cr.); 12 P.R. 1870 (Cr.). Omission to report case of cholera, 9 P.R. 1895 (Cr.). As to appeals against conviction for offence under Cantonment Rules, see 1 P.R. 1897 (Cr.). Rule under the section when *ultra vires*. 40 P.R. 1884 (Cr.); 48 P.R. 1887 (Cr.).

SEC. 280 (a).—See Rat. 505. Secs. 64 to 67, Penal Code, do not apply to sentences passed under this Act. Duty of Cantonment Magistrate to inform accused of his right to have the case tried by another Magistrate, see 55 I.C. 1002=21 Cr.L.J. 394. (See also Notes under sec. 282, *infra*).

going power, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which and the authority to which, application for permission to occupy land belonging to ¹[the Crown] in a cantonment is to be made;

(b) the authority by which such permission may be granted and the conditions to be annexed to the grant of any such permission;

²[(bb) the allotment to a Board of a share of the rents and profits accruing from property entrusted to its management under the provisions of section 116-A;]

(c) the appointment, control, supervision, suspension, removal, dismissal and punishment of servants of Boards;

³[(cc) the constitution of a Service of Executive Officers and the appointment, control, supervision, conditions of service, pay and allowances, suspension, removal, dismissal and punishment of the members thereof;]

(d) the circumstances in which security shall be demanded from servants of Boards and the amount and nature of such security;

(e) the grant of leave, absentee or acting allowance to servants of Boards;

(f) the creation and management of Provident Funds, and the circumstances in which, and the conditions subject to which, contributions thereto shall be made from cantonment funds and by servants of Board;

(g) the keeping of accounts by Boards and the manner in which such accounts shall be audited and published;

(h) the definition of the persons by whom, and the manner in which, money may be paid out of a cantonment fund;

⁴[(hh) * * *];

(i) the preparation of estimates of income and expenditure by Boards and the definition of the persons by whom, and the conditions subject to which, such estimates may be sanctioned;

(j) the regulation of the procedure of Committees of Arbitration; and

(k) the prescribing of registers, statements and forms to be used and maintained by any authority for the purposes of this Act.

281. (1) A rule under section 280 may be made in addition to the provisions made generally for all cantonments or for the whole or any part of any one or more cantonments.

(2) All rules so made shall be published in the Official Gazette and in such other manner, if any, as the Central Government may direct and, on such publication, shall have effect as if enacted in this Act.

282. Subject to the provisions of this Act and of the rules made there-

under, a Board may, in addition to any bye-laws which it is empowered to make by any other provision of this Act, make bye-laws to provide for all or any of the following matters in the cantonment, namely:—

LEG. REF.

¹ Substituted for 'Government' by A.O., 1937.

² Inserted by Act VII of 1925.

³ Cl. (cc) of sec. 280 inserted by Act XXIV of 1936.

⁴ Cl. (hh) which was inserted by Act XXXV of 1926, was omitted by Act XXIV of 1936.

SEC. 282, CLS. (8), (9) AND (10).—See 3 Cr.L.J. 301=23 P.R. 1905 (Cr.) (Repair of wall and removal of building); Rat. 706; 3 Cr.L.J. 78 (keeping common gaming house);

Rat. 541 (order for construction of privy); Rat. 636 (neglect to repair house); 19 P.R. 1904 (order for repair of building). See also Rat. 875; 7 O.O. 68; 1 P.R. 1906 (Cr.); 13 I.C. 209=3 P.R. 1912 (Cr.); 1 S.L.R. 92 (washing clothes in tank); Rat. 54 (plying offensive trade); 8 M. 428; 9 P.R. 1895 (Cr.) (omission to report cholera case); 17 N.L.J. 214 (grazing cattle within cantonment area and preventing them from being impounded).

"Public places" what are and what are not, see (1887) A.W.N. 19, 361; 15 P.R.

- (1) the registration of births, deaths and marriages, and the taking of a census;
- (2) the enforcement of compulsory vaccination;
- (3) the regulation of the collection and recovery of taxes, tolls and fees under this Act and the refund of taxes;
- (4) the regulation or prohibition of any description of traffic in the streets;
- (5) the manner in which vehicles standing, driven, led or propelled in the streets between sunset and sunrise shall be lighted;
- (6) the seizure and confiscation of ownerless animals straying within the limits of the cantonment;
- (7) the prevention and extinction of fire;
- (8) the construction of scaffolding for building operations to secure the safety of the general public and of persons working thereon;
- (9) the regulation in any manner not specifically provided for in this Act of the construction, alteration, maintenance, preservation, cleaning and repairs of drains, ventilation-shafts, pipes, water-closets, privies, latrines, urinals, cesspools and other drainage works;
- (10) the regulation or prohibition of the discharge into, or deposit in, drains or sewage, polluted water and other offensive or obstructive matter;
- (11) the regulation or prohibition of the stabling or herding of animals, or of any class of animals, so as to prevent danger to public health;
- (12) the proper disposal of corpses, the regulation and management of burial and burning places and other places for the disposal of corpses, and the fees chargeable for the use of such places where the same are provided or maintained by Government or at the expense of the cantonment fund;
- (13) the permission, regulation or prohibition of the use or occupation of any street or place by itinerant vendors or by any person for the sale of articles or the exercise of any calling or the setting up of any booth or stall, and the fees chargeable for such use or occupation;
- (14) the regulation and control of encamping grounds, pounds, washing-places, serais, hotels, dak-bungalows, lodging-houses, boarding-houses, buildings let in tenements, residential clubs, restaurants, eating-houses, cafes, refreshment rooms and places of public recreation, entertainment or resort;
- (15) the regulation of the ventilation, lighting, cleansing, drainage and water-supply of the buildings used for the manufacture or sale of aerated or other potable waters and of butter, milk, sweet-meats and other articles of food or drink for human consumption;
- (16) the matters regarding which conditions may be imposed by licences granted under section 210;
- (17) the control and supervision of places where dangerous or offensive

1906 (Cr.)=45 P.L.R. 1907; Rat. 471; Rat. 476 (public road); 22 P.L.R. 1907.

Conviction under a wrong section of the Code—Ignorance of law—Effect. *See* 11 I. C. 139=12 Cr.L.J. 371. As to registration of prostitutes, *see* 2 P.R. 1895 (Cr.); (1887) A.W.N. 219; Rat. 572; 25 P.R. 1870 (Cr.). As to liability of master for offence committed by servant, *see* 10 Bom.L.R. 1052. Conviction for non-removal of remains of ruined buildings. 23 P.R. 1905 (Cr.). *See also* as to liability for keeping buildings in a ruinous condition. *See* 43 B. 836=21 Bom. L.R. 759=52 I.C. 288; 43 B. 838=21 Bom. L.R. 761=52 I.C. 665. As to use of stables without licence, *see* Rat. 413. As to giving owner notice of repairs required, *see* 56 P. L.R. 1912. As to when and how and by whom notice is to be given, *see* 3 P.R. 1907 (Cr.)=5 Cr.L.J. 493. As to ordering im-

prisonment in default of payment of fine, *see* 40 P.R. 1884 (Cr.). As to effect of breach of rules, *see* (1886) A.W.N. 289; 48 P.R. 1887 (Cr.). Order as to payment of daily fine not proper. 12 Cr.L.J. 371=11 I.C. 139. *See also* 7 B.H.C. (Cr.) 87; 19 P.R. 1904 (Cr.); Additional fine when proper. 22 B. 841. Trial of offences beyond cantonment limits—Procedure for trial. 12 P.R. 1870 (Cr.). Liability of Cantonment officer for not proceeding according to the Code and the Rules. *See* 9 C. 341=9 I.A. 152 (P.C.).

SECS. 282 AND 283.—A conviction for the offence of grazing cattle on land within the Cantonment area and preventing them from being impounded cannot stand when no connection has been proved between the persons convicted and the cattle in respect of which the conviction is based. 17 N.L.J. 214.

trades are carried on so as to secure cleanliness therein or to minimise any injurious, offensive or dangerous effects arising or likely to arise therefrom;

(18) the regulation of the erection of any enclosure, fence, tent, awning or other temporary structure of whatsoever material or nature on any land situated within the cantonment;

(19) the laying out of streets and the regulation and prohibition of the erection of buildings without adequate provision being made for the laying out and location of streets;

(20) the regulation of the use of public parks and gardens and other public places, and the protection of avenues, trees, grass and other appurtenances of streets and other public places;

(21) the regulation of the grazing of animals;

(22) the fixing and regulation of the use of public bathing and washing places;

(23) the regulation of the posting of bills and advertisements, and of the position, size, shape or style of name-boards, sign-boards and sign-posts;

(24) the fixation of a method for the sale of articles whether by measure, weight, piece or any other method;

(25) the rendering necessary of licences within the cantonment—

(a) for persons working as job porters for the conveyance of goods;

(b) for animals or vehicles let out on hire;

(c) for the proprietors or drivers of vehicles, boats or other conveyances, or of animals kept or plying for hire; ¹[*].

(d) for persons impelling or carrying such vehicles or other conveyances; ¹[or].

¹[(e) for persons practising as nurses, midwives or dais]

(26) the prescribing of the fee payable for any licence required under clause (25), and of the conditions subject to which such licences may be granted, revised, suspended or withdrawn;

(27) the regulation of the charges to be made for the services of such job porters and of the hire of such animals, vehicles or other conveyances, and for the remuneration of persons impelling or carrying such vehicles or conveyances as are referred to in clause (25);

(28) the regulation or prohibition, for purposes of sanitation or the prevention of disease or the promotion of public safety or convenience, of any act which occasions or is likely to occasion a nuisance, and for the regulation or prohibition of which no provision is made elsewhere by or under this Act;

(29) the circumstances and the manner in which owners of buildings or land in the cantonment, who are temporarily absent from, or are not resident in, the cantonment, may be required to appoint as their agents for all or any of the purposes of this Act or of any rule or bye-law made thereunder, persons residing within or near the cantonment;

(30) the prevention of the spread of infectious or contagious diseases within the cantonment;

(31) the segregation in, or the removal and exclusion from, the cantonment, or the destruction, of animals suffering or reasonably suspected to be suffering from any infectious or contagious disease;

(32) the supervision, regulation, conservation and protection from injury, contamination or trespass of sources and means of public water-supply, and of appliances for the distribution of water whether within or without the limits of the cantonment;

(33) the manner in which connections with water-works may be constructed or maintained, and the agency which shall or may be employed for such construction and maintenance;

LEG. REF.

¹ The word "or" at the end of sub-cl. (e) omitted, and the word "or" at the end of

sub-cl. (d) and new sub-cl. (e) added by Act XV of 1942.

(34) the regulation of all matters and things relating to the supply and use of water including the collection and recovery of charges therefor and the prevention of evasion of the same;

(35) the maintenance of schools, and the furtherance of education generally;

(36) the regulation or prohibition of the cutting or destruction of trees or shrubs, or of the making of excavations, or of the removal of soil or quarrying, where such regulation or prohibition appears to the Board to be necessary for the maintenance of a water-supply, the preservation of the soil, the prevention of landslips or of the formation of ravines or torrents, or the protection of land against erosion, or against the deposit thereon of sand, gravel or stones;

(37) the rendering necessary of licences for the use of premises within the cantonment as stables or cowhouses or as accommodation for sheep, goats or fowls;

(38) the control of the use in the cantonment of mechanical whistles, syrens or trumpets; and

(39) generally for the regulation of the administration of the cantonment under this Act.

283. Any bye-law made by a Board under this Act may provide that a contravention thereof shall be punishable—

(a) with fine which may extend to one hundred rupees; or

(b) with fine which may extend to one hundred rupees and, in the case of a continuing contravention, with an additional fine which may extend to twenty rupees for every day during which such contravention continues after conviction for the first such contravention; or

(c) with fine which may extend to ten rupees for every day during which the contravention continues after the receipt of a notice from the Board by the person contravening the bye-law requiring such person to discontinue such contravention.

284. (1) Any power to make bye-laws conferred by this Act is conferred subject to the condition of the bye-laws being made after previous publication and of their not taking effect until they have been approved and confirmed by the Central Government and published in the Official Gazette.

(2) The Central Government in confirming a bye-law make any change therein which appears to it to be necessary.

(3) The Central Government may, after previous publication of its intention, cancel any bye-law which it has confirmed, and thereupon the bye-law shall cease to have effect.

285. (1) A copy of all rules and bye-laws made under this Act shall be kept at the office of the Board and shall, during office hours, be open free of charge to inspection by any inhabitant of the cantonment.

(2) Copies of all such rules and bye-laws shall be kept at the office of the Board ¹[and shall be sold to the public at cost price singly, or in collections at the option of the purchaser].

CHAPTER XVII.

SUPPLEMENTAL PROVISIONS.

286. The Central Government may, by notification in the Official Gazette,

LEG. REF.

by Act XXIV. of 1936,

¹ Substituted for 'for sale to the public'

Extension of certain provisions of the Act and rules to places beyond cantonments.

and subject to any conditions as to compensation or otherwise which it thinks fit to impose, extend to any area beyond a cantonment and in the vicinity thereof, with or without restriction or modification, any of the provisions of Chapters IX, X, XI, XII, XIII, XIV and XV or of any rule or bye-law made under this Act for the cantonment which relates to the subject-matter of any of those Chapters, and every enactment, rule or bye-law so extended shall thereupon apply to that area as if the area were included in the cantonment.

¹[286-A. The Board may empower any of its members or officers to exercise or perform in the absence of the Executive Officer from the Cantonment all or any of such powers or duties of an Executive Officer under this Act as the Central Government may, by notification in the Official Gazette, specify in this behalf.]

287. (1) Paragraphs 2 and 3 of section 54, and sections 59, 107 and 123 of the Transfer of Property Act, 1882, with respect to the transfer of property by registered instrument, shall, on and from the commencement of this Act, extend to every cantonment.

²[(2) The Registrar or Sub-Registrar of the district or sub-district formed for the purposes of the Indian Registration Act, 1908, in which any cantonment is situated, shall ³[when any document relating to immovable property within the cantonment is registered, send information of the registration] forthwith to the Board or such other authority as the Central Government may prescribe in this behalf.]

288. No notice, order, requisition, licence, permission in writing or other document issued under this Act shall be invalid merely by reason of any defect of form.

289. A copy of any receipt, application, plan, notice, order or other document or of any entry in a register, in the possession of a Board shall, if duly certified by the legal keeper thereof or other person authorised by the Board in this behalf, be admissible in evidence of the existence of the document or entry, and shall be admitted as evidence of the matters and transactions therein recorded in every case where, and to the same extent to which, the original document or entry would, if produced, have been admissible to prove such matters.

290. No officer or servant of a Board shall, in any legal proceeding in which the Board is not a party, be required to produce any register or document the contents of which can be proved under section 289 by a certified copy, or to appear as a witness to prove any matter or transaction recorded therein save by order of the Court made for special cause.

LEG. REF.

¹Sec. 286-A added by Act VII of 1931.

²Sub-section substituted by Act XXXV of 1926.

³Substituted by Act X of 1927.

SEC. 287.—By virtue of this section, sec. 107 of the T. P. Act is made applicable to cantonments. 134 I.C. 289=1931 Lah. 501. A mortgage by deposit of title-deeds cannot be effected within the limits of a Cantonment to which sec. 59 has been extended. (1933 Lah. 972, Ref.) 1933 Lah. 1001=149 I.C. 1060. A mortgage by deposit of title-deeds is invalid, if effected within a Cantonment area where such transactions are prohibited even though property is situated in

a place where such mortgages are valid. The determining factor in the matter of validity of the mortgage in such cases is not the place where the property alleged to have been mortgaged is situated but the formalities required by the law for the creation of a valid mortgage at the place where the title-deeds are alleged to have been delivered to the creditor. (1927 Cal. 823, Foll.) Case-law discussed. 1933 Lah. 972=147 I. C. 942.

SEC. 288.—Proceedings without notice to accused illegal. 17 A.L.J. 503=50 I.C. 992 =20 Cr.L.J. 384; contents of notice as to extent of repairs necessary. 3 P.R. (Cr.) 1912=13 Cr.L.J. 17=13 I.C. 209.

291. For the purposes of the Government Buildings Act, 1899, Cantonment Application of Act IV of 1899. ments and Boards shall be deemed to be municipalities and municipal authorities respectively.

292. [Repeals]. Repealed by the Repealing Act (12 of 1927).

[Schedules—Omitted.]

THE CANTONMENTS (HOUSE ACCOMMODATION) ACT (VI OF 1923).¹

EFFECT OF LEGISLATION.

Year.	No.	Short title.	How repealed or affected by Legislation.
1923	IV	The Cantonments (House Accommodation) Act, 1923.	Amendment Act X of 1925. " Act IX of 1930. " Act XXII of 1933 and XXXII of 1940. Govt. of India (Adaptation of Indian Laws) Order, 1937. Rep. in pt., Act XII of 1927.

[5th March, 1923.

An Act further to amend and to consolidate the law relating to the provision of house accommodation for military officers in cantonments.

WHEREAS it is expedient further to amend and to consolidate the law relating to the provision of house accommodation for military officers in cantonments; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called THE CANTONMENTS (HOUSE ACCOMMODATION) ACT, 1923.

(2) It extends to the whole of British India (inclusive of British Baluchistan) [* * * *]²

(3) It shall come into force on the first day of April, 1923, but it shall not become operative in any cantonment or part of a cantonment until the issue, or otherwise than in pursuance, of a notification as hereinafter provided by section 3 :

Provided that any notification made under section 3 of the ³Cantonments (House Accommodation) Act, 1902, which is in force at the commencement of this Act, shall be deemed to be a notification made under section 3 of this Act.

Definitions.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) "Brigade area" means one of the Brigade areas, whether occupied by a brigade or not, into which India is for military purposes for the time being divided, and includes any area which the Central Government may, by notification in the Official Gazette, declare to be a Brigade area for all or any of the purposes of this Act;

⁴[* * * *]

⁵[(b) "Cantonment Board" means a Cantonment Board constituted under the Cantonments Act, 1924 ;]

(c) "Command" means one of the Commands into which India is for military purposes for the time being divided, and includes any area which the

LEG. REF.

¹For Statement of Objects and Reasons, see *Gazette of India*, 1922, Pt. V, p. 233; and for Report of Joint Committee, see *ibid.*, 1923, Pt. V, p. 5.

²Words 'except Aden' omitted by Government of India (Adaptation of Indian Laws),

Order, 1937.

³Repealed by sec. 39 and Schedule of this Act.

⁴Original clause (b) was omitted and clause (bb) re-lettered as clause (b) by Act IX of 1930.

⁵Inserted by Act X of 1925, S. 2.

Central Government may, by notification in the Official Gazette, declare to be a Command for all or any of the purposes of this Act ;

(d) ¹[" Officer Commanding the station "] means the officer for the time being in command of the forces in a cantonment ²[or if that officer is the Officer Commanding the District, the military officer who would be in command of those forces in the absence of the Officer Commanding the District].

(e) " District " means one of the Districts into which India is for military purposes for the time being divided ; it includes a Brigade area which does not form part of any such District and any area which the Central Government may, by notification in the Official Gazette, declare to be a District for all or any of the purposes of this Act ;

(f) " house " means a house suitable for occupation by a military officer or a military mess, and includes the land and buildings appurtenant to a house ;

(g) " military officer " means a commissioned or warrant officer of His Majesty's military or air-forces on military or air-force duty in a cantonment, and includes a Chaplain on duty with troops in a cantonment, ³[an officer of the Cantonments Department] and any person in Army departmental employment whom the Officer Commanding the District may at any time, by an order in writing, place on the same footing as a military officer for the purposes of this Act ;

(h) " owner " includes the person who is receiving, or is entitled to receive, the rent of a house, whether on his own account or on behalf of himself and others or as an agent or trustee, or who would so receive the rent, or be entitled to receive it, if the house were let to a tenant ; and

(i) a house is said to be in a state of reasonable repair when—

(i) all floors, walls, pillars, and arches are sound and all roofs sound and watertight,

(ii) all doors and windows are intact, properly painted or oiled, and provided with proper locks or bolts or other secure fastenings, and

(iii) all rooms, out-houses and other appurtenant buildings are properly colour-washed or white-washed.

(2) If any question arises whether any land or building is appurtenant to a house, it shall be decided by the ⁴[Officer Commanding the station] whose decision thereon shall, subject to revision by the ⁵[Collector], be final.

CHAPTER II.

APPLICATION OF ACT.

3. (1) The ⁶[Central Government], ⁷[* * * * *], may, by notification in the Official Gazette, declare this Act

Cantonments or parts of cantonments in which Act to be operative.

to be operative in any cantonment or part of a cantonment ⁸[* * * * *] other than a cantonment situate within the limits of a presidency-town.

(2) Before issuing a notification under sub-section (1) in respect of any cantonment or part of a cantonment, the ⁶[Central Government] shall cause local inquiry to be made with a view to determining whether it is expedient to issue such notification, and what portion (if any) of the area proposed to be included therein should be excluded therefrom.

⁹[4. Nothing in this Act shall affect the provisions of any written Crown Saving of written instruments. contract unless all the parties to that contract consent in writing to be bound by the terms of this Act.]

LEG. REF.

¹Substituted for words " Commanding Officer of the Cantonment " by Act X of 1925.

²Added by Act IX of 1930.

³Substituted for words " a Cantonment Magistrate " by Act X of 1925, S. 2.

⁴Substituted for words " Commanding Officer of the Cantonment " by Act X of 1925.

⁵Substituted for words " District Magistrate "

by Act IX of 1930.

⁶Substituted for " Local Government " by A.O., 1937.

⁷Words " with the previous sanction of the Governor-General in Council " omitted by *ibid.*

⁸Words " situate in the Province " omitted by *ibid.*

⁹Substituted for old sec. 4 by *ibid.*

CHAPTER III.

APPROPRIATION OF HOUSES.

5. Every house situate in a cantonment or part of a cantonment in respect of which a notification under sub-section (1) of section 3 is for the time being in force shall be liable to appropriation by the ¹[Central] Government on a lease in the manner and subject to the conditions hereinafter provided.

Conditions on which houses may be appropriated. ²[6. (1) Where—

(a) a military officer who is stationed in or has been posted to the cantonment, or a President of a military mess in the cantonment, applies in writing to the Officer Commanding the Station stating that he is unable to secure suitable accommodation in the cantonment for himself or the mess on reasonable terms by private agreement, and that no suitable house or quarter belonging to ³[the Crown] is available for his occupation or for the occupation of the mess, and the Officer Commanding the Station is satisfied on inquiry of the truth of the facts so stated ; or

(b) the Officer Commanding the Station is satisfied on inquiry that there is not in the cantonment a sufficient and assured supply of houses available at reasonable rates of rent by private agreement to meet the requirements of the military officers and military messes whose accommodation in the cantonment is in his opinion necessary or expedient, the Officer Commanding the Station may, with a view to enforcing the liability under section 5, serve a notice on the owner of any house which appears to him to be suitable for occupation by a military officer or a military mess, as the case may be, within the cantonment, or, if this Act is in force in part only of the cantonment, within that part, requiring the owner to permit the house to be inspected, measured and surveyed by such person and on such date not being less than three clear days from the service of the notice, and at such time between sunrise and sunset, as may be specified in the notice.

(2) On the date and at the time so specified the owner shall be bound to afford all reasonable facilities to the person specified in the notice for the purpose of the inspection, measurement and survey of the house and, if he refuses or neglects to do so, such person may, subject to any rules made under this Act, enter on the premises and do all such things as may be reasonably necessary for the said purpose.]

7. (1) If, on the report of such person as aforesaid, the ⁴[Officer Commanding the Station] is satisfied that the house is suitable for occupation by a military officer or a military mess, he may ⁵[* * * *] by notice—

Procedure for taking house on lease.

LEG. REF.

¹Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

²Section 6 is newly substituted for old S. 6 by Act IX of 1930.

³Substituted for 'Government' by Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words "Commanding Officer of the Cantonment" by S. 6 of the Cantonments (House Accommodation) Amendment) Act, 1925 (X of 1925).

⁵In sub-section (1) to S. 7, the words "with the previous sanction of the Officer Commanding the District" have been omitted by Act IX of 1930.

SECS. 6 AND 11.—The Cantonments Act does

not contain any prohibition against a transfer by an owner of his right to continue in occupation of the house. All that the Act says is that no notice shall be issued under sec. 6 if the house is occupied by the owner. The owner, therefore, may agree that if the house is required by the military authorities, he would deliver possession thereof to them. The Cantonment Magistrate is not prohibited from entering into any such agreement with an intending purchaser or even an owner in possession. Such an agreement would not defeat the provisions of the Cantonments Act. 25 Bom.L.R. 938=85 I.C. 442=1924 Bom. 258.

SEC. 7.—The best criterion for arriving at a reasonable figure of rent of a house is to find out the rent of bungalows in the locality. 182 I.C. 566=A.I.R. 1939 Pesh. 22.

(a) require the owner to execute a lease of the house to the ¹[Central] Government for a specified period which shall not be less than five years ;

(b) require the existing occupier, if any, to vacate the house ; and

(c) require the owner to execute within such time as may be specified in the notice such repairs as may, in the opinion of the ²[Officer Commanding the station], be necessary for the purpose of putting the house into a state of reasonable repair.

(2) Every notice issued under sub-section (1) shall state the amount of the annual rent proposed as reasonable for the house, calculated on the assumption that the owner will carry out the required repairs, if any. It shall also contain an estimate of the cost of such repairs.

(3) The following shall be deemed to be conditions of every lease executed under sub-section (1), namely :—

(a) that the house shall, on the expiration of the lease, be redelivered to the owner in a state of reasonable repair, and

(b) that the grounds and the garden, if any, appertaining to the house shall be maintained in the condition in which they are at the time at which the lease is executed :

³[Provided that nothing in this sub-section shall be deemed to affect the right of the ¹[Central] Government to avoid the lease in any such event as is specified in clause (e) of section 108 of the Transfer of Property Act, 1882].

⁴8: [*Repealed by Act IX of 1930*].

9. No house in any cantonment or part of a cantonment in which this Act is operative shall, unless it was so occupied at the date of the issue of the notification declaring this Act or the ⁵Cantonments (House Accommodation) Act, 1902, as the case may be, to be operative, be occupied for the purposes of a hospital, school, school hostel, bank, hotel, or shop, or by a railway administration, a company or firm engaged in trade or business or a club, without the previous sanction of the Officer Commanding the District given with the concurrence of the Commissioner, or, in a province where there are no Commissioners, of the Collector.

Sanction to be obtained before a house is occupied as a hospital, etc.

10. No notice shall be issued under section 7 if the house—

(a) was, at the date of the issue of the notification declaring this Act or the ⁵Cantonments (House Accommodation) Act, 1902, as the case may be, to be operative in the cantonment or part of the cantonment, or is, with such sanction as is required by section 9, occupied as a hospital, school, school hostel, bank, hotel or shop, and has been so occupied continuously during the three years immediately preceding the time when the occasion for issuing the notice arises, or

(b) was, at the date of such notification as is referred to in clause (a), or is, with such sanction as aforesaid, occupied by a railway administration or by a company or firm engaged in trade or business or by a club, or

(c) is occupied by the owner, or,

(d) has been appropriated by the Provincial Government with the concurrence of the Officer Commanding the District, or by the Central Government for use as a public office or for any other purpose.

11. (1) If a house is unoccupied, a notice issued under section 7 may require the owner to give possession of the same to the ²[Officer Commanding the station] within twenty-one days

Time to be allowed for giving possession of house.

from the service of the notice.

LEG. REF.

¹Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "Commanding Officer of the Cantonment" by S. 6 of the Cantonments (House Accommodation Amendment) Act, 1925 (X of 1925).

³Proviso to sub-S. (3) has been newly added by Act IX of 1930.

⁴Section 8 was repealed by Act IX of 1930.

⁵Repealed by S. 39 and Schedule of this Act.

Secd. 11.—See 1934 B. 258 cited under sec. 6 *supra*.

(2) If a house is occupied, a notice issued under section 7 shall not require its vacation in less than thirty days from the service of the notice.

(3) Where a notice has been issued under section 7 and the house has been vacated in pursuance thereof, the lease shall be deemed to have commenced on the date on which the house was so vacated.

12. If the owner fails to give possession of a house to the ¹[Officer Commanding the station] in pursuance of a notice issued under section 7, or if the existing occupier fails to vacate a house in pursuance of such a notice, the District Magistrate, by himself or by another person generally or specially authorised by him in this behalf, shall enter on the premises and enforce the surrender of the house.

Option in certain cases for owner on whom notice is issued under section 7 to call upon the Government to purchase.

13. (1) If a house, in respect of which a notice is issued under section 7, is shown to the satisfaction of the ²[Central Government], or is proved by a decree or order of a Court of competent jurisdiction to have been erected—

(a) under any conditions, rules, regulations or orders which were in force in Bengal prior to the eighth day of December, 1864, and conferred on the owner the option of offering the house for sale to the military officer applying for its appropriation for his occupation or to the East India Company or the Government, or

(b) under any conditions, rules, regulations, or orders which were in force in Bombay prior to the first day of June, 1875, and conferred such an option as is described in clause (a), then the owner shall have the option of either complying with the notice or offering the house for sale to the ³[Central] Government.

(2) If the owner elects to sell the house, and the ³[Central] Government is willing to purchase it, the question of the amount of the purchase-money to be paid shall, in the event of disagreement, be referred to ⁴[a Civil Court, in accordance with the provisions of chapter IV].

14. (1) If a house, in respect of which a notice is issued under section 7, is occupied by a tenant holding in good faith and for valuable consideration under a registered lease for any term exceeding one year, the ⁵[Central Government] shall, for the term of one year from the date on which the house is vacated in pursuance of the notice, or for the unexpired term of the lease whichever is the shorter, be liable to the owner for the rent fixed by the registered lease instead of for the rent payable under this Act if the rent so fixed exceeds the rent so payable.

(2) If a house, in respect of which a notice is issued under section 7, is occupied by a tenant holding in good faith and for valuable consideration under a registered lease from year to year, the ⁵[Central Government] shall be liable as aforesaid for the term of six months from the date on which the house is vacated in pursuance of the notice.

(3) Nothing in this section shall be deemed—

(a) to render the ⁶[Central Government] so liable unless an application in writing in this behalf is made by the owner to the ¹[Officer Commanding the station] within fifteen days from the service of the notice ; or

(b) to limit or otherwise affect any agreement between the ⁶[Crown] and the owner.

LÉG. REF.

¹These words were substituted for the words "Commanding Officer of the Cantonment" by S. 6, Act X of 1925.

²Substituted for "Local" by Government of India (Adaptation of Indian Laws) Order, 1937.

³Inserted by *Ibid.*

⁴Substituted by Act IX of 1930.

⁵Substituted for "Secretary of State for India in Council" by A.O., 1937.

⁶Substituted for "said secretary of State in Council" by *Ibid.*

15. (i) If the owner considers that the rent stated in a notice issued under section 7 is not reasonable, he may, within a period of ¹[thirty] days from the service of such notice, ¹[refer the matter to a Civil Court in accordance with the provisions of Chapter IV] :

Power for owner to refer to Civil Court on question of rent.

²[Provided that where an appeal has been made to the Officer Commanding the District under section 30, the period of thirty days shall be reckoned from the date on which the owner received notice of the result of the appeal under sub-section (2) of section 32.]

(2) If the owner does not make such a ³[reference] within the said period, he shall be deemed to have accepted the rent so offered.

16. (i) If the owner fails to execute any repairs to a house as required by a notice issued to him under section 7, the ⁴[Officer Commanding the station] may by notice require the owner to execute the repairs within such period, not being less than ¹[thirty] days, as may be specified in the notice.

Power for owner to refer to Civil Court question of repairs.

(2) If the owner objects to any requisition continued in a notice issued under sub-section (1), he may, within ¹[thirty] days from the service of the notice, ²[refer the matter to a Civil Court in accordance with the provisions of Chapter IV] :

³[Provided that where an appeal has been made to the Officer Commanding the District under section 30, the period of thirty days shall be reckoned from the date on which the owner received notice of the result of the appeal under sub-section (2) of section 32.]

⁴[(3) Every reference under sub-section (2) shall be accompanied by an estimate of the repairs, if any, which the owner considers necessary in order to put the house into a state of reasonable repair.]

- ⁷[17. If the owner fails to comply with a notice issued under sub-section (1) of section 16, the Military Engineer services or the

Power to have repairs executed and recover cost.

Public Works Department may, with the previous sanction of the Officer Commanding the Station and notwithstanding any right of reference conferred by that section, cause the repairs specified in the notice to be executed at the expense of the ⁸[Central] Government, and the cost thereof, or, where a reference has been made, the amount finally determined by the Civil Court, may be deducted from the rent payable to the owner.]

LEG. REF.

¹Substituted by Act IX of 1930.

²Proviso added by Act XXII of 1933.

³Substituted by Act IX of 1930, for 'requisition'.

⁴These words were substituted for the words "Commanding Officer of the Cantonment" by Act, (X of 1925).

⁵Substituted by Act IX of 1930.

⁶Sub-section (3) of S. 16 added by Act IX of 1930.

⁷Section 17 has been substituted by Act IX of 1930.

⁸Inserted by A.O., 1937.

SEC. 15.—The Act only refers to an owner. A notice is issued to an owner and if there is any person in occupation, to the occupier, and it is

the owner alone who can make a reference to the Civil Court under sec. 15. The owner is not bound to make a mortgagee, who is not in possession of the property acquired on lease, a party, and his non-joinder will not defeat the suit, although it is advisable that the mortgagee should be added under O. 1, R. 10, C. P. Code. 167 I.C. 158=1937 Pesh. 17. There should be some provision in the Act that where a house has been taken over and the question of rent is contested by the landlord the amount fixed by the officer commanding should be paid to the landlord without prejudice to his right to fight in Court the question of the enhancement of the rate of rent. 182 I.C. 566=A.I.R. 1939 Pesh. 22.

SECS. 17 AND 18.—See 25 A.L.J. 91=97 I.C. 71=1926 All. 746.

18. Every person on whom devolves by transfer, by succession or by operation of law, the interest of an owner in any house, or in any part of any house, situate in a cantonment or part of cantonment in respect of which a notification under sub-section (1) of section 3 is for the time being in force, shall be bound to give notice of the fact to the ¹[Officer Commanding the Station] within one month from the date of such devolution, and, if he, without reasonable cause, fails to do so, he shall be punishable with fine which may extend to fifty rupees.

²CHAPTER IV.

PROCEDURE IN REFERENCES.

19. All references under this Act shall be made by application to, and tried by, the Court of the District Judge.

20. References under this Act shall be deemed to be proceedings within the meaning of section 141 of the Code of Civil Procedure, 1908, and in the trial thereof the Court may exercise any of its powers under that Code.

21. The scope of the inquiry in a reference under this Act shall be restricted to a consideration of the matters referred to the Court in accordance with the provisions of this Act.

³[* * * * *]

CHAPTER V.

APPEALS.

⁴[29. (1) An appeal shall lie to the High Court against the decision of the Court of the District Judge upon a reference tried by it.

(2) No appeal under this section shall be admitted unless it is made within thirty days from the date of the decision against which it is preferred.

(3) An appeal preferred under this section shall be deemed to be an appeal from an order within the meaning of section 108 of the Code of Civil Procedure, 1908].

⁴[30. The owner or any tenant of a house in respect of which a notice has been issued under section 7 may, within a period of [ten days]⁵ from the date of the service thereof, appeal to the Officer Commanding the District against the decision of the Officer Commanding the Station to appropriate the house.].

Petition of appeal. 31. (1) Every petition of appeal under section 30 shall be in writing and accompanied by a copy of the notice appealed against.

(2) Any such petition may be presented to the ¹[Officer Commanding the station], and that officer shall be bound to forward it to the authority empowered by section 30 to hear the appeal, and may attach thereto any report which he may desire to make in explanation of the notice appealed against.

LEG. REF.

¹ Substituted by Act X of 1925.

² Chapter IV has been newly substituted by Act IX of 1930 for the old Chapter IV containing secs. 19-28.

³ Substituted for old sec. 29 by Act IX of 1930.

⁴ Substituted for old sec. 30 by *Ibid.*

⁵ Substituted for the words "twenty-one days" by Act XXII of 1933.

SEC. 29 (2).—S. 5 of Limitation Act is not applicable to the case of appeals under the Canton-

ment (House Accommodation) Act, as the latter is a special Act. 1941 O.W.N. 453=1941 O.A. (Supp.) 195=I.L.R. (1941) All. 356=1941 All. 207.

SEC. 30.—A person aggrieved by the issue of a notice against him under sec. 7 for vacating a house in the Cantonment has only one remedy open to him, namely, to appeal under sec. 30, whether the notice is legal or not. Civil Courts have no jurisdiction to entertain a suit in respect of such notice. 49 B. 152=27 Bom.L.R. 56=1925 B. 162.

(3) If any such petition is presented direct to the Officer Commanding the District and an immediate order on the petition is not necessary, the Officer Commanding the District may refer the petition to the ¹[Officer Commanding the station] for report.

32. ²[(1)] The decision on any such appeal of the Officer Commanding the District ³[* * * *] shall be final, and shall not be questioned in any Court otherwise than on the ground that the house is situate in a cantonment, or part of a cantonment in which this Act is not operative :

Order in appeal final. Provided that no appeal shall be decided until the appellant has been heard or has had a reasonable opportunity of being heard in person or through a legal practitioner, ⁴[and in giving a decision the Officer Commanding the District shall record briefly the grounds therefor].

⁵[(2) Notice of the result of the appeal shall be given to the appellant as soon as may be, and where the appellant is a tenant of the house, to the owner of the house also].

33. Where an appeal has been presented under section 30 within the period prescribed ⁶[therein] all action on the notice shall, on Suspension of action pending appeal. the application of the appellant, be held in abeyance pending the decision of the appeal.

CHAPTER VI.

SUPPLEMENTAL PROVISIONS.

34. Every notice or requisition prescribed by this Act shall be in writing, signed by the person by whom it is given or made or by his duly appointed agent, and may be served by post on the person to whom it is addressed, or, in the case of an owner who does not reside in or near the cantonment, on his agent appointed ⁷[in accordance with a bye-law made under clause (29) of section 282 of the Cantonments Act, 1924].

⁸[34-A. The period prescribed for making any reference or preferring any appeal under this Act shall be computed in accordance with the provisions of the Indian Limitation Act, 1908].

Power for Central Government to make rules.

35. (1) The Central Government may make rules ⁹to carry out the purposes and objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) [* * * *] ¹⁰

(b) define the powers of entry, inspection, measurement or survey which may be exercised in carrying out the purposes and objects of this Act or of any rule made hereunder.

36. (1) The power to make rules under section 35 shall be subject to the condition of the rules being made after previous publication and of their not taking effect until they have been published in the Official Gazette and in such other manner (if any) as the Central Government may direct.

(2) Any rule under section 35 may be general for all cantonments or parts of cantonments in British India in which this Act is for the time being operative,

LEG. REF.

¹ Substituted by Act X of 1925.

² The original sec. 32 has been renumbered as sub-section (1) of sec. 32 by Act XXII of 1933.

³ Omitted by Act IX of 1930.

⁴ Added by Act IX of 1930.

⁵ Added by Act XXII of 1933.

⁶ Substituted for "by sub-section.(2) of that

section" by Act IX of 1930.

⁷ Substituted for words "under the Cantonments Act, 1910, or any rule made thereunder" by Act X of 1925.

⁸ Inserted by Act IX of 1930.

⁹ For such rules, see *Gen. R. and O.*, Vol. V, p. 251.

¹⁰ Omitted by Act IX of 1930.

or may be special for any of such cantonments or parts as the Central Government may direct.

(3) A copy of the rules under section 35 for the time being in force in a cantonment shall be kept open to inspection free of charge at all reasonable times in the office of the Cantonment ¹[Board].

(4) In making any rule under clause (b) of sub-section (2) of section 35, the Central Government may direct that whoever obstructs any person, not being a public servant within the meaning of section 21 of the Indian Penal Code, in making any entry, inspection, measurement or survey, shall be punishable with fine which may extend to fifty rupees, and, in the case of a continuing offence, with fine which, in addition to such fine as aforesaid, may extend to five rupees for every day after the first during which such offence continues.

37. No Judge or Magistrate shall be deemed, within the meaning of section 556 of the Code of Criminal Procedure, 1898, to be a party to, or personally interested in, any prosecution for an offence constituted by or under this Act merely because he is a member of the Cantonment ²[Board] or has ordered or approved the prosecution.

38. No suit or other legal proceeding shall lie against any person for anything in good faith done, or intended to be done, under this Act or in pursuance of any lawful notice or order issued under this Act.

39. [Repeals.] Repealed by S. 2 and Sch. of the Repealing Act, 1927 (XII of 1927).

[THE SCHEDULE.]
[Enactments repealed.] Repealed by S. 2 and Sch. of the Repealing Act, 1927, (XII of 1927).

THE CATTLE TRESPASS ACT (I OF 1871).³

EFFECT OF LEGISLATION

Year.	No.	Short title.	Repealed or otherwise* how affected by Legislation.
1871	I	The Cattle-Trespass Act, 1871.	Rep. in pt XV of 1910; X of 1914; XVII of 1921; Act I of 1938. Am., I of 1891; XVII of 1921; Govt. of Ind. (Adap. of Indian Laws) Order, 1937.

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LEG. REF.

¹ Substituted by Act XXXII of 1940.
² Substituted for word "Committee" by Act X of 1925.

³ For the Statement of Objects and Reasons, C. C. M.-I-23

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SCHEDULE.

[13th January, 1871]

An Act to consolidate and amend the law relating to Trespasses by Cattle.

WHEREAS it is expedient to consolidate and amend the law relating to trespasses by cattle; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Title and extent.

¹[1. (1) This Act may be called THE CATTLE-TRESPASS ACT, 1871; and

(2) It extends to the whole of British India,² except the presidency-

LEG. REF.

¹Substituted for the original sec. 1 by Act I of 1891.

²This Act has been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898), sec. 4 (1), and Sch. I, Bur. Code; in the Hill district of Arakan by the Arakan Hill District Laws Regulation, 1916 (I of 1916), *ibid.*; in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (II of 1913), S. 3, Bal. Code; in the Santhal Parganas by the Santhal Parganas Settlement Regulation (III of 1872), as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899), S. 3, B. & O. Code; in angul and the Khondmals by the Angul Laws Regulation, 1913 (III of 1913), sec. 3, *ibid.*; in the Pargana of Manpur by the Manpur Laws Regulation, 1926 (II of 1926), S. 2; and in the Chittagong Hill Tracts by notification under S. 4 (2) of the Chittagong Hill Tracts Regulation, 1900 (I of 1900), *see* Bengal Code, Volume IV, pp. 84-85. It has been declared by notification under sec. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts, namely:—

The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum [Gazette of India, 1881, Pt. I, p. 504]; the

District of Lohardaga included at this time the present District of Palamau, which was separated in 1894; the District of Lohardaga is now called the Ranchi District, [*see* Calcutta Gazette, 1899, Pt. I, p. 44]; and the North-Western Provinces Tarai, Gazette of India, 1876, Pt. I, p. 505; the Scheduled Districts in Ganjam and Vizagapatam *ibid.*, 1899, Pt. I, p. 720.

It has been extended, by notification under sec. 16 of the Burma Laws Act, 1898 (XIII 1898), to the Civil Station of Lashio in the State of North Hsenwi, Burma Gazette, 1898, Pt. I, p. 584.

It has been extended to the Civil Station of Taunggi in the State of Yawng Hwe, *ibid.*, 1895, Pt. I, p. 550.

SEC. 1: CASE-LAW.—Where a prisoner was properly convicted on evidence of illegally seizing cattle, but was sentenced under the old law III of 1867, but that Act has been repealed by Act I of 1871, the High Court declined to interfere with the sentence as the latter Act was in force at the time of the conviction and sentence, and no injustice had been done. 16 W.R. (Cr.) 12. But where a conviction was not justified under the Act and especially where the fine was arbitrary, High Court interfered and set aside the conviction. 6 Luck. 26=31 Cr.L.J. 1015=1930 Oudh 250. Where a plaintiff complains of

towns and such local areas as the Provincial Government, by notification¹ in the Official Gazette, may from time to time exclude from its operation.]

2[* * *]

Repeal of Acts.

2. [Rep. by Act I of 1938.]

Interpretation-clause.

3. In this Act,—

“officer of police” includes also village-watchmen, and

“cattle” includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats, and kids,³ and

“local authority” means any body of persons for the time being invested by law with the control and administration of any matters within a specified local area, and

“local fund” means any fund under the control or management of a local authority].

CHAPTER II.

POUNDS AND POUND-KEEPERS.

4. Pounds shall be established at such places as the Magistrate of the District, subject to the general control of the Provincial Government, from time to time directs.⁵

The village by which every pound is to be used shall be determined by the Magistrate of the District.⁶

LEG. REF.

¹ For notification issued by the Government of the United Provinces under this power, see U. P. R. & O.

² Sub-section (3) of sec. 1 was repealed by sec. 3 and Second Schedule of the Repealing and Amending Act, 1914 (X of 1914).

³ Added by Act I of 1891.

⁴ Cf. definition in S. 3 (28) of the General Clauses Act, 1897 (X of 1897), which sec. 4 (2) applies to all Acts passed after the 14th January, 1887.

⁵ For rules and forms as to cattle-pounds in Sind, see Bom. R. & O.

⁶ In the Civil Station of Lashio in the Shan State of North Hsenwi, the jurisdiction, powers and duties of a District Magistrate or of a Sub-Divisional Magistrate, being a Magistrate of the first class, are exercised by the Superintendent of the Northern Shan States and every Assistant Superintendent of the Shan States, respectively—See Burma Gazette, 1898, Pt. I, p. 585.

damage to his crops by the cattle of different persons and there is nothing to show the extent of damage by each set of cattle, the plaintiff can only be awarded nominal damages. 1941 O.W.N. 1124=1941 A.W. R. (Rev.) 938=17 Luck. 284=1942 Oudh 73.

SEC. 4.—The maintenance of private cattle pounds is incompatible with the provisions of this Act and establishment and maintenance of cattle pounds under the superintendence and control of Government Officials assisted by the police may be considered essential for the maintenance of law and order and the peace and good Government of the country. It is an act of the Executive Government with which it is not competent for the Civil Courts to interfere. 39 C. 615=39 I.A. 31=16 C.W.N. 363=13 I.C. 965 (P.C.).

A person in exclusive possession of land

is an occupier thereof under sec. 10. He can seize any cattle trespassing on his land. 3 P.R.Cr. 1916=17 Cr.L.J. 63=32 I.C. 655. See also 8 L.B.R. 217=17 Cr.L.J. 62=32 I.C. 654. Under sec. 10 the right to take hold of cattle trespassing on land and doing damage subsists only while the cattle are on the land. It does not continue after the cattle have left the land and so the owner of the land trespassed on cannot go to the owner of the errant cattle and demand their delivery in order that he may take them to the cattle pound. 25 Cr.L.J. 1004=81 I.C. 716=1925 N. 50. This case was however distinguished in a later case arising in Bombay, where it was held that for the purpose of seizing such cattle, the owner of the field trespassed upon by them had power to chase them and follow them into another person's land to which they ran and the latter could not treat the chasers as trespassers, whom he could attack and injure in the exercise of his right of private defence. 116 I.C. 403=30 Cr.L.J. 627=1928 L. 692. [In this case, the cattle when chased by the owners of the field trespassed upon by them ran towards the field of the accused to whom they belonged and on the owners chasing them thither, the accused inflicted mortal injuries on one of them, who died, for which the accused was put up for trial.] No doubt the right of capture of the cattle does not extend to following them to their sheds and seizing them there; but if the owner of a field attempts to seize them while actually trespassing, he is within his rights, in capturing them before they have definitely made their escape from the spot, even though they were not actually inside the field when captured. 36 Cr.L.J. 361=1934 N. 258. Unless the burgadar is shown to be a mere servant of lessor, the lessor is chargeable for cattle trespass on land under *Burga* lease. 23 C.W.N. 387=20 Cr.L.J. 398=50 I.C.

Control of pounds, Rates of charge for feeding impounded cattle.

Appointment of pound-keepers.

Pound-keepers may hold other offices.

Pound-keepers to be "public servants."

To keep registers and furnish returns.

To register seizures.

(a) the number and description of the animals,

(b) the day and hour on and at which they were so brought,

(c) the name and residence of the seizure, and

(d) the name and residence of the owner, if known,

and shall give the seizer or his agent a copy of the entry.

To take charge of and feed cattle.

5. The pounds shall be under the control of the Magistrate, of the District; and he shall fix, and may from time to time alter, the rates of charge for feeding and watering impounded cattle.

6. ¹[The Provincial Government shall appoint a pound-keeper for every pound.

Any pound-keeper may hold simultaneously any other office under the Crown.

Every pound-keeper shall be deemed to be a public servant within the meaning of the Indian Penal Code.]

Duties of Pound-keepers.

7. Every pound-keeper shall keep such registers and furnish such returns as the Provincial Government from time to time directs.²

8. When cattle are brought to a pound, the pound-keeper shall enter in his register, —

9. The pound-keeper shall take charge of, feed and water the cattle until they are disposed of as hereinafter directed.

CHAPTER III.

IMPOUNDING CATTLE.

Cattle damaging land.

10. The cultivator or occupier of any land, or any person who has advanced cash for the cultivation of the crop or produce on any land,

or the vendee or mortgagee of such crop or produce or any part thereof, may seize or cause to be seized any cattle trespassing on such land, and doing damage thereto or to any crop or produce thereon, and ³[send them or cause them to be sent within twenty-four hours] to the pound established for the village in which the land is situate.

All officers of police shall, when required, aid in preventing (a) resistance to such seizures, and (b) rescues from persons making such seizures.

Police to aid seizures.

LEG. REF.

¹ Substituted by the A.O., 1937.

² For notification prescribing registers and returns in Burma, see *Burma Gazette*, 1902, Pt. I, p. 794.

³ Substituted for words "take them or cause them to be taken without unnecessary delay" by Act I of 1891.

1006. Seizure by the lessee without any intention to take the cattle to the pound for the purpose of coercing the owner of the cattle to pay the arrears of rent for grazing is illegal and amounts to an attempt to commit theft. 18 Cr.L.J. 849=41 C. 817; 22 C. 1017. Where the accused kept the cow in his custody for damages done over-night for the purpose of impounding unless he received compensation, *held*, he was legally entitled under this section to keep it in his own

custody for 24 hours before lodging it in the pound. 23 Cr.L.J. 511=68 I.C. 47=1923 N. 64; 14 C.W.N. 238. Under sec. 10 a watchman watching crops on land on behalf of a cultivator or occupier is entitled to seize cattle trespassing on the land under his charge when he is given general instructions to seize them while so trespassing. 1922 P. 317; 16 Cr.L.J. 772=31 I.C. 372. A man in exclusive possession of a plot of land is an occupier under sec. 10 and is entitled to seize cattle and any resistance to the removal is punishable under sec. 24. 8 L.B.R. 217=17 Cr.L.J. 62=32 I.C. 654. As to extent of right of seizure, see 81 I.C. 716=25 Cr.L.J. 1004; 1934 N. 258.

SEC. 10. The proprietor of a private protected forest or of an embankment is an occupier of land within the meaning of sec. 10. There is no reason why he should

11. Persons in charge of public roads, pleasure-grounds, plantations, canals, drainage-works, embankments and the like and officers of police, may seize or cause to be seized any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments and the like, or the sides or slopes of such roads, canals, drainage-works or embankments or found straying thereon,

and shall ²[send them or cause them to be sent within twenty-four hours] to the nearest pound.

³[**12.** For every head of cattle impounded as aforesaid, the pound-keepers shall levy a fine in accordance with the scale for the time being prescribed by the Provincial Government in this behalf by notification in the Official Gazette. Different scales may be prescribed for the different local areas.

All fines so levied shall be sent to the Magistrate of the District through such officer as the Provincial Government may direct.

A list of the fines and of the rates of charge for feeding and watering cattle shall be posted in a conspicuous place on or near to every pound.]

CHAPTER IV.

DELIVERY OR SALE OF CATTLE.

13. If the owner of the impounded cattle or his agent appear and claim the cattle, the pound-keeper shall deliver them to him on payment of the fines and charges incurred in respect of such cattle.

The owner or his agent, on taking back the cattle, shall sign a receipt for them in the register kept by the pound-keeper.

LEG. REF.

¹ As to the application of sec. 11 to forests, see the Indian Forest Act, 1927 (XVII of 1927), sec. 70; the Burma Forest Act, 1902 (Bur. Act IV of 1902), sec. 49; the Assam Forest Regulation, 1891 (VII of 1891), sec. 66, Assam Code; to railways, see Act IX of 1890, sec. 125 (4).

² Substituted for words "take them without unnecessary delay" by Act I of 1891.

³ Substituted by Act XVII of 1921.

In lieu of fines fixed under sec. 12, the Indian Forest Act, 1927 (XVII of 1927) fixed a different scale of fines for cattle impounded under sec. 70 of that Act; see sec. 71 of the Indian Forest Act, 1927 (XVII of 1927).

not be regarded as the occupier of land which he has reserved for afforestation. Similarly the occupier of land used as an embankment who builds or maintains an embankment. In either case, sec. 10 applies to cattle doing damage, whether in the forest or in the embankment. 1939 P.W.N. 295=20 P.L.T. 340. Before it can be held that an owner of a property was justified in seizing cattle and taking them to the pound, it must be shown that they were causing damage to land or crops thereon. Doing damage to crops would be implied in a finding that the cattle were found grazing the crops, for it is impossible for cattle to graze

on crops without doing damage to them. Hence when there is evidence of such grazing and it is accepted, nothing further is necessary. 1944 O.W.N. 523=1944 O.A. (C.C.) 318=1944 A.W.R. (C.C.) 318=A.I.R. 1945 Oudh 116. For compensation to be given under sec. 22, there must be a finding that the seizure or detention of cattle was illegal (i.e.) not in accordance with sec. 10. 1939 O.W.N. 150=1939 O.A. 289. Sec. 10 is not inapplicable to grass land. Grass is produce of the land under the section. I.L.R. (1943) Kar. 112=1943 Sind 152.

SEC. 11: STRAYING CATTLE.—Seizure and conviction of person responsible—Actual damage if necessary. The legislature with a view to protect the person and property of the public in general has made it an offence to let cattle stray about without there being any one to look after them. The legality of the seizure of such cattle and the conviction of the persons responsible is not made dependent an actual damage being caused. (1930 O. 250, Ref.; 1920 P. 832, Dist.) 28 S.L.R. 73=35 Cr.L.J. 830=1934 S. 34. As to driving of cattle across the railway line at a place where there is no fence and where there is no regular track without causing any damage to the line, see 6 Luck. 26=31 Cr.L.J. 1015=1930 O. 250.

SEC. 13.—See 4 B.H.C. (Cr.) 14; *ibid.* 13; 8 B.H.C. (Cr.) 22.

14. If the cattle be not claimed within seven days from the date of their being impounded, the pound-keeper, shall report the fact to the officer in charge of the nearest police-station, or to such other officer as the Magistrate of the District appoints in this behalf.

Such officer shall thereupon stick up in a conspicuous part of his office a notice stating—

- (a) the number and description of the cattle,
- (b) the place where they were seized,
- (c) the place where they are impounded,

and shall cause proclamation of the same to be made by beat of drum in the village and at the market-place nearest to the place of seizure.

If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the said officer, or an officer of his establishment deputed for that purpose, at such place and time and subject to such conditions as the Magistrate of the District by general or special order from time to time directs:

Provided that, if any such cattle are, in the opinion of the Magistrate of the District, not likely to fetch a fair price if sold as aforesaid, they may be disposed of in such manner as he thinks fit.

15. If the owner or his agent appear and refuse to pay the said fines and expenses, on the ground that the seizure was illegal and that the owner is about to make a complaint under section 20, then, upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him.

16. If the owner or his agent appear and refuse or omit to pay or (in the case mentioned in section 15) to deposit the said fines and expenses, the cattle, or as many of them as may be necessary, shall be sold by public auction by such officer at such place and time, and subject to such conditions, as are referred to in section 14.

The fines leviable and the expenses of feeding and watering, together with the expenses of sale, if any, shall be deducted from the proceeds of the sale.

The remaining cattle and the balance of the purchase-money, if any, shall be delivered to the owner or his agent, together with an account showing—

- (a) the number of cattle seized,
- (b) the time during which they have been impounded,
- (c) the amount of fines and charges incurred,
- (d) the number of cattle sold,
- (e) the proceeds of sale, and
- (f) the manner in which those proceeds have been disposed of.

The owner or his agent shall give a receipt for the cattle delivered to him and for the balance of the purchase-money (if any) paid to him according to such account.

Receipt.

17. The officer by whom the sale was made shall send to the Magistrate of the District the fines so deducted.

The charges for feeding and watering deducted under section 16 shall be paid over to the pound-keeper, who shall also retain and appropriate all sums received by him on account of such charges under section 13.

The surplus unclaimed proceeds of the sale of cattle shall be sent to the Magistrate of the District, who shall hold them in deposit for three months,

and, if no claim thereto be preferred and established within that period, shall, at its expiry, ¹[be deemed to hold them as part of the revenues of the Province.]

18. [*Application of fines and unclaimed proceeds of sale.*] *Repealed by the Govt. of India (Adaptation of Indian Laws) Order, 1937.*

19. No officer of police or other officer or pound-keeper appointed under the provisions herein contained shall, directly or indirectly, purchase any cattle at a sale under this Act.

No pound-keeper shall release or deliver any impounded cattle otherwise, than in accordance with the former part of this Chapter, unless such release or delivery is ordered by a Magistrate or Civil Court.

Officers and pound-keepers not to purchase cattle at sales under Act.

Pound-keepers when not to release impounded cattle.

CHAPTER V.²

COMPLAINTS OF ILLEGAL SEIZURE OR DETENTION.

20. Any person whose cattle have been seized under this Act, or, having been so seized, have been detained in contravention of this Act, may, at any time within ten days from the date of the seizure, make a complaint³ to the Magistrate of the District or any Magistrate authorized to receive and try charges without reference by the Magistrate of the District.

21. The complaint shall be made by the complainant in person, or by an agent personally acquainted with the circumstances. It may be either in writing or verbal. If it be verbal, the substance of it shall be taken down in writing by the Magistrate.

Power to make complaints.

Procedure on complaint.

LEG. REF.

¹ Substituted for the words 'dispose of them as hereinafter provided' by A.O., 1937.

² This Chapter was substituted for the original Ch. V by Act I of 1891.

³ The term "offence" as defined by sec. 4 (o) of the Code of Criminal Procedure, 1898 (V of 1898) includes any act in respect of which a complaint may be made under this section.

Offences under this section may be tried in a summary way, *see* Act V of 1898, sec. 260 (1) (m).

SEC. 20.—Although sec. 10, General Clauses Act, only applies to Acts made on or after 14th January, 1897, and does not cover in terms, an Act like Cattle Trespass Act passed in 1871, the principle underlying that section should be applied to complaints under this Act, sec. 20. 30 Cr.L.J. 125=113 I.C. 285=1929 Nag. 96. A Magistrate authorised under sec. 190, Cr. P. Code, to take cognizance of offences upon receiving complaints can take cognizance of an offence under sec. 20 of this Act though there is no special authorisation in that behalf. 44 Bom. 42=21 Bom.L.R. 1084=54 I.C. 495. *See also* 50 M. 841=52 M.L.J. 251=28 Cr.L.J. 301=1927 M. 396 (44 Bom. 42 and 34 C. 926, *Foll.*).

LIMITATION FOR COMPLAINT.—A complaint under sec. 20 to be valid, must be made to a Magistrate having jurisdiction within 10 days of the seizure of cattle. 29 Mys.H.C.R. 1023. *See also* 38 C.W.N. 1078.

SECS. 20 AND 21: SCOPE.—Compliance with—Invalid complaint within time—Valid complaint after—Not sufficient compliance.

An offence under the Act was committed on 6—10—1930. The persons whose cattle had been seized lodged informal complaint of theft in writing to the Amildar and head of the police on 10—10—1930. Subsequently on 30—10—1930, the police placed a charge-sheet for an offence under sec. 20 before a Magistrate. *Held*, this was not a sufficient compliance within secs. 20 and 21, and that the Court could not take cognizance of the offence. 39 Mys.H.C.R. 1023.

SEC. 21.—For a complaint by an agent to be valid, it is not necessary that the agent must know all about the matter from what he has seen himself and not from what he has been told by others. 26 Cr. L. J. 327=84 I.C. 551=1923 N. 156. The expression "an agent personally acquainted" means an agent who has some personal knowledge of the circumstances relating to the seizure of the cattle and not merely an agent who holds a general power of attorney. But personal acquaintance need not mean that a person having such acquaintance must have been an eye-witness. The word "agent" includes not only an agent in the ordinary sense, but also a servant, but does not include an agent, who lives at a distance and who has received information of the seizure at second hand. A servant actually present at the time of the seizure might make a complaint under sec. 20 when the owner himself is unable to do so, or when there was no agent who was able to make complaint for the owner; but where the owner himself is able to make a complaint or there is an agent, then a complaint should be made by the owner or such agent. 27 N.L.R. 167=32 Cr.L.J. 896=1931 N. 98. A complaint can only be made by one of two

If the Magistrate, on examining the complainant or his agent, sees reason to believe the complaint to be well founded, he shall summon the person complained against, and make an enquiry into the case.

22. If the seizure or detention be adjudged illegal, the Magistrate shall award to the complainant, for the loss caused by the seizure or detention, reasonable compensation, not exceeding one hundred rupees, to be paid by the person who made the seizure or detained the cattle together with all fines paid and expenses incurred by the complainant in procuring the release of the cattle, and, if the cattle have not been released, the Magistrate shall, besides awarding such compensation, order their release and direct that the fines and expenses leviable under this Act shall be paid by the person who made the seizure or detained the cattle.

23. The compensation, fines and expenses mentioned in section 22 may be recovered as if they were fines imposed by the Magistrate.¹

LEG. REF.

¹ See secs. 63 to 70 of the Indian Penal Code (Act XLV of 1860) and sec. 386 of the Code of Criminal Procedure, 1898 (V of 1898); cf. also sec. 25 of the General Clauses Act, 1897 (X of 1897).

definite sets of persons, viz., either in person by the owner of the cattle seized or by an agent personally acquainted with the circumstances of the case. A complaint by any one else is unauthorised and is no complaint at all in law. Such a defect strikes at the very root of the matter and cannot be cured by sec. 537, Cr. P. Code. 39 Mys.H. C.R. 1023. *Grasier of cattle* is an agent of the owners personally acquainted with the circumstances within the meaning of this section. 116 I.C. 424=30 Cr.L.J. 633=1929 N. 152.

SEC. 22.—Sec. 326 (1) of the U. P. Municipalities Act relates only to suits of a civil nature in a Civil Court and has nothing to do with prosecutions under Cattle Trespass Act. The Magistrate found that cattle had done no damage to Municipal trees and that consequently the seizure of the cattle by the accused Municipal servants was bad, *held*, that the accused were rightly convicted under sec. 22. 16 A.L.J. 148=19 Cr.L.J. 368=44 I.C. 592. Where a complaint mainly under sec. 22 of this Act, though secs. 323 and 504 of the Penal Code were also mentioned, is presented to a panchayat Court within time, but which by reason of sec. 17 of the U. P. Village Panchayat Act was not competent to entertain it, and it was subsequently transferred to the proper Court, the presentation is not proper and cannot be cured by sec. 537, Cr. P. Code. 175 I.C. 662=1938 O.W.N. 596=1938 Oudh 183. For compensation to be given under sec. 22, there must be a finding that the seizure or detention of the cattle was illegal, that is to say, the seizure was not in accordance with sec. 10, Cattle Trespass Act. Where the question is whether the cattle were doing damage to the crop, the fact that the damage was likely to be small, cannot render the seizure illegal. If in law one is entitled to impound the

cattle, the smallness of the damage or any consequent unreasonableness of the impounding is no ground awarding compensation. 1939 O.W.N. 150=1939 A.W.R. (C.C.) 56=1939 O.A. 289. The person under whose orders the cattle were seized is liable to compensate the complainant equally with those who directly seized them under his orders. 72 I.C. 71=24 Cr.L.J. 311=1923 P. 292. In a *suit for damages* for illegal seizure of cattle, the onus lies on defendant to prove that the seizure was justifiable in law. Such a suit is not barred by reason of Ch. V of this Act. 44 I.C. 237 (N.), following 15 W.R. 279; 16 C. 159. Where there was no allegation of loss in the petition and no compensation was claimed, order for payment of compensation cannot be sustained. 4 Pat.L.T. 231=1923 P. 292=24 Cr.L.J. 311. See also 31 Cr.L.J. 278=121 I.C. 665=1930 N. 149. *But see *contra* 29 Cr.L.J. 325=108 I.C. 80=1928 M. 369; 159 I.C. 154=1935 A.L.J. 1113=1935 A. 925. Where the complaint is lodged by an agent, the Magistrate can award reasonable compensation, which will be paid to the complainant (owner of cattle) and not to the agent who filed the complaint. 30 Cr.L.J. 633=116 I.C. 424=1929 N. 152. The Magistrate has no power to award *pleader's fees* as "compensation for loss caused by seizure"; nor where the cattle had been released before the pleader was engaged, can it be awarded as "expenses incurred by complainant in procuring the release." 34 Cr.L.J. 676 (1)=1933 M. 502=65 M.L.J. 24. See also 48 L.W. 214=1938 M.W.N. 831=(1938) 2 M.L.J. 285. The Magistrate can only award compensation for illegal seizure of cattle and cannot impose fine. He is also not competent under sec. 22 to pass sentence of imprisonment and thus when he passes a sentence of imprisonment in default of payment of compensation, the sentence is illegal. 31 Cr.L.J. 278=121 I.C. 665=1930 N. 149. See also 1938 O.W.N. 1130=1938, O.A. 915. Appeal against order of compensation and repayment of fine under sec. 22 is maintainable. 23 Bom.L.R. 836=22 Cr.L.J. 624=1923 Bom. 191.

CHAPTER VI.

PENALTIES.

Penalty for forcibly opposing the seizure of cattle or rescuing the same.

24. Whoever forcibly opposes the seizure of cattle liable to be seized under this Act,

and whoever rescues the same after seizure, either from a pound, or from any person taking or about to take them to a pound, such person being near at hand and acting under the powers conferred by this Act,

shall, on conviction before a Magistrate, be punished with imprisonment for a period not exceeding six months, or with fine not exceeding five hundred rupees, or with both.

¹25. Any fine imposed ²[under the next following section or] for the

Recovery of penalty for mischief committed by causing cattle to trespass.

offence of mischief by causing cattle to trespass on any land may be recovered by sale of all or any of the cattle by which the trespass was committed, whether they were seized in the act of trespassing or not, and

whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed.

26. Any owner or keeper of pigs who, through neglect or otherwise,

Penalty for damage caused to land or crops or public roads by pigs.

damages or causes or permits to be damaged any land, or any crop or produce of land, or any public road³, by allowing such pigs to trespass thereon, shall, on conviction before a Magistrate, be punished

with fine not exceeding ten rupees.

⁴[The Provincial Government, by notification in the Official Gazette, may from time to time, with respect to any local area specified in the notification, direct that the foregoing portion of this section shall be read as if it had reference to cattle generally, or to cattle of a kind described⁵ in the notification, instead of to pigs only, or as if the words "fifty rupees" were substituted for the words "ten rupees," or as if there were both such reference and such substitution.]

* * * * *

LEG. REF.

¹ As to the application of sec. 25 in the case of cattle-trespassing on a railway, see the Indian Railways Act, 1890 (IX of 1890), sec. 125 (3).

² Inserted by Act I of 1891.

³ "Public road" in sec. 26 includes a railway—see the Indian Railways Act, 1890 (IX of 1890), sec. 125 (4).

⁴ Para. added by Act I of 1891.

⁵ For notification issued under sec. 26, see different Local Rules and Orders.

⁶ Last paragraph repealed by Act X of 1914.

SEC. 24.—It cannot be said that a conviction under sec. 24, is essential before any offence under the Penal Code connected with such an offence can be taken into consideration. 1944 O.W.N. 523=1944 O.A. (C.C.) 318=1944 A.W.R. (C.C.) 318. It is essential to a conviction under sec. 24 that there should be a clear finding of damage done by the trespassing cattle. 186 I.C. 182=21 P.L.T. 627=A.I.R. 1940 Pat. 299. There can be no conviction under this section, unless it is proved and found that the

cattle were liable to be seized within sec. 10, and that damage was caused. 1 Pat.L.T. 176=57 I.C. 464=21 Cr.L.J. 640. See also 24 A.L.J. 280=27 Cr.L.J. 313=1926 A. 276; 19 Cr.L.J. 202=43 I.C. 618; 19 Cr.L.J. 157=43 I.C. 445. In order that an offence may be established under sec. 24, the seizure of the cattle must be legal, and consequently driving herds of cattle across the railway line at a place where there is no fence and where there is a regular track does not constitute any offence under sec. 24 in the absence of any damage to the line. 6 Luck. 26=31 Cr.L.J. 1015=1930 O. 250. See also 1939 O.W.N. 150=1939 O.A. 289. Rescue of cattle not seized in accordance with the Act is not illegal. 23 C.W.N. 387=20 Cr.L.J. 398=50 I.C. 1006. Entering the cattle pound with intent to commit an offence under this section amounts to criminal trespass within the meaning of sec. 447, I. P. Code. 8 L. 331=103 I.C. 201=28 Cr.L.J. 665. Persons claiming that they are the owners of the cattle and also of the land, are liable under sec. 24 if they do not remove the cattle. Their claim will not affect the title of the true owner. 3 P.R.Cr. 1916=16 Cr.L.J.

27. Any pound-keeper releasing or purchasing or delivering cattle contrary to the provisions of section 19, or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty rupees.

Such fines may be recovered by deductions from the pound-keeper's salary.

Application of fines recovered under sections 25, 26 or 27.

28. All fines recovered under section 25, section 26 or section 27 may be appropriated in whole or in part as compensation for loss or damage proved to the satisfaction of the convicting Magistrate.

CHAPTER VII.

SUITS FOR COMPENSATION.

29. Nothing herein contained prohibits any person whose crops or other produce of land have been damaged by trespass of cattle from suing for compensation in any competent Court.

30. Any compensation paid to such person under this Act by order of the convicting Magistrate shall be set-off and deducted from any sum claimed by or awarded to him as compensation in such suit.

CHAPTER VIII¹

SUPPLEMENTAL.

Power for Provincial Government to transfer certain functions to local authority and direct credit of surplus receipts to local fund.

31. The Provincial Government may, from time to time, by notification in the Official Gazette,—

(a) transfer to any local authority² within any part of the territories under its administration in which this Act is in operation, all or any of the functions of the Provincial Government or the Magistrate of the District under this Act, within the local area subject to the jurisdiction of the local authority.

(b) ³[* * * * *]
⁴[* * * * *]

SCHEDULE.

[Repealed by Act I of 1938.]

THE INDIAN CENSUS ACT (XXIV OF 1929).

[Repealed by Act VI of 1945.]

LEG. REF.

¹ Ch. VIII added by Act I of 1891, sec. 9.
² For special enactments, see as to the Central Provinces, the Central Provinces Local Self-Government Act (I of 1883), sec. 9, cl. (f), and sec. 23 (1), cl. (c), C. P. Code; and as to the Punjab, the Punjab District Boards Act, 1883 (XX of 1883), sec. 20, cl. (a), P. and N.W.F., Code.

³ Cl. (b) omitted by A.O.

⁴ The words 'and may from time to time, by notification in the Official Gazette, cancel or vary any notification under this section' repealed by Act X of 1914.

63=32 I.C. 655. See also 8 L.B.R. 217=17 Cr.L.J. 62=32 I.C. 654. Driving cattle by

shouts and cries does not constitute rescuing. 17 L.W. 548=24 Cr.L.J. 456=1923 M.W.N. 437=72 I.C. 616=1923 M. 608. A person who removes cattle from a pound where they are secured without paying the legitimate fee is liable to be convicted under this section as well as under sec. 380, I. P. Code. In such cases, however, the conviction cannot be under both provisions of law. 33 L.W. 205=32 Cr.L.J. 354=1931 M. 18. The offence of *causing hurt* is a separate offence from that of *rescuing cattle* and separate sentences may be passed in such a case. 105 I.C. 806=28 Cr.L.J. 982=53 M.L.J. 653; offence under section not compoundable. L.R. 1 A. 50 C.R.

... THE CHILD MARRIAGE RESTRAINT ACT (XIX OF 1929).

Year.	No.	Short title.	How Repealed or otherwise affected by Legislation.
1929	XIX	The Child Marriage Restraint Act, 1929.	Amended by Act III of 1930. " Act VII of 1938. " Act XIX of 1938.

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[1st October, 1929.

An Act to restrain the solemnisation of child marriages.

WHEREAS it is expedient to restrain the solemnisation of child marriages; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called THE CHILD MARRIAGE RESTRAINT ACT, 1929.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

¹[and applies also to—

LEG. REF.

¹ Added by Act VII of 1938.

SEC. 1: OBJECT OF THE AMENDMENT.—

There was a conflict of decisions as to whether the Act, as it originally stood, was applicable to child marriages celebrated in places outside British India, e.g., in any place within the French territory or a Native State where such marriages were not declared offences. [Vide (1937) 1 M.L.J. 388=1937 M. 203; 59 B. 745; 175 I.O. 615=1938 Nag. 205.] But this amendment makes this Act applicable to all British subjects and servants of the Crown in any part of India and to all British subjects who are domiciled in any part of India wherever they may be. Thus, at present, this Act can pursue every British subject, although he may celebrate the marriage outside British India, and the Legislature by this amendment has adopted the view of the Madras High Court; so the decision in 59 B. 745 would no longer be correct under the Act as amended. In an administration suit an application was made for liberty to spend out of the estate certain sum to meet the marriage expenses of the

plaintiff who was a minor and had not reached the age of 16. Both the bridegroom and the bride were domiciled in Bikanir and the marriage ceremony was to be performed in Bikanir. The source of income was however in Calcutta. Held, that the application could not be granted as the Court should not facilitate conduct which the legislature in British India has made penal even if such marriage was not punishable according to law of Bikanir. A.I.R. 1941 Cal. 244=194 I.O. 730. See also 1941 N.L.J. 282 (marriage contrary to this Act, not "(necessity" to justify alienation).

OBJECT OF ACT NOT TO DECLARE MARRIAGE INVALID, BUT TO INFLICT PUNISHMENT.—

Although a marriage may have been celebrated in contravention of the provisions of this Act, the Act does not declare it to be an invalid marriage. The Act merely imposes certain penalties on the persons bringing about such marriages. 1936 A. 852=1936 A.L.J. 1097. The Child Marriage Restraint Act aims at the restraint of solemnization of child marriages. It does not affect validity of the marriages after they have

- (a) all British subjects and servants of the Crown in any part of India; and
 (b) all British subjects who are domiciled in any part of India wherever they may be].
 (3) It shall come into force on the 1st day of April, 1930.

been performed. There may no doubt be cases where the Court in the exercise of its discretion, may refuse to give a declaration in the case of a marriage performed in contravention of the Act. 182 I.C. 568=1939 A.L.J. 173=A.I.R. 1939 All. 340.

ACT, IF *ULTRA VIRES*.—The Act is not *ultra vires* at least so far as Hindus are concerned. It was contended that the previous sanction of the Governor-General in Council required by sec. 57 (2) (b) of the Government of India Act (5 and 6 Geo. V, ch. 61 and 9 and 10 Geo. V ch. 101) was not given to the introduction of the measure which became Act XIX of 1929. The argument was that the original Bill, which was introduced and for which sanction was given, was so altered and shaped by the Select Committee, that the Bill as it came out of the Select Committee bore no resemblance at all to the original Bill, and that therefore a fresh sanction should have been obtained for this. It was held that so far as Hindus are concerned, the changes introduced in the Select Committee did not affect the object and purpose of the Bill; and that the difference introduced was only with reference to the methods of achieving the purpose, *viz.*, that the Bill provided for achieving it by creating civil disability whereas the Act provides for achieving it by inflicting punishments, and that the changes were not such as to render inadequate the "previous sanction" accorded, and that the Act, therefore, was valid and not *ultra vires*. 14 Pat.L.T. 438=33 Cr.L.J. 20=1933 Pat. 471.

APPLICABILITY OF ACT—JURISDICTION OF COURTS.—(a) *To foreigners and Subjects of Native States*.—The Act is a penal statute, and, under it whoever offends against its provisions commits a crime. It is applicable to all such crimes committed in British India, even though the persons accused are foreigners, *i.e.*, subjects of a Native State. 39 C.W.N. 656. In the case of these persons, if the marriage takes place outside British India, it would not constitute an offence under this Act.

With reference to the question whether the celebration of child marriages by native British subjects outside British India can be punished under this Act, there was a conflict of opinion between the Bombay and Madras High Courts.

The Madras High Court held that this Act makes it an offence to celebrate a child marriage, and that the penal law, applies not only to the celebration of such marriages within British India by any one, but also to the celebration of such marriage even outside British India by native Indian subjects. (*Vide* sec. 3, I. P. C. and secs. 186 and 188, Criminal Procedure Code.) This Act is extra-territorial to this extent, *viz.*, that if native Indian subjects commit offences

punishable under this Act even outside British India, they are liable to be tried and punished when found in British India. The Act can pursue them even when they have broken it after going outside British India. (1937) 1 M.L.J. 388=1937 M. 237; *see also* 175 I.C. 615=A.I.R. 938 Nag. 235. In this case the marriage was in Frenchpet, about which there was dispute at the time whether it was in British India or whether it formed a part of the French Territory. But the Court held that this circumstance was immaterial for the case as the jurisdiction of the Court did not depend on that question. (*Ibid*). But the Bombay High Court has taken a different view, and has held that this Act is limited in its operation to British India and it only strikes at marriages contracted in British India. I.L.R. 59 B. 745=1935 B. 437. The accused in this case were charged under sec. 6 of this Act in that they permitted or failed to prevent the marriage of their son, who was under the age of 18 years. The marriage took place at Goa, outside British India, and the accused were tried by the District Magistrate of Kanara where the accused were residing at the time of the charge. It was held that marriage contracted outside British India was not an offence under the Act. *See* arguments of Counsel reported in I.L.R. 59 B. 745.

But now the amending Act VII of 1938 has set at rest this question. Under it the Act is made applicable to all British subjects wherever they may be in India. So now, the view of the Madras High Court would be the correct law on the point.

Court not to do anything in frustration of object of this Act, even in proceedings unconnected with this Act. The preamble to the Act states that it is "expedient to restrain the solemnization of child marriages", and therefore no Court would do anything which is calculated to facilitate the performance of any such act. So, where the Court was asked to sanction an amount for the marriage of a girl out of the funds in the hands of a Receiver appointed by the Court, the Court refused to do so, as the girl was below 14 years and as the legislature has expressed disapproval of such a marriage. It also repelled the suggestion that the marriage could be celebrated without any offence in a place outside British India and that the parties were domiciled in a Native State. 63 C. 1153. A charge in respect of an offence under the Child Marriage Restraint Act alleged to have been committed in French territory cannot be inquired into in British India except on the certificate of the Political Agent or the sanction of the Local Government, as required by the proviso to Sec. 188, Cr. P. Code. There is nothing to the contrary in the Child Marriage Restraint Act. 1939 M.W.N. 742=49 L.W. 656

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context—

(a) “child” means a person who, if a male, is under eighteen years of age, and if a female, is under fourteen years of age;

(b) “child marriage” means a marriage to which either of the contracting parties is a child;

=A.I.R. 1939 Mad. 577. See also 1940 N. L.J. 304 cited under sec. 9 *infra*; also 1939 A.M.L.J. 130.

INTENTION TO GIVE CHILD IN MARRIAGE—UNLAWFUL PURPOSE WITHIN EXCEPTION TO SEC. 361, I. P. C.—An intention to give a child in marriage in contravention of this Act is an “unlawful purpose” within the exception to sec. 361, I. P. Code, on the ground that, if the purpose is carried out, the person giving the child in marriage is liable to conviction and punishment. 11 R. 213=34 Cr.L.J. 696=1933 R. 98 (F.B.).

TRIAL UNDER ACT MAY BE SUMMARY.—A trial under this Act may be summary, as it is permitted by sec. 260 (1) (a), Criminal Procedure Code, as the offences under the Act come under the heading “offences not punishable with imprisonment for a term exceeding 6 months”. Sec. 4 (1) (c), Criminal Procedure Code, states that “offence” means any act or omission made punishable by any law for the time being in force. Therefore, an offence against a law such as this Act will come under the provisions of sec. 260 (1) (a) of the Criminal Procedure Code. 35 Cr.L.J. 677=148 I.C. 351=1934 A. 331. *Transfer of case under this Act by District Magistrate to subdivisional Magistrate for disposal without making any enquiry (under sec. 202 Cr. P. Code) is not legal.* 48 L.W. 774.

SETTING ASIDE OF ACQUITTAL IN REVISION—PRACTICE OF HIGH COURT.—It was held in 12 Pat.L.T. 629 that, though the acquittal of an accused would be set aside only in very exceptional cases, it would not be proper to apply that strict rule in cases under this Act, on the grounds that the Police can take no action and the legislature has made the members of the public litigants. But now the Act has been amended and the Police also can take action.

SENTENCE UNDER ACT TO BE DETERRENT.—The Courts are not at liberty to treat this enactment as a legislative imposture and manifestly, if it is to be effective, the sentence upon the priest and other celebrants, without whose aid ordinarily no infringement of the Act is possible, should be such as to deter other avaricious members of his caste from following his example. 14 Pat.L.T. 438=33 Cr.L.J. 20=1933 Pat. 471.

SEC. 2: EVIDENCE OF AGE.—Register of Births and Deaths is a relevant document under sec. 35 of the Evidence Act, and further evidence may not be necessary to establish the date of birth. 16 Pat.L.T. 629. But opinion evidence from mere appearance is not sufficient to establish the age. I.L.R. (1937) Mad. 854=A.I.R. 1937 M. 490; nor certificate from any incompetent medical officer when more competent officer is avail-

able. 35 Cr.L.J. 677=148 I.C. 351=1934 A. 331.

SEC. 2 (b): MARRIAGE.—The word ‘marriage’ has not been defined in this Act. “The meaning of the word differs in different countries. In Christendom, it means a monogamous marriage, being the voluntary union for life of one man and one woman to the exclusion of all others. In India a marriage has a different meaning, in that, in the case of Hindus, it need not be voluntary and it may be polygamous, and if custom permits polyandrous; while in the case of the Mahomedans there is a marriage called *mutah* which need not be for life at all.” (*Gour’s Hindu Law*, 3rd Ed., p. 271).

However, marriage may be defined as an alliance between a man and a woman recognised by law. Such alliance may be formed in a number of ways which vary from the most complicated form prescribed in the Hindu Sastras to the free love which under the name of *Sambandam* is taken for a marriage in Malabar. The question of legal recognition is all in all.

SOLEMNIZATION OF MARRIAGE AMONG HINDUS—ESSENTIALS.—Hindu lawyers prescribed various ceremonies for the solemnization of a marriage. But these ceremonies in their entirety are seldom, if ever, performed. According to them the Vivaha Homa and Saptapadi are essential. But it is notorious that marriages are performed in many castes without them, and it is now settled that, if by caste usage any other form is considered as constituting a marriage, then the adoption of that form under the conditions prescribed by the caste, with the intention of thereby completing the marriage union, is sufficient. It is consequently clear that the essential and binding part of the marriage ceremony must necessarily vary in different localities. 33 M. 342=5 I.C. 42.

TILAK CEREMONY, IF CONSTITUTES MARRIAGE.—*Tilak* ceremony may be regarded as a necessary preliminary to the marriage ceremony; but the actual marriage is a ceremony quite different and distinct from it. Nor can a marriage be properly called a ‘consequence’ of the *tilak* ceremony. 1934 A.L.J. 681=35 Cr.L.J. 1175=1934 A. 829.

MARRIAGE BETWEEN PARTIES OF SAME GOTRA IF NOT WITHIN THE ACT.—The Act aims at and deals with the restraint of the performance of the marriage, and it has nothing to do with the validity or invalidity of the marriage; so even when the parties to the marriage belonged to the same *gotra*, it will nonetheless be marriage for the purposes of this Act. 58 A. 402=36 Cr.L.J. 1453=1936 A. 11.

MARRIAGE WHEN COMPLETE—GAUNA CERE-

(c) "contracting party" to a marriage means either of the parties whose marriage is ¹[or is about to be] thereby solemnised; and

(d) "minor" means a person of either sex who is under eighteen years of age.

Punishment for male
adult below twenty-one
years of age marrying a
child.

3. Whoever, being a male above eighteen years of age and below twenty-one, contracts a child marriage shall be punishable with fine which may extend to one thousand rupees.

4. Whoever, being a male above twenty-one years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

Punishment for male
adult above twenty-one
years of age marrying a
child.

LEG. REF.

¹ Inserted by Act XIX of 1938.

MONEY IF NECESSARY.—The marriage becomes complete as soon as the marriage ceremony which depends on the law and religion of the parties is performed. The fact that the *Gauna* ceremony has not been performed as yet does not affect the performance of the marriage. Consummation is not a part of the marriage ceremony. 58 A. 402=36 Cr. L.J. 1483=1936 A. 11.

SEC. 2 (c): CONTRACTING PARTY.—These words in this Act are defined to mean the parties whose marriage is or is about to be thereby celebrated. Generally in this country, child marriages are brought about by the parents or guardians of the children, and but for this definition, these words would naturally refer to the parents or guardians.

SEC. 2 (d): MINOR.—This Act fixes the age of minority at 18 years for the purposes of this Act. According to the Indian Majority Act, it is extended to 21 years when there is a certificated guardian appointed or declared by the Court under the Guardian and Wards Act, 1893.

SEC. 3: SCOPE OF.—This section fixes the penalty of a maximum fine of Rs. 1,000 on a male between the ages of 18 and 21, who contracts a child marriage. Note that no imprisonment can be awarded under this section. Imprisonment cannot be awarded under the provisions of sec. 25, General Clauses Act, 1897, or sec. 64 of the I. P. Code even in case of default in payment of the fine inflicted. (see sec. 7, *infra*.)

CONTRACTUAL CAPACITY FOR MARRIAGE UNDER ENGLISH LAW—EFFECT OF CHILD MARRIAGE.—Under the English law, a binding marriage can be contracted by an infant of either sex at the age of 16 years. [*Vide* age of Marriage Act (1929), 19 & 20 Geo. V, ch. 36, sec. 1], and a marriage between persons either of whom is under that age is void. (*Halsbury*, 2nd Ed., Vol. XVII, p. 597).

SECS. 3 AND 4: SCOPE OF.—Secs. 3 and 4 prescribe penalties for the male who contracts a child marriage for himself and these differ according to his age. If he is below the age of 18 years, he is not at all punishable. If he is between the ages of 18 and 21, the punishment prescribed under sec. 3 is

only a maximum fine of Rs. 1,000. According to sec. 7 of the Act, the Court is not competent to award imprisonment for default in payment of the fine inflicted. If the male is above 21 years of age, it is open to the Court under sec. 4 not only to inflict a similar fine of Rs. 1,000 but also to award a month's simple imprisonment in addition, or in the alternative. Also, in this latter case it is open to the Court under sec. 25 of the General Clauses Act, 1897, or sec. 64 of the I. P. Code to award additional imprisonment on default of payment of the fine.

SEC. 3 OR 4 AND SEC. 12: DISTINCT OFFENCES.—A person may commit distinct offences both under sec. 3 or sec. 4 and sec. 12. Where a male has been restrained by means of an injunction order of the Court issued under sec. 12 from contracting a child marriage, and he has the same solemnized, then, he would be committing two offences (i) the offence of contracting the child marriage under sec. 3 or sec. 4 as the case may be, and (ii) the offence of contempt of Court for disobeying the injunction, and would render himself liable to two sentences and punishments.

It is to be noted that sec. 7 disables the Court from awarding punishment of imprisonment for default of payment of the fine inflicted, only in respect of a sentence under sec. 3. Therefore, where the male between the ages of 18 and 21 contracts a child marriage in disobedience to an injunction order issued by the Court against it, and he is fined under sec. 12, it is open to the Court to award imprisonment as an alternative punishment on default of payment of the fine inflicted on him.

SEC. 4.—*See* notes under sec. 3 *supra*.

SECS. 4 AND 5: VALUE OF CERTIFICATE AS TO AGE OF BRIDE FROM INCOMPETENT MEDICAL OFFICER.—In a case under this Act against the bridegroom under sec. 4 and the priest who officiated at the marriage under sec. 5, it was contended by them that they were misled by a certificate granted by the woman medical officer in charge of a hospital to the effect that the girl was not less than 14 years of age. But according to the Civil Surgeon the girl was only about 12 years of age, and no evidence was produced to contradict the Civil Surgeon. It was held that they should have gone to the Civil Surgeon

5. Whoever performs, conducts or directs any child marriage shall be

Punishment for solemnising a child marriage.

punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage.

in order to obtain a certificate and that the fact of their having secured a certificate from the woman medical officer, was not sufficient. 35 Cr.L.J. 677=148 I.C. 351=1934 A. 331. But, the production of the medical certificate may be taken into account in the matter of awarding punishment. (*Ibid.*).

JUSTIFICATION CAN BE PLEADED ONLY IF ACT DONE IN GOOD FAITH.—A party pleading justification and claiming exemption from punishment for any offence should have, under sec. 79 of the Indian Penal Code, acted in good faith involving due care and caution. 35 Cr.L.J. 677=148 I.C. 351=1934 A. 331.

SEC. 5: 'PERFORMS, CONDUCTS OR DIRECTS'.—The words 'performing conducting', etc., refer to the actual marriage ceremony itself, and not of any negotiation, preparation or any other preliminary acts; and these are not covered by the section. 175 I.C. 615=1938 Nag. 235. See also 42 Bom.L.R. 857=1940 Bom. 363. These words would include the Priests or Purohits who officiate at the marriage ceremony. See 14 Pat.L.T. 438=146 I.C. 298=1933 Pat. 471. Do these words include also persons such as those who accommodate the offending parties by giving them premises, etc., for the celebration of the marriage, and the servants and dependants of the parties who do several acts in connection with and in furtherance of the marriage? It has been held that merely applying to the Municipal Board for permission to hold nautch, music, and fireworks on the occasion of marriage does not amount to an offence under this section. 1936 O.W. N. 480. But it has been held, in 16 Pat. L. T. 639, that, though a person may not be directly guilty of an offence under this Act, the provisions of the Indian Penal Code regarding the abetment of offences may be applied to him, and he may be convicted and sentenced for abetment of offences under this Act. So according to this section, it would be a question of fact in each case whether the acts alleged against any such person constitute an abetment of the offence under this Act read with the provisions of the Indian Penal Code. Sec. 5 of the Act is intended to punish the solemnising a child marriage. The words "perform, conduct or direct" in sec. 5 bear the same import and mean working towards the end, that is completing the union, and are used to indicate solemnization of the marriage. They do not suggest the arranging of marriage merely or attending a marriage ceremony with a view to assisting in the solemnization of the marriage. The words are used in relation to the ceremony. The performance of a

marriage among Hindus means the solemnization thereof by conducting such ceremonies as would complete and validate the marriage that is, the performance of the sacramental or religious and not the secular ceremony. Mere participation in the latter ceremony would not offend against sec. 5. Sec. 5 is not intended to punish parents who arrange or assist in the performance of the marriage ceremony. The parents of a grown up bride who take part in the kanyadan ceremony cannot be made liable under sec. 5. I. L.R. (1940) Bom. 709=42 Bom.L.R. 857=A.I.R. 1940 Bom. 363.

MARRIAGE.—[See also notes under sec. 2 (b) *supra*.] For the purposes of this section, it is only the marriage ceremony that has to be considered, and it is quite immaterial where and when or by whom the *Tilak* ceremony was performed. 1934 A.L.J. 681=35 Cr.L.J. 1175=1934 A. 829. Where the accused are not charged with the commission of an offence by reason of having performed the *Tilak* ceremony, but are charged for the offence of performing, conducting or directing the child marriage under sec. 5 of this Act, secs. 179 and 182, Criminal Procedure Code, could not apply, as the marriage cannot be properly called a 'consequence' of the *Tilak* ceremony, and the case is, therefore, not triable in the place where the *Tilak* ceremony took place. 1934 A.L.J. 681=35 Cr.L.J. 1175=1934 A. 829. See also 175 I.C. 615=1938 Nag. 235.

'REASON TO BELIEVE'.—These words imply that there has been a *bona fide* inquiry and test as regards the age of the child concerned. It is a well-known fact in medical jurisprudence that the age of a person between the ages of 12 and 16 could not be ascertained satisfactorily by a mere personal inspection. So in a case where the husband and priest who were accused under this Act pleaded that they were satisfied by a personal inspection of the minor girl that she was above the age of 14 years while as a matter of fact she was below that age, it was held that the defence would not avail them. I.L.R. (1937) Mad. 854=45 L.W. 437. Further, mere production of a medical certificate as to the age would not be sufficient. It must have been issued by a competent medical officer. Where, therefore, a certificate as to the age of a girl was obtained from a subordinate woman medical officer while there was available in the station the District Civil Surgeon, and while the uncontradicted evidence of the Civil Surgeon showed that the girl was below the age of 14 years, it was held that the parties were guilty. 35 Cr.L.J. 677=148 I.C. 351=1934 A. 331. Production of the birth certificate

6. (1) Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian

Punishment for parent or guardian concerned in a child marriage.

or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both:

of the boy or girl may be satisfactory evidence.

SECS. 5 AND 6: SCOPE OF—CONFLICT OF RULINGS.—As to the question whether the parents are liable under sec. 5 or under sec. 6, or under both these sections, there is a difference of opinion among the High Courts. It was held by the Allahabad High Court that secs. 5 and 6 deal with different offences. Sec. 5 deals with the persons who perform, conduct or direct any child marriage. Sec. 6 provides for the offence in cases where a minor himself conducts a child marriage. It is only in the case where a minor contracts a child marriage that any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised shall be punishable. Sec. 5 deals with cases in which the marriage is not contracted by the minor. It is not the intention of the legislature to punish a person both under secs. 5 and 6 at the same time. 58 A. 402=36 Cr.L.J. 1483=A.I.R. 1936 A. 11.

The Madras High Court, on the other hand, holds that sec. 5 applies only to the solemnization of marriage by others than parents and that sec. 6 alone applies to parents who promote a child marriage or permit it or negligently fail to prevent it. I.L.R. (1937) Mad. 854=45 L.W. 437. The Nagpur Court also holds the same view as that of Madras. 1932 N. 174. In cases of complaints of offences under secs. 5 and 6 it is essential that trying Magistrate should find definitely that either or both of the contracting parties to the marriage were infants within the meaning of the Act, that is to say, that the bridegroom was under the age of 18 or that the bride was under the age of 14. 181 I.C. 916=40 Cr.L.J. 605=A.I.R. 1939 Cal. 288. Where it is alleged that the accused lived in British India and arranged for a marriage in contravention of the provisions of the Act, to take place out of British India, the offence is committed inside British India and hence no certificate under sec. 188, Cr. P. Code, is necessary, 1939 A. M.L.J. 130. See also 49 L.W. 656=A.I.R. 1939 M. 577.

SEC. 6: SCOPE AND OBJECT OF SECTION.—Unlike sec. 5 which constitutes only positive acts as an offence, this section constitutes not only certain acts but also certain omissions as offences under the Act. Further this section lays down a rule of presumption contrary to the ordinary rule of presump-

tion under the criminal law, and throws on the accused the burden of proving that he did not negligently fail to prevent the child marriage. On this section, see 175 I.C. 615=A.I.R. 1938 Nag. 235.

PARENTS WHEN COMMIT OFFENCE UNDER THIS SECTION—FATHER AND MOTHER.—Sec. 6 is confined only to the person who had actual charge of the minor either as parent or guardian at the time of the marriage. I.L.R. (1937) Mad. 854=A.I.R. 1937 M. 490. See also 16 Pat.L.T. 629=1935 Pat. 475. In the case of Hindu marriages, it cannot be said that the father of the bridegroom or the bride does not perform or direct the marriage. It is generally the father or the guardian who arranges for the marriage of the boy and takes the marriage party to the house of the bride. It is the father of the bride who takes part actually in the performance of the marriage ceremonies, as it is he who gives his daughter in marriage. Therefore it cannot be said of either of them that he did not perform or direct the marriage. 58 A. 402=36 Cr.L.J. 1483=A.I.R. 1936 A. 11. The mother has no authority, when the father of the bridegroom who is below 18 years promotes and brings about the marriage, to prevent the marriage; and her mere participation in the marriage cannot be regarded as constituting an offence punishable under this section. I.L.R. (1937) Mad. 854=45 L.W. 437. Where the bridegroom who was below 18 years was in charge of the father, who promoted the marriage and got it performed, the mother of the bridegroom cannot be convicted under this section. I.L.R. (1937) M. 854=A.I.R. 1937 M. 490.

BRIDEGROOM AND BRIDE—ONE ONLY IS CHILD—WHETHER FATHER OF THE OTHER GUILTY UNDER THIS ACT—CONFLICT OF VIEWS—ABETMENT.—The Allahabad High Court holds that sec. 5 is wide enough to cover the case of the fathers of both the bridegroom and the bride. Even where one of them, i.e., the bride or the bridegroom is not of the age specified in the Act for her or him, the fathers of both of them would be liable under this section. 58 A. 402=36 Cr.L.J. 1483=A.I.R. 1936 A. 11. But a different view has been taken by the Madras High Court which holds that the parents of the bridegroom cannot be convicted under this section, merely because the bride was under 14 years, and they can be convicted, if at all under this section, only if the bridegroom, i.e., their own son who was in their charge, was under 18 years at the time of the marriage. I.L.R. (1937) M. 854=A.I.R. 1937 M. 490. But a reconciliation may be found in

Provided that no woman shall be punishable with imprisonment.

(2) For the purposes of this section, it shall be presumed unless and until the contrary is proved, that, where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnised.

7. Notwithstanding anything contained in section 25 of the General Clauses Act, 1897, or section 64 of the Indian Penal Code, a Court sentencing an offender under section 3 shall not be competent to direct that, in default of payment of the fine imposed; he shall undergo any term

Imprisonment not to be awarded for offences under section 3.

of imprisonment.

8. Notwithstanding anything contained in section 190 of the Code of Criminal Procedure, 1898, no Court other than that of a Presidency Magistrate or a Magistrate of the first class shall take cognizance, of, or try, any offence

Jurisdiction under this Act.

under this Act.

9. No Court shall take cognizance of any offence under this Act after the

Mode of taking cognizance of offences. expiry of one year from the date on which the offence is alleged to have been committed.

the decision of the Patna High Court which has held that although the Act makes no mention of abetting, yet under the provisions of the Indian Penal Code, it is possible for them to be prosecuted for abetting an offence although the accused is not the father of one of the parties who is under age so long as the other party is below the prescribed age. So, even if the bridegroom is not under age, his father would be guilty of abetting the offence under this Act if the bride is of under age. 16 Pat.L.T. 629. It cannot be said from the words "where a minor contracts a child marriage" occurring in sec. 6, that the section applies only to cases where the child himself or herself entered into an agreement for the marriage. The liability rests on any parent or guardian who in any way is responsible for the marriage of his minor child, by whomsoever the agreement and arrangements for the marriage may be made. Further the responsibility is laid by sec. 6 on the person who has charge of the minor. Hence where a father is alive and the daughter is living with him, he alone can be made liable under the section and the grandfather would not be liable though he might have in fact made all the arrangements. 1945 A.W.R. (H.C.) 67.

NO IMPRISONMENT FOR WOMEN.—This provision in favour of woman offenders is due to the fact that very often they are not the principal offenders, but only happen to be a tool in the hands of some male relations. There is a similar exemption from imprisonment in the case of females, in respect of offences under sec. 12 of this Act.

SEC. 7.—This section does not affect the power of the Court to inflict an alternative punishment of imprisonment in default of payment of the fine imposed, where the offence and sentence are under sec. 12 of this Act; even though the accused is the male husband between the ages of 18 and 21. This section applies only where the sentence

is under sec. 3.

SEC. 8.—The reason for the amendment introduced in this section is to confer upon a larger number of officers jurisdiction to take cognizance of offences and to entertain complaints, and try offences under the Act, so that cases may be disposed of with greater facility and quickness. In (1937) 1 M. L.J. 498=A.I.R. 1937 Mad. 637, it was held that an Additional District Magistrate who had been given all the powers of a District Magistrate was empowered to try cases under this Act. But in view of the amendment to the section which empowers every first class Magistrate to try them, there would not be any room for any such doubt arising. On this section, see also 1934 A. 331.

SEC. 9: OBJECT OF AMENDMENT.—The amendment of this section has been made with a view to permit the Court to take proceedings under the Act upon its own motion without the necessity of a formal complaint. The words "save upon a complaint made" have been deleted. The ruling in 1938 Rang. L.R. 150=A.I.R. 1938 Rang. 257 which held that a mere 'police report' did not constitute a 'complaint' as required by this section before it was amended, is no longer of any significance since the words relating to 'complaint' have been deleted in the amended section. The reason for this amendment has been stated as follows in the Statement of Objects and Reasons:—"It is known that one of the principal impediments to the enforcement of the Sarda Act at present lies in the obligation placed upon the complainant to incur the publicity of a formal complaint and, if required by the Court, to execute a bond, to incur also the risk of losing the sum mentioned in the bond. The proposed amendment would enable the Court to proceed upon information obtained privately after taking such steps as it might think necessary to satisfy itself of the correctness of the information."

10. The Court taking cognizance of an offence under this Act shall, unless it dismisses the complaint under section 203 of the Code of Criminal Procedure, 1898, either itself make an inquiry under section 202 of that Code, or direct a Magistrate of the first class subordinate to it to make

Preliminary inquiries into offences under this Act.
such inquiry.

ONE YEAR—LIMITATION, REASON FOR.—As a general rule, in the absence of statutory limitation a prosecution for an offence may be instituted at any time however long after the commission of the criminal act. But several special Acts have enacted a time limit for the commencement of criminal proceedings. The general rule underlying these provisions is that in respect of minor offences, it is desirable that after the lapse of a long period no prosecution should be entertained. Every act that is prohibited by law and for which a penalty is imposed is not to be deemed a criminal offence. Actions for the violation of several Municipal Ordinances are treated as civil in their nature, the imprisonment or fine imposed for non-compliance with the order being looked upon not as a punishment but as compelling a compliance with the order. It is the policy of this Act more to restrain and prevent the performance of child marriages than to punish the offenders. Hence a time limit of one year has been fixed for taking cognizance of an offence under this Act, with a view to avoid vexatious and stale prosecutions. Sec. 14 of the *Limitation Act* is in terms restricted to civil proceedings and cannot be availed of in respect of proceedings under the *Child Marriage Restraint Act*. A complaint preferred beyond year of the solemnisation of the marriage cannot be taken cognizance of under sec. 7. The fact that another unsuccessful complaint had been made to another Magistrate within time would not help to make the second complaint filed beyond time a valid one. 49 L.W. 547 (1)=A.I.R. 1939 Mad. 512=(1939) 1 M.L.J. 775. Marriage in Native State—Complaint within one year but certificate obtained after one year—Trial would be legal. See also A.I.R. 1939 Mad. 577=49 L.W. 656; 1940 N.L.J. 304; 1939 A.M.L.J. 130.

SEC. 10: "TAKING COGNIZANCE".—Formerly the Court can take cognizance of an offence under the Act only on a complaint made to it, but now the Amending Act XIX of 1938 has removed the words "save upon a complaint" in sec. 9 with the result that the Court can take cognizance of the matter otherwise also.

PRELIMINARY INQUIRY NECESSARY BEFORE ISSUING SUMMONS.—Under this section, the Court taking cognizance of an offence under this Act is bound to hold a preliminary inquiry before taking further action unless it dismisses the complaint under sec. 203, Criminal Proceedings Code. 12 Lah. 383=32 Cr.L.J. 616=1931 Lah. 56 (1); 15 Lah. 63=35 Cr.L.J. 1436=1934 Lah. 155; 20 N.L.J. 115. See also 48 L.W. 774. Sec. 10 is mandatory and clearly prohibits a Court from

taking cognizance of an offence under the Act without a preliminary inquiry being held. A process issued without holding an inquiry as required by sec. 10, is therefore unauthorised and illegal. A.I.R. 1939 Mad. 530=(1939) 1 M.L.J. 900. Sec. 10 contains provisions which are mandatory, and omission to conform with the procedure prescribed by the section would vitiate all subsequent proceedings. I.L.R. (1940) Kar. 442=A.I.R. 1940 Sind 213. Sec. 10 no doubt requires that a preliminary inquiry must be held. But where a Court finds that there is a *prima facie* case and also holds the offence established after a proper trial, it can not be held that the conviction must be set aside for the technical reason that no preliminary inquiry was held as required by sec. 10. This does not mean that Magistrates are entitled to disregard the provisions of sec. 10. But where the accused does not object to the trial, he cannot benefit by an objection which is entirely technical in its nature. 20 Pat.L.T. 495=A.I.R. 1939 Pat. 525. Where in respect of an offence under the Child Marriage Restraint Act the accused are tried and convicted without a preliminary enquiry being held as required by sec. 10 of the Act, and no prejudice had thereby been caused to the accused, the trial and conviction is not on that ground in any way vitiated and the defect is cured by sec. 537, Cr. P. Code. I.L.R. (1940) Nag. 488=A.I.R. 1940 Nag. 375=42 Cr.L.J. 37.

The mere fact that the security bond obtained from the complainant is defective, because the property offered by him did not belong to him, would not vitiate the trial of an offence under sec. 5, as it does not affect the merits of the case. 1936 O.W.N. 480=A.I.R. 1936 O. 311=37 Cr.L.J. 616.

PROCEDURE AT TRIAL.—Cases under this Act may be summarily tried. 36 Cr.L.J. 677=148 I.C. 351=1934 All. 331. Strictly speaking the accused should be re-examined after the prosecution witnesses are over. But omission to re-examine an accused after the prosecution evidence is completely recorded is not such an irregularity as vitiates the trial of an offence under this Act unless the irregularity is shown to have caused prejudice to the accused or a failure of justice. 1936 O.W.N. 480=A.I.R. 1936 O. 311=37 Cr.L.J. 616. Where, therefore in a case under sec. 6 of the Act, an accused is examined at length and given full opportunity to state his case, but is not *examined again* after some further prosecution witnesses are produced and no real prejudice or failure of justice has been caused, the omission to re-examine the accused was held not to have vitiated the trial. (*Ibid.*) But, where the

11. (1) When the Court takes cognizance of any offence under this Act.

Power to take security
from complainant.

upon a complaint made to it, it may for reasons to be recorded in writing, at any time after examining the complainant and before issuing process for compelling the attendance of the accused, require the complainant to execute a bond, with or without sureties, for a sum not exceeding one hundred rupees, as security for the payment of any compensation which the complainant may be directed to pay under section 250 of the Code of Criminal Procedure, 1898, and if such security is not furnished within such reasonable time as the Court may fix, the complaint shall be dismissed.

(2) A bond taken under this section shall be deemed to be a bond taken under the Code of Criminal Procedure, 1898, and Chapter XLII of that Code shall apply accordingly.

12. (1) Notwithstanding anything to the contrary contained in this Act,

Power to issue injunction
prohibiting marriage in
contravention of this Act.

the Court may, if satisfied from information laid before it through a complaint or otherwise that a child marriage in contravention of this Act has been arranged or is about to be solemnized, issue an injunction against any of the persons mentioned in sections 3, 4, 5 and 6 of this Act prohibiting such marriage.

Court merely asked the accused, whether he pleaded 'guilty' or 'not guilty', and there was nothing on the record to show that he was questioned at any time with a view to enabling him to explain the circumstances appearing in evidence against him, the failure to examine the accused person was held to be an irregularity which went to the root of a fair trial and it was not to be regarded as a mere technical error of procedure, and that it would, therefore, be necessary to set aside the conviction and sentence on him. 1936 O.W.N. 480=37 Cr.L.J. 616=A.I.R. 1936 O. 311; 11 Luck. 461=A.I.R. 1936 O. 16, Expl.

SEC. 11 (1).—This sub-section applies only to cases where the Court takes cognizance of an offence under this Act upon a complaint and not where it takes cognizance otherwise. Generally security would be demanded from the complainant only in cases where the Court entertains a doubt as to the truth of the complainant's allegation, or opines that the complaint has not been *bona fide*. [20 N.L.J. 115 is not now good law.]

OBJECT AND SCOPE OF AMENDMENT.—As regards taking security, it was obligatory on the Court to do so under the old sub-sec. (1); and the words used were "shall require". If the Court did not want to take any security it was required to state its reasons therefor. But under the present substituted sub-sec. (1), the words used are "may require" and also the Court has to state its reasons not for *waiving security* but for *requiring security*. Under the old sub-sec. (1), it was held that the failure of a Magistrate to record any reason for not requiring the complainant to execute a bond was a material irregularity which could not be cured by sec. 537, Criminal Procedure Code. 37 C.W.N. 626=34 Cr.L.J. 554=1933 Cal. 433 (1). But this would be no longer correct under the amended sub-sec. (1), under which reason has to be given only for 'taking' security and not for

'not taking'. On this section *see also* 20 N. L.J. 115; 162 I.C. 389=37 Cr.L.J. 616=A.I.R. 1936 Oudh 311.

SEC. 12: OBJECT.—The reason for the insertion of sec. 12 has been stated as follows in the Statement of Objects and Reasons:—"For facilitating the more effective enforcement of the Act," it is necessary to put "beyond question that the Courts empowered to take proceedings under the Act may at their discretion issue an injunction prohibiting a marriage arranged in contravention of the Act. Already Civil Courts in Bombay Presidency are known in several cases to have issued injunction orders against marriages known to have been arranged in contravention of the Act. It is not known whether similar action has been taken in any other province. But since doubts have been thrown upon the legality or practicability of this method, it seems desirable to remove such doubts by providing for it directly through the proposed amendment. The draft bill proposes to impose a higher maximum penalty for the breach of such an injunction than the penalty provided in the Act in the case of prosecutions after the marriage had already taken place, on the ground that breach of a Court injunction involves contempt of Court." As interference of the Court in the matter of contemplated marriages by way of injunction orders is a serious matter and is likely to lead sometimes to irreparable damages, several safeguards have been provided in sub-secs. (2) to (4) of this section. Previous notice to be given and opportunity to be afforded to the party to show cause to the contrary before an injunction order can be issued; and further, power is reserved to the Court to dissolve the injunction order *suo motu* or on the application of any aggrieved party. Sub-sec. (4) also enjoins on the Court the duty of a speedy disposal of applications to dissolve the injunction orders passed by it,

(2) No injunction under sub-section (1) shall be issued against any person unless the Court has previously given notice to such person, and has afforded him an opportunity to show cause against the issue of the injunction.

(3) The Court may either on its own motion or on the application of any person aggrieved rescind or alter any order made under sub-section (1).

(4) Where such an application is received, the Court shall afford the applicant an early opportunity of appearing before it either in person or by pleader; and if the Court rejects the application wholly or in part, it shall record in writing its reasons for so doing.

(5) Whoever knowing that an injunction has been issued against him under sub-section (1) of this section disobeys such injunction shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both;

Provided that no woman shall be punishable with imprisonment.

THE CHILDREN (PLEDGIN OF LABOUR) ACT (II OF 1933).

[24th February, 1933.]

An Act to prohibit the pledging of the labour of children.

WHEREAS it is expedient to prohibit the making of agreement to pledge the labour of children, and the employment of children whose labour has been pledged; It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called THE CHILDREN (PLEDGING OF LABOUR) ACT, 1933.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) This section and sections 2 and 3 shall come into force at once, and the remaining sections of this Act shall come into force on the first day of July, 1933.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

“an agreement to pledge the labour of a child” means an agreement, written or oral, express or implied, whereby the parent or guardian of a child, in return for any payment or benefit received or to be received by him, undertakes to cause or allow the services of the child to be utilised in any employment:

Provided that an agreement made without detriment to a child, and not made in consideration of any benefit other than reasonable wages to be paid for the child's services, and terminable at not more than a week's notice, is not an agreement within the meaning of this definition;

“child” means a person who is under the age of fifteen years; and

“guardian” includes any person having legal custody of or control over a child.

Agreements contrary to the Act to be void.

3. An agreement to pledge the labour of a child shall be void.

Penalty for parent or guardian making agreement to pledge the labour of a child.

4. Whoever, being the parent or guardian of a child, makes an agreement to pledge the labour of that child, shall be punished with fine which may extend to fifty rupees.

and the Court is required to state its reasons in writing if it happens to reject the application. This provision shows that the rejection of such an application is not a matter of mere discretion for the Court, but that it can be only for valid and sufficient grounds

which have to be expressly stated so that the Court of revision may be in a position to judge about the sufficiency of the grounds.

PROVISO—NO IMPRISONMENT FOR WOMAN.—
See notes under sec. 6 *supra*.

Penalty for making with parent or guardian an agreement to pledge the labour of a child.

5. Whoever makes with the parent or guardian of a child an agreement whereby such parent or guardian pledges the labour of the child shall be punished with fine which may extend to two hundred rupees.

Penalty for employing a child whose labour has been pledged.

6. Whoever, knowing or having reason to believe that an agreement has been made to pledge the labour of a child, in furtherance of such agreement employs such child, or permits such child to be employed in any premises or place under his control, shall be punished with fine which may extend to two hundred rupees.

THE INDIAN CHRISTIAN MARRIAGE ACT (XV OF 1872).¹

EXTRACTS.

Year.	No.	Short title.	Repealed or otherwise how affected by islation.
1872	XV	The Indian Christian Marriage Act, 1872.	Repealed in part by Act XVI of 1874. Repealed in part and amended by Act XII of 1891. Amended by Acts VI of 1886, S. 30, cls. (a), (b), (d) and II of 1891. Section 81 substituted by Act XIII of 1911. Section 82 and Sch. 11. amended by Act I of 1903. Section 86 amended by Acts X of 1914 and XXXVIII of 1920. Amended by Act XVIII of 1928. Declared in force in the Sonthal Parganas, Reg. III of 1872, S. 3, as amended by Reg. III of 1899, S. 3; in the Arakan Hill District, Reg. 1 of 1916, S. 2; in Upper Burma (except the Shan States), Act XIII of 1898, S. 4; in British Baluchistan, Reg. II of 1913, S.

[18th July, 1872.

An Act to consolidate and amend the law relating to the solemnization in India of the marriage of Christians.

WHEREAS it is expedient to consolidate and amend the law relating to the solemnization in India of the marriages of persons professing the Christian religion; It is hereby enacted

Preamble.

as follows:—

* * * * *

PART VII.

PENALTIES.

False oath, declaration notice or certificate for procuring marriage.

66. Whoever, for the purpose of procuring a marriage or licence of marriage, intentionally,—

LEG. REF.

¹ For the Statement of Objects and Reasons, see *Gazette of India*, 1871, Pt. V, p. 473; for Proceeding in Council, see *ibid.*, 1870, Supplement, p. 1077; *ibid.*, 1871, Supplement, pp. 1426, 1643; *ibid.*, 1802, Supplement, pp. 257, 728, 742, 805, 813 and 858. This Act is based on 14 and 15 Vict., c. 40

and 58 Geo. III, c. 84 (both Statutes relate to marriages in India and are now no longer in force), and Acts V of 1852 and V of 1865; the last two Acts were repealed by this Act.

SECS. 66 AND 68.—See 16 A. 212; 40 A. 393; 14 M. 342; 17 M. 391; 18 M. 230; 19 M. 273; 20 M. 12; 6 Mad.H.C. Rep. Ap. 20.

(a) where an oath or declaration is required by this Act, or by any rule or custom of a Church according to the rite and ceremonies of which a marriage is intended to be solemnized, such Church being the Church of England or of Scotland or of Rome, makes a false oath or declaration, or,

(b) where a notice or certificate is required by this Act, signs a false notice or certificate,

shall be deemed to have committed the offence punishable under section 193 of the Indian Penal Code with imprisonment of either description for a term which may extend to three years and, at the discretion of the Court, with fine.

67. Whoever forbids, the issue, by a Marriage Registrar, of a certificate

Forbidding, by false personation, issue of certificate by Marriage Registrar.

by falsely representing himself to be a person whose consent to the marriage is required by law, knowing or believing such representation to be false, or not having reason to believe it to be true, shall be deemed

guilty of the offence described in section 205 of the Indian Penal Code.

68. Whoever, not being authorized by section 5 of this Act to solemnize

Solemnizing marriage without due authority.

marriages solemnizes or professes to solemnize in the absence of a Marriage Registrar of the district in

which the ceremony takes place, a marriage between persons one or both of whom is or are a Christian or Christians, shall be punished with imprisonment which may extend to ten years, or (in lieu of a sentence of imprisonment for seven years or upwards) with transportation for a term of not less than seven years, and not exceeding ten years.

or, if the offender is an European or American, with penal servitude according to the provisions of Act XXIV of 1855 (*to substitute penal servitude for the punishment of transportation in respect of European and American convicts*)²[**]

and shall also be liable to fine.

69. Whoever knowingly and wilfully solemnizes a marriage between

Solemnizing marriage out of proper time, or without witnesses.

persons one or both of whom is or are a Christian or Christians at any time other than between the hours of six in the morning and seven in the evening, or in the absence of at least two credible witnesses other

than the person solemnizing the marriage, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

This section does not apply to marriages solemnized under special licences

Saving of marriages solemnized under special licence.

granted by the Anglican Bishop of the Diocese or by his Commissary, nor to marriages performed between the hours of seven in the evening and six in the morning by a Clergyman of the Church of Rome,

when he has received the general or special licence in that behalf mentioned in section 10.

³[Nor does the section apply to marriages solemnized by a Clergyman of

LEG. REF.

¹ Substituted for original sec. 68 by Act II of 1891.

² The words "and to amend the law relating to the removal of such convicts" were repealed by Act II of 1891.

³ Added by Act II of 1891.

No one except a person who professes the Christian religion comes under sec. 68. The mere fact that a person was baptized as an infant or that he is attending a Christian school or he is dressing as a Christian is not

sufficient to treat him as such. There is no express prohibition preventing a person professing Christianity from doing violence to his faith and marrying a non-Christian, by a non-Christian ceremony sec. 68 does not make it penal for a Christian to marry by a ceremony which is void under sec. 4 of the Act. 40 A. 393. A Hindu by religion performing a marriage according to the Hindu mode between two persons one of whom is a Christian commits an offence under sec. 68. 40 M. 1030=33 M.L.J. 148.

the Church of Scotland according to the rules, rites, ceremonies and customs of the Church of Scotland.]

70. Any Minister of Religion licensed to solemnize marriages under this

Solemnizing, without notice or within fourteen days after notice marriage with minor.

Act who, without a notice in writing, or, when one of the parties to the marriage is a minor, and the required consent of the parents or guardians to such marriage has not been obtained, within fourteen days after the receipt by him of notice of such marriage,

knowingly and wilfully solemnizes a marriage under Part III, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Issuing certificate, or marrying without publication of notice;

71. A Marriage Registrar under this Act, who commits any of the following offences:—

(1) knowingly and wilfully issues any certificate for marriage, or solemnizes any marriage, without publishing the notice of such marriage as directed by this Act;

(2) ¹[after the expiration of two months after the copy of the notice has been entered as required by section 40 in respect of any marriage, solemnizes such marriage;]

(3) solemnizes without any order of a competent Court authorizing him to do so, any marriage, when one of the parties is a minor, before the expiration of fourteen days after the receipt of the notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Senior Marriage Registrar of the district if there be more Marriage Registrars of the district than one, and if he himself be not the Senior Marriage Registrar;

(4) issues any certificate the issue of which has been prohibited, as in this Act provided, by any person authorized to prohibit the issue thereof,

shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

Issuing certificate after expiry of notice, or in case of minor, within fourteen days after notice, or against authorized prohibition.

72. Any Marriage Registrar knowingly and wilfully issuing any certificate for marriage after the expiration of ²[two months] after the notice has been entered by him as aforesaid,

or knowingly and wilfully issuing, without the order of a competent Court authorizing him so to do, any certificate for marriage, where one of the parties intending marriage is a minor, before the expiration of fourteen days after the entry of such notice or any certificate the issue of which has been forbidden as aforesaid by any person authorized in this behalf,

shall be deemed to have committed an offence under section 166 of the Indian Penal Code.

Persons authorized to solemnize marriage other than Clergy of Churches of England, Scotland or Rome;

73. Whoever, being authorized under this Act to solemnize a marriage,

and not being a Clergyman of the Church of England, solemnizing a marriage after due publication of banns, or under a licence from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf,

or, not being a Clergyman of the Church of Scotland, solemnizing a marriage according to the rules, ceremonies and customs of that Church,

or, not being a Clergyman of the Church of Rome, solemnizing a marriage according to the rites, rules, ceremonies and customs of that Church,

LEG. REF.

¹ Substituted for the original cl. (2) by Act II of 1891.

² Substituted for words "three months" by

Act II of 1891.

knowingly and wilfully issues any certificate for marriage under this Act or solemnizes any marriage between such persons as aforesaid, without publishing, or causing to be affixed, the notice of such marriage as directed in Part III of this Act, or after the expiration of two months after the certificate has been issued by him,

issuing certificate of marrying, without publishing notice, or after expiry of certificate;
or knowingly and wilfully issues any certificate for marriage, or solemnizes a marriage between such persons when one of the persons intending marriage is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Marriage Registrar, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar of the district,

issuing certificate authoriz-
edly forbidden;
solemnizing marriage au-
thorizedly forbidden.
or knowingly and wilfully issues any certificate the issue of which has been forbidden, under this Act, by any person authorized to forbid the issue,
or knowingly and wilfully solemnizes any marriage forbidden by any person authorized to forbid the same,

shall be punished with imprisonment for a term which may extend to four years, and shall also be liable to fine.

74. Whoever, not being licensed to grant a certificate of marriage under Part VI of this Act, grants such certificate intending thereby to make it appear that he is so licensed, shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

¹[Whoever, being licensed to grant certificates of marriage under Part VI of this Act, without just cause refuses, or wilfully neglects or omits, to perform any of the duties imposed upon him by that Part shall be punished with fine which may extend to one hundred rupees.]

75. Whoever, by himself or another, wilfully destroys or injures any register-book or the counterfoil certificates thereof, of any part thereof or any authenticated extract therefrom,

Destroying or falsifying register-books.
or falsely makes or counterfeits any part of such register-book or counterfoil certificates,

or wilfully inserts any false entry in any such register-book or counterfoil certificate or authenticated extract,

shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

76. The prosecution for every offence punishable under this Act shall be commenced within two years after the offence is committed.

* * * * *

THE CINEMATOGRAPH ACT (II OF 1918).

EFFECT OF LEGISLATION.

Year.	No.	Short title.	How repealed or otherwise affected by Legislation.
1918	II	The Cinematograph Act, 1928.	Am. XIII of 1931 : XXXVIII of 1920. Govt. of India Adaptation of Indian Laws Order, 1937.

LEG. REF.

¹ Added by Act II of 1891.

An Act to make provision for regulating exhibitions by means of cinematographs.

WHEREAS it is expedient to make provision for regulating exhibitions by means of cinematographs; It is hereby enacted as follows:—

Short title, extent and commencement. 1. (1) This Act may be called THE CINEMATOGRAPH ACT, 1918.

(2) It extends to the whole of British India including British Baluchistan.

¹[(3) The Provincial Government may, by notification in the Official Gazette, direct that the whole or any of its provisions shall come into force in any Province or part of a Province on such date as may be specified in the notification.]

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

"Cinematograph" includes any apparatus for the representation of moving pictures or series of pictures;

"Place" includes also a house, building, tent or vessel; and

"Prescribed" means prescribed by rules made under this Act.

3. Save as otherwise provided in this Act, no person shall give an exhibition by means of a cinematograph elsewhere than in a place licensed under this Act, or otherwise than in compliance with any conditions and restrictions imposed by such licence.

Cinematograph exhibitions to be licensed.

4. The authority having power to grant licence under this Act (hereinafter referred to as the "licensing authority") shall be the District Magistrate, or in a Presidency-town

²[* * *] the Commissioner of Police:

Provided that the Provincial Government may, by notification in the Official Gazette, constitute for the whole or any part of a Province such other authority as it may specify in the notification to be the licensing authority for the purposes of this Act.

Restrictions on powers of licensing authority.

5. (1) The licensing authority shall not grant a licence under this Act unless it is satisfied that—

(a) the rules made under the Act have been substantially complied with; and

(b) adequate precautions have been taken in the place in respect of which the licence is to be given to provide for the safety of persons attending exhibitions therein.

(2) A condition shall be inserted in every licence that the licensee will not exhibit, or permit to be exhibited, in such place any film other than a film which has been certified as suitable for public exhibition, by ³[an authority constituted under section 7] and which when exhibited, displays the prescribed mark of that authority and has not been altered or tampered with in any way since such mark was affixed thereto.

(3) Subject to the foregoing provisions of this section, and to the control of the Provincial Government, the licensing authority may grant licenses under this Act to such persons as it thinks fit, and on such terms and conditions and subject to such restrictions as it may determine.

LEG. REF.

¹ Substituted by Act XXIII of 1919, sec. 2.

² Words 'or in the town of Rangoon' omitted by A.O., 1937.

³ Substituted by Act XXIII of 1919.

poration limits—Police licence taken—Further licence of Corporation is also necessary under Municipal Act, 40 C.W.N. 497=162 I.C. 666=A.I.R. 1936 Cal. 145. A cinematograph show is one which comes under the words "theatre, circus or other similar place of public resort or amusement" in sec. 391 of the Calcutta Municipal Act, (*Ibid.*)

6. (1) If the owner or person in charge of a cinematograph uses the same or allows it to be used, or if the owner or occupier of

Punishment for contravention of this Act and rules made thereunder.

any place permits that place to be used, in contravention of the provisions of this Act or the rules made thereunder or of the conditions and restrictions upon or subject to which any licence has been granted under this Act, he shall be punishable with fine which may extend to one thousand rupees and, in the case of a continuing offence with a further fine which may extend to one hundred rupees for each day during which the offence continues, and his licence (if any) shall be liable to be revoked by the licensing authority.

(2) If any person is convicted of an offence punishable under this Act committed by him in respect of any film, the convicting Court may further direct that the film shall be forfeited to His Majesty.

¹[7. (1) Any Provincial Government ²[* *] may, by notification in the

Certification of films.

Official Gazette, constitute as many authorities as it may think fit for the purposes of examining and certifying films as suitable for public exhibition, and declare the area (hereinafter referred to as the 'local area') within which each such authority shall exercise the powers conferred on it by this Act. Where an authority so constituted consists of a Board of two or more persons, not more than one-half of the members thereof shall be persons in the service of ³[the Crown].

(2) If any such authority after examination considers that a film is suitable for public exhibition, it shall grant a certificate to that effect to the person applying for the same, and shall cause the film to be marked in the prescribed manner. The certificate of any such authority shall, save as hereinafter provided, be valid throughout the territories in which this Act is in force.

(3) (a) If the authority is of opinion that a film is not suitable for public exhibition in the local area, it shall inform the person applying for the certificate of its decision and such person may, within thirty days from the date of such decision, appeal for a reconsideration of the matter by the Provincial Government by which the authority was constituted.

(b) If the Provincial Government rejects the appeal it shall by notification in the Official Gazette direct that the film shall be deemed to be an uncertified film in that local area, and such direction shall have effect notwithstanding the subsequent grant of a certificate in respect of the film by any other such authority.

(4) Any such authority may demand the exhibition before itself of any certified film which it has reason to believe is about to be publicly exhibited in its local area, and may by order suspend the certificate of any such film pending the orders of the Provincial Government, and during such suspension the film shall be deemed to be an uncertified film in that area.

(5) The District Magistrate, or, in a Presidency-town ⁴[* * * *] the Commissioner of Police, may by order suspend the certificate of any film pending the orders of the Provincial Government, and during such suspension the film shall be deemed to be an uncertified film in that district or town.

(6) A copy of any order of suspension made under sub-section (4) or (5), together with a statement of reasons therefor, shall forthwith be forwarded by the authority or the officer making the same to the Provincial Government by which the authority was constituted or to which the officer is subordinate, as the case may be, and such Provincial Government may ⁵[* *] either discharge

LEG. REF.

¹ Substituted by Act XXIII of 1919.

² Words 'authorized in this behalf by the Governor-General in Council' omitted by A.O., 1937.

³ Substituted for 'Government' by *ibid.*

⁴ Words 'or in the town of Bangoon' omitted by *ibid.*

⁵ Words 'in its discretion' omitted by *ibid.*

the order or, by notification in the Official Gazette, direct that the film shall be deemed to be an uncertified film in the whole or any part of the Province.

(7) A Provincial Government may, of its own motion, by notification in the Official Gazette, direct that a certified film shall be deemed to be an uncertified film in the whole or any part of the Province.

(8) The exhibition of a film to which any order or direction under clause (b) of sub-section (3) or sub-section (4), (5), (6) or (7) is for the time being applicable shall, in the area to which such order or direction relates, be deemed to be a contravention of the condition mentioned in sub-section (2) of section 5.]

8. (1) The Provincial Government may make rules for the purposes of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, rules under this section may provide for—

(a) the regulation of cinematograph exhibitions for securing the public safety;

(b) the procedure of the authorities constituted for examining and certifying films as suitable for public exhibition, and all matters ancillary thereto, and the fees to be levied by those authorities; ¹[*]

²[(bb) the appointment of officers subordinate to authorities constituted under section 7 and the regulation of the powers and duties of such officers; and]

(c) any other matter which by this Act is to be prescribed.

(3) ³[* * * *].

(4) All rules made under this Act shall be published in the ³[* * *] Official Gazette, ³[* *] and, on such publication, shall have effect as if enacted in this Act.

9. The Provincial Government may by order in writing exempt, subject to such conditions and restrictions as it may impose any cinematograph exhibitions or class of cinematograph exhibitions from any of the provisions of this Act or of any rule made thereunder.

THE COMMERCIAL DOCUMENTS EVIDENCE ACT (XXX OF 1939).

[26th September, 1939.

An Act to amend the Law of Evidence with respect to certain commercial documents.

WHEREAS it is expedient to amend the Law of Evidence with respect to certain commercial documents;

It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called THE COMMERCIAL DOCUMENTS EVIDENCE ACT, 1939.

(2) It extends to the whole of British India.

2. Notwithstanding anything contained in the Indian Evidence Act, 1872, statements of relevant facts in scheduled documents to be themselves relevant facts. statements of facts in issue or of relevant facts made in any document included in the Schedule as to matters usually stated in such document shall be themselves relevant facts within the meaning of that Act.

LEG. REF.

¹ The word 'and' omitted by Act XXIII of 1919.

² Inserted by Act XXIII of 1919.

³ Omitted by Act XXXVIII of 1920.

Presumption as to genuineness of documents.

3. For the purposes of the Indian Evidence Act, 1872, and notwithstanding anything contained therein, a Court—

(a) shall presume, within the meaning of that Act, in relation to documents included in Part I of the Schedule, and

(b) may presume, within the meaning of that Act, in relation to documents included in Part II of the Schedule,—

that any document purporting to be a document included in Part I or Part II of the Schedule, as the case may be, and to have been duly made by or under the appropriate authority, was so made and that the statements contained therein are accurate.

4. In the Schedule the expression "recognised Chamber of Commerce"

Definition.

means a Chamber of Commerce recognised by the Government of its country as being competent to

issue certificates of origin, and includes any other association similarly recognised.

THE SCHEDULE.

(See sections 2 and 3.)

PART I.

Documents in relation to which the Court "SHALL presume".

1. Lloyd's Register of Shipping.
2. Lloyd's Daily Shipping Index.
3. Lloyd's Loading List.
4. Lloyd's Weekly Casualty Reports.
5. Certificate of delivery of goods to the Manchester Ship Canal Company.
6. Official log book, Supplementary Official log book and official wireless log kept by a British ship.
7. Certificate of Registry, Safety Certificate, Safety Radio-Telegraphy Certificate, Exemption Certificate, Certificate of Survey, Declaration of Survey, International Load Line Certificate, British India Load Line Certificate, Report of Survey of a ship provisionally detained as unsafe, Report of Survey to be served upon the master of a ship declared unsafe upon survey, Docking Certificate, Memorandum issued under Article 56 of the International Convention for the Safety of Life at Sea, 1929.
8. Certificates A and B issued under the Indian Merchant Shipping Act, 1923.
9. The following documents relating to marine insurance, namely, insurance policy, receipt for premium, certificate of insurance and insurance cover note.
10. Certificate concerning the loss of country craft issued by the appropriate authority under Department of Commerce, Mercantile Marine Department Circular No. 2 of 1938.
11. Protest made before a Notary Public or other duly authorised official by a master of a ship relating to circumstances calculated to affect the liability of the ship-owner.
12. License or permit for radio-telegraph apparatus carried in ships or aircraft.
13. Certificate of registration of an aircraft granted by the Government of the country to which the aircraft belongs.
14. Certificate of airworthiness of an aircraft granted or validated by, or under the authority of, the Government of the country to which the aircraft belongs.
15. Licences and certificates of competency of aircraft personnel granted or validated by, or under the authority of, the Government of the country to which the personnel belongs.
16. Ground Engineer's Licence issued by a competent authority authorised in this behalf by Government.
17. Consular Certificate in respect of goods shipped or shut out, consular certificates of origin and consular invoice.
18. Certificate of origin of goods issued (but not merely attested) by a recognised Chamber of Commerce, or by a British Consular officer or British or Indian Trade Commissioner or Agent.
19. Receipt for payment of customs duty issued by a Customs authority.
20. Schedule issued by a Port, Dock, Harbour, Wharfage or Warehouse authority, or by a Railway company, showing fees, dues, freights or other charges for the storage, transport or other services in connection with goods.
21. Tonnage schedule and schedule of fees, commission or other charges for services rendered, issued by a recognised Chamber of Commerce.
22. The publication known as the Indian Railway Conference Association Coaching and Goods Tariffs.

23. Copy, certified by the Registrar of Companies, of the memorandum or the articles of association of a company, filed under the Indian Companies Act, 1913.

24. Protest, nothing and certifying the dishonour of a bill of exchange, made before Notary Public or other duly authorised official.

PART II.

Documents in relation to which the Court "MAY presume".

1. Survey Report issued by a competent authority—
 - (i) in respect of cargo loaded; or
 - (ii) certifying the quantity of coal loaded; or
 - (iii) in respect of the security of hatches.
2. Official log book, Supplementary Official log book and official wireless log kept by a foreign ship.
3. Dock certificate, dock chalan, dock receipt or warrant, Port Warehouse certificate or warrant, issued by, or under the authority of, a Port, Dock, Harbour or Wharfage authority.
4. Certificate issued by a Port, Dock, Harbour, Wharfage or other authority having control of acceptance of goods for shipping transport or delivery, relating to the date or time of shipment of goods, arrival of goods for acceptance, arrival of vessels or acceptance or delivery of goods, or to the allocation of berthing accommodation to vessels.
5. Export Application issued by a Port authority showing dues paid, weight and measurement and the shutting out of a consignment.
6. Certificate or receipt showing the weight or measurement of a consignment issued by the official measurer of the Conference Lines, or by a sworn or licensed measurer, or by a recognised Chamber of Commerce.
7. Reports and publications issued by a Port authority showing the movement of vessels, and certificates issued by such authority relating to such movements.
8. Certificate of safety for flight signed by a licensed Ground Engineer.
9. Aircraft Log Book, Journey Log Book and Log Book, maintained by the owner or operator in respect of aircraft.
10. Passenger List or Manifest of Goods carried in public transport aircraft.
11. Passenger ticket issued by a steamship company or air transport company.
12. Air Consignment Note and Baggage Check, issued by an air transport company in respect of goods carried by air, and the counterfoil or duplicate thereof retained by the carrier.
13. Aircraft Load Sheet.
14. Storage warrant of a warehouse recognised by a Customs, Excise, Port, Dock, Harbour or Wharfage authority.
15. Acknowledgment receipt for goods granted by a Port, Dock, Harbour, Wharfage or Warehouse authority or by a Railway or Steamship company.
16. Customs or Excise pass and Customs or Excise permit or certificate, issued by a Customs or Excise authority.
17. *Force majeure* certificate issued by a recognised Chamber of Commerce.
18. Receipt of a Railway or Steamship company granted to a consignor in acknowledgment of goods entrusted to the company for transport.
19. Receipt granted by the Posts and Telegraphs Department.
20. Certificate or survey award issued by a recognised Chamber of Commerce relating to the quality, size, weight or valuation of any goods, count of yarn or percentage of moisture in yarn and other goods.
21. Copy, certified by the Registrar of Companies, of the Balance Sheet, Profit and Loss Account, and audit report of a company, filed with the said Registrar under the Indian Companies Act, 1913, and the rules made thereunder.

THE CONTEMPT OF COURTS ACT (XII OF 1926).¹

EFFECT OF LEGISLATION.

Year.	No.	Short title.	Repealed or otherwise how affected by legislation.
1926	XII	The Contempt of Courts Act, 1926.	Am. Act XII of 1937.

LEG. REF.

¹ For Statement of Objects and Reasons,

see Gazette of India, 1925, Pt. V, p. 42; for Report of Sel. Com., see *ibid.*, p. 249.

[8th March, 1926.

An Act to define and limit the powers of certain Courts in punishing contempts of Courts.

WHEREAS doubts have arisen as to the powers of a High Court of Judicature to punish contempts of ¹[* *] Courts;

AND WHEREAS it is expedient to resolve these doubts and to define and limit the powers exercisable by High Courts and Chief Courts in punishing contempts of court; It is hereby enacted as follows:—

Short title, extent and commencement. 1. (1) This Act may be called THE CONTEMPT OF COURTS ACT, 1926.

LEG. REF.

¹ Word 'subordinate' omitted by Act XII of 1937.

SEC. 1: SCOPE OF ACT.—(Per *Yorke, J.*) Far from the enactment implying a recognition that no such power had in fact previously existed, the Contempt of Courts Act is an Act which creates no fresh powers at all but merely recognises the fact that such powers already do exist but seeks to define and limit them. 14 Luck. 492=A.I.R. 1939 O. 131 (F.B.). The proceedings for contempt of the High Court are in the exercise of the inherent jurisdiction of the Court and are of a criminal nature. *When the matter is of a criminal nature, the Civil Procedure Code does not apply.* 1941 O.W.N. 455=1941 O.A. (Supp.) 193=1941 A.W.R. (H.C.) 120. Proceedings for contempt of Court are of a summary nature. That being so such proceedings are not suitable for the decision of a hotly contested question of fact. A.I.R. 1944 Lah. 196 (S.B.). Contempt of Court proceedings are summary and a very arbitrary method of dealing with an offence. That being so, contempt proceedings should be sparingly instituted and a person should not be convicted unless his conviction is essential in the interests of justice. There must be a substantial contempt, that is something which tends in a substantial manner to interfere with the course of justice or to prejudice the public against one of the parties to a proceedings. A.I.R. 1943 Lah. 329 (F.B.). While it is true that proceedings for contempt are in the nature of criminal proceedings, it is not quite correct that the position of the alleged contemner is that of an accused person who cannot file an affidavit or make a statement on oath. A.I.R. 1943 Lah. 329 (F.B.). The principle that the summary proceedings for contempt of Court should not be instituted in respect of what amounts to a technical contempt after the proceedings in the Court have been disposed of and there is no possibility of interference with the due course of justice applies only to applications for proceedings in contempt made by private parties and not to institution of proceedings by Court. The jurisdiction of the Court exists not only to prevent the mischief in the particular case but also to prevent similar mischief arising in other cases. Consequently, even when the proce-

dings before it have been disposed of, the Court can institute proceedings to see whether an article published in connexion with the proceedings before it was on the date of its publication calculated to interfere with the due course of justice and to prevent repetition of the same if it amounted to contempt. 45 Cr.L.J. 445=A.I.R. 1943 Lah. 329 (F.B.). There is no rule of law which prevents the Court from proceeding against a person who has been guilty of contempt without first obtaining an affidavit from some person. If doubtful questions of fact are involved, the Court may refuse to issue notice to the person charged with contempt without satisfying itself by means of an affidavit that there is reasonable ground for thinking that an offence of contempt has been committed. 1944 O.W.N. (H.C.) 287=1945 A.W.R. (H.C.) 15=1945 O.A. (H.C.) 15. Proceedings for contempt of Court though not criminal, are of a quasi-criminal nature and therefore where there is any reasonable doubt, the persons charged with contempt are entitled to the benefit of such doubt. A.I.R. 1944 Lah. 196 (S.B.).

CONTEMPT, WHAT IS.—Any act done or writing published calculated to bring a Court or a Judge of the Court in to contempt or to lower his authority, is a contempt of Court. That is one class of contempt. Further any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts is another class of contempt. The former class belongs to the category which is characterised as 'scandalising a Court or a Judge.' That description of that class of contempt is to be taken subject to one and an important qualification. Judges and Courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no Court could or would treat that as contempt. 40 C.W.N. 801=38 Bom.L.R. 681=A.I.R. 1936 P.C. 141=71 M.L.J. 665 (P.C.). See also 44 Cr.L.J. 93. Where the writer had written an article on the inequality of sentence under text, "The Human Element," held, that he was perfectly justified in pointing out what is obvious, that sentences do vary in apparently similar circumstances with the habit of mind of the particular Judge. It is quite inevitable. Some very conscientious Judges

(2) It shall extend to the whole of British India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.¹

LEG. REF.

¹ This Act was brought into force on the 1st May, 1926, Gazette of India, 1926, Pt. I, p. 442.

have thought it their duty to visit particular crimes with exemplary sentences; others equally conscientious have thought it their duty to view the same crimes with leniency. Hence, to say that the human element enters into the awarding of punishment is not contempt of Court. (*Ibid.*) Letter by manager of estate to Collector referring to decision of latter as District Magistrate dismissing a complaint and stating that opposite party had been emboldened by the view taken by the District Magistrate—Not contempt of Court. 38 Cr.L.J. 412=18 Pat.L. T. 113=A.I.R. 1937 Pat. 124. The publication of comments on a pending case amounts to contempt, if the comments are such as are likely to prejudice the administration of justice in the case. In the absence of an express provision allowing him to do so, no person can contract out of a responsibility imposed upon him by law in the case of a contempt of Court for publication of *prejudicial comments on case pending trial and a printer as well as a publisher cannot escape responsibility for matter printed and published.* 6 R. 39=1928 R. 115. A printer and publisher of an article amounting to contempt of Court is liable for contempt of Court even if the article is written by another and he has dissociated from it and disapproved it. A.I.R. 1940 Sind 239 (F.B.). The question in all cases of comment on pending proceedings is not whether the publication does interfere, but whether it tends to interfere with the due course of justice, and on the same principle it is a contempt of Court to make a *speech tending to influence the result of a pending trial* whether civil or criminal, or to deliver a speech at a meeting. 188 I.C. 408=41 Cr. L.J. 584=1940 A.W.R. (C.C.) 238. One kind of contempt of Court is scandalizing the Court itself. Any act done or writing published calculated to bring a Court or a Judge of the Court into contempt or to lower its or his authority is a contempt of Court. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts, is a contempt of Court. There may be likewise a contempt of the Court in abusing parties who are concerned in causes there or in prejudicing mankind against a party before the cause is heard. In the class of cases of contempt of Court where anything is done which is calculated to interfere with the due course of justice or is likely to prejudice the public for or against a party the essence of the matter is the tendency to interfere with the due course of justice. Any publication which is calculated to poison the

minds of jurors, intimidate witnesses or parties or to create an atmosphere in which the administration of justice would be difficult or impossible, amounts to contempt. But before a Court will take notice of such a publication the Court must be satisfied that the matter published tended substantially to interfere with the due course of justice or was calculated substantially to create prejudice in the public mind. The Court will not take action where the offending matter amounts to what is sometimes referred to as a technical contempt, i.e., in a case involving a mere question of propriety where the tendency of the article to do harm is slight and the character and circumstances of the comment is otherwise such that it can properly be ignored. It is however of the very essence of the offence that proceedings should be pending when the offending publication appears. It is not necessary in the case of a criminal trial that the accused should have been committed for trial or even for him to have been brought before a Magistrate provided that he had been arrested and was in custody. Further, the offence of contempt may be committed even if there is no proceeding or cause actually pending provided that such a proceeding or cause is imminent and the writer of the offending publication either knew it to be imminent or should have known that it was imminent. A person may be guilty of contempt though there was no intention to commit contempt. It is sufficient if the effect of the article complained of is to create prejudice and to interfere with the due course of justice. A.I.R. 1943 Lah. 329 (F.B.). See also 56 L.W. 702=1943 P.C. 202=(1943) 2 M.L.J. 568 (P.C.); 1945 Nag. 33. In cases of contempt the question of motive is irrelevant; what the Court has to consider is the effect—the probable effect of the publication. Motive of the contemner cannot be considered in determining his guilt; it may, however, be a proper criterion for awarding punishment. 1942 O.W.N. 6. See also 1945 N.L.J. 30=1945 Nag. 33. Per Mitter, J.—It is not merely those acts which are calculated to affect the authority of the Court or to hamper the administration of justice that constitute a contempt of Court, but also acts which are calculated to affect the dignity of the Court. 47 O.W.N. 854. The fact that an act was done ignorantly or innocently would make no difference to the offence of contempt. It would only be relevant regarding the measure of punishment. 1945 N.L.J. 30=A.I.R. 1945 Nag. 33. The truth of the allegations is no defence in proceedings for contempt. Nobody is allowed to scandalise a Court and make allegations against it even if they are true. Every attempt to justify must constitute a new offence of contempt committed in the very face of the Court. 1945 A.W.R. (H.C.) 15=

1944 O.W.N. (H.C.) 287=1944 A.L.W. 606. Where during the pendency of a suit instituted for a declaration that certain land claimed by the defendant is a public pathway, a resolution is passed at a public meeting protesting against the attempts of the defendant to close the land in question which is being used by the general public from time immemorial, the effect and tendency of the resolution is to embarrass, if indeed not to imperil the defendant's cause and that being so, the passing of that resolution amounts to contempt. To the resolution itself, there is not so much objection in so far as it is, or purports to be, merely a resolution of the residents of the locality to support the cause of establishing the right of the public over the land in suit. But it is objectionable to put forward in the resolution of a public meeting a positive assertion of a public right of way, as it would predispose people to a belief, right or wrong, that the defendant is an invader of the public right. It undoubtedly conveys the impression of a public denunciation of the defendant's conduct which might well deter inhabitants of the locality from bearing testimony in support of his case. *LL.R.* (1938) 2 Cal. 447=42 C.W.N. 952=A.I.R. 1938 Cal. 772. Where the publication of a plaint is the publication of a document reflecting severely on the conduct of the defendant, a contempt of scandalous and serious nature is committed. 165 I.C. 813=1936 Lah. 917. Where the editors of newspapers publish copies or summary of pleadings and other similar documents in pending cases, they do so at considerable risk. Where however the abstract of the plaint published in the newspaper only represented the defendant as the victim of the wickedness of others, it contained no attack upon her personal character and there was no attempt to prejudge the issue or prejudice her defence. *Held*, that the publication did not amount to contempt of Court. 152 I.C. 900=38 C.W.N. 330=1934 C. 606. *See also*, 44 Bom.L.R. 95=1942 Bom. 86. The cases of contempt which consists of 'scandalising the Court itself' require to be treated with much discretion. Proceedings for this species of contempt is a weapon to be used sparingly and always with reference to the administration of justice. The test to be applied in such a case is to see whether the words complained of were in the circumstances calculated to obstruct or interfere with the course of justice and the due administration of the law. Where the printer and publisher and editor of a daily newspaper were charged in contempt proceedings for having published a news item and comment thereon, untruly alleging that the Chief Justice had committed an ill-advised act, namely, writing to the Subordinate Judges asking (as the news item said), enjoining (as the comment said) them to collect money for the war fund it was held that the words did not contain any criticism of any judicial act of the Chief Justice, or any imputation on him for anything done or omitted to be

done by him in the administration of justice and that hence the proceedings in contempt were misconceived. 56 L.W. 702=1943 A.L.J. 527=48 C.W.N. 44=A.I.R. 1943 P.C. 202=(1943) 2 M.L.J. 568 (P.C.). Where the gravamen of an article published in a newspaper is that *judgment after judgment is being given in the High Court arbitrarily* and that neither law nor facts are discussed before judgment is delivered, and it further says that it is necessary "to restore the confidence of the public that law is discussed and facts are digested before cases are disposed off", there can be no doubt that the article is as gross a contempt of Court and misrepresentation of proceedings in Court as it is possible to imagine and nothing could be more calculated to bring the High Court into contempt and to lower its authority with the general public. 16 L. 266=155 I.C. 695=1935 Lah. 212 (S.B.). *See also* 1942 O.W.N. 6. It is not possible to lay down an exhaustive catalogue of cases which would amount to contempt of Court, but interference with the administration of justice is one of the well-recognised heads of contempt of Court. A notice was issued to the defendant in a pending suit by the plaintiff's counsel after the plaintiff's evidence closed and the defendant's evidence begun, threatening him with drastic action in case he did not withdraw a plea which he had taken in the suit, and offering to desist from taking any action in case the plea was withdrawn within a certain time. It was intended to put pressure on the defendant and to compel him to withdraw the plea. *Held*, that the action amounted to a direct interference with administration of justice and constituted contempt of Court. 57 A. 573=1935 A. 117=1935 A.L.J. 29. The editor of a newspaper, who was convicted of having published in his newspaper an obscene advertisement published a leading article in his newspaper in the course of which he said: "The prosecution clearly stated that the case was filed as the result of 'correspondence from Government,' but with the blessings of the magistrate, refused to produce the correspondence and the statement had to go uncontested. Without meaning any disrespect, we doubt whether in any case where opinions count and Subordinate Magistrate will give a judgment contrary to what he believes the Government of the day has decided. The fate of this case was sealed the minute the Police told the Magistrate that the Government was behind the prosecution." *Held*, that the passage suggested that there was not and there could not be any proper judicial trial, that the proceedings before the Magistrate were an empty formality, that the Magistrate had made up his mind to convict the accused even before the trial was over with a view to conform to what he believed to be the wishes of the Government; in other words, once the Magistrate knew that the Government had instituted the prosecution, there was bound to be a conviction, and the article amounted to a gross contempt of Court, and the con-

tempt was so grave that the High Court could not allow attacks of this nature to be made against the subordinate Courts of the Province without taking serious action. 1942 M.W.N. 722=55 L.W. 799 (2)=A.I.R. 1942 Mad. 711 (1)=(1942) 2 M.L.J. 622 (S.B.)=I.L.R. (1943) Mad. 26; *see also* 1942 Bom. 331=44 Bom.L.R. 796. Per *Munir J.*—The editor of a newspaper is responsible for what is published in his newspaper and if he wishes to absolve himself from any liability that would otherwise attach to him by the publication, *e.g.*, for contempt of Court, it is for him to show that he had nothing to do with the publication in question. The usual presumption of the editor being aware of the contents of publication is not rebutted by a vague and general statement that the editor was on leave on the day that the article was published. 45 Cr.L.J. 445=A.I.R. 1943 Lah. 329 (F.B.). In contempt of Court proceedings the fact that the item alleged to be contempt merely consists of quotations from other source would afford no defence if the article amounted to contempt because a person may be as much guilty of contempt by quoting from some source as writing the matter himself. 45 Cr.L.J. 445=A.I.R. 1943 Lah. 329 (F.B.). *See also* 16 Luck. 758 (newspaper article likely to deter witness from giving evidence). It must not be supposed that a Court of Justice has not the power to remove an Attorney if he is unfit to be entrusted with a professional status and character. If an Attorney be found guilty of *moral delinquency in his private character*, there is no doubt that he may be struck off the roll. Contempt of Court when committed by an Attorney in a private capacity can be of such a nature as to show professional unfitness. There can be no grosser contempt on the part of an Attorney than to *allege that a Judge has acted with prejudice, bias and malice in the course of his judicial duties*, that he decided a case not according to his own convictions but to please somebody else and that he abused his powers as a Judge and acted dishonestly and in bad faith. The fact that such *allegations are contained in a notice sent by the Attorney under sec. 80, C. P. Code*, to a Judge in respect of certain remarks made by the Judge in a judgment in a case in which the Attorney was a witness is no ground for holding that no offence is committed. No one by merely filing or threatening to file a suit and calling his communication a notice under sec. 80, C. P. Code, can insult and vilify a Judge in that manner. The fact that the scandalous allegations are contained in a notice under sec. 80, C. P. Code cannot therefore prevent them from being contempt of Court, and the Attorney who makes such allegations renders himself liable to be dealt with under the disciplinary powers of the High Court. 43 Bom.L.R. 250. It is not uncommon to attack abuses and to attack persons in an *election manifesto* whether the abuses exist or not and whether the persons deserve the attack. But to *slander*

the whole judiciary of a province in an attempt to secure votes at a Bar Council election is not only contemptible but almost criminal. An advocate indulging in such attacks is guilty of contempt of Court. 57 A. 573=1935 A.L.J. 46=1935 A. 38. An article in a newspaper contained a passage as follows: "In this connection it is amusing to note that when a *comparatively undeserving lawyer is raised to the Bench*, which is a fairly frequent occurrence in our judicial history, it is generally claimed, etc." Held, the words "a comparatively undeserving lawyer," were particularly offensive, connoting as they did lack of capacity or character or of both, and that the passage in question amounted to an unwarranted defamation of the High Court, likely to injure and lower its prestige in the eyes of the public and to shake their confidence in its capacity to administer justice, and that it constituted a contempt of Court of which the High Court is bound to take cognizance. 57 A. 573=1935 A.L.J. 125=1935 A. 1. To constitute contempt it is not necessary that the Act or writing should be in respect of a case which has been heard or is pending. Judges and Courts are no doubt open to criticism and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no Court would treat that as contempt of Court. A publication out of Court of a libel on one or more Judges of the Court will constitute contempt. 36 Cr.L.J. 1053=39 C.W.N. 770=1935 Cal. 419 (S.B.). An article published in a newspaper stated as follows: "It is so unfortunate and regrettable that at the present day the Chief Justice and the Judges find a peculiar delight in hobnobbing with the executive with the result the judiciary is robbed of its independence which at one time attracted the admiration of the whole country. The old order of things has vanished away. We wish the Chief Justice and the Judges appreciate the sentiments of the public. The generation that has gone by should be an ideal to them." Held, that it constituted contempt of the High Court; and that it was the duty of the High Court in the administration of justice, to deal with it in summary manner and not by way of indictment or criminal information, which was too dilatory and inconvenient to afford any satisfactory remedy. (*Ibid.*) (But *see* judgment of Mukerji, J.) Where the effect of certain newspaper articles was likely to be to deter witness from giving evidence in a pending case, it amounts to contempt of Court though not of a serious nature. 1941 O.A. 429. Where a complainant in a defamation case writes an article a couple of days after the complaint is filed asserting the truth of the statements contained in his paper and challenges the accused to prove their falsity, the article does not amount to contempt of Court. 1941 O.A. 429.

HEADLINES AMOUNTING TO COMMENT on a pending case are not permissible. Where a

newspaper in publishing the proceedings of a pending case inserted headlines which in fact amounted to a criticism of the prosecution case under the guise of a summary of the day's proceedings and some of the headlines were mere arguments of the defence and it appeared that their publication might have an effect on the minds of witnesses to be examined or cross-examined and amounted to conduct calculated to produce an atmosphere of prejudice, *held*, that the publication of the headlines amounted to contempt. (Limits to press comment on pending criminal cases pointed out.) 87 C.W.N. 276=60 C. 603=1933 C. 118. Where a newspaper published with scare headlines portions of a complaint against the respondent in which gross allegations were made against him four months after the complaint had been filed, while proceedings were actually pending in the trial Court and also in the High Court for quashing the complaint, and further the paper published above the complaint its own comments. *Held*, that nothing could be more in the nature of contempt than action of that character. 40 P. L.R. 791=A.I.R. 1938 Lah. 815. Although the danger or absence of danger of actual prejudice is an important consideration it is not the only consideration. The jurisdiction of the Court exists not only to prevent mischief in the particular case but to prevent similar mischief arising in other cases. 37 C.W.N. 276=1933 C. 118=60 C. 603. The misuse of the process of the Court for obtaining a warrant against a person against whom the complainant has no intention of proceeding, merely to use it as a lever for blackmailing him, amounts to contempt of Court. 41 P.L.R. 130=A.I.R. 1939 Lah. 143.

JURISDICTION.—A contempt of the High Court is an "act made punishable under a law for the time being in force" within the meaning of sec. 4 (c) of the Code of Criminal Procedure and such offence can be inquired into according to the provisions of the Code as set out in sec. 5 (2)—Hence where a contempt has been committed within the territorial Jurisdiction of a High Court in India, such Court is competent to issue process to secure the attendance of the offender wherever he may be residing in British India as in the case of an offence under the Penal Code or under any other Act for the time being in force. 1944 A.L.J. 459. *See also* 1944 Bom. 127.

JURISDICTION TO PUNISH FOR CONTEMPT.—The jurisdiction to punish for contempt of itself is inherently vested in every High Court in India including the non-Presidency High Court, which is also a superior Court of record. This inherent power of the High Courts has not been taken away or in anywise limited by Act XII of 1926. Consequently the High Courts in India continue to have power to deal with contempt of themselves in the same manner as a Court

of record has under the common law of England. There is no limitation imposed on the High Courts in the matter of punishment of offenders for contempt. A sentence passed on an offender committing him to custody in jail until such time as he apologised to the Court and further purged his contempt by paying into the Court the sums of money received in defiance of the Court's injunction, is in accordance with law. 18 Lah. 69=38 Cr.L.J. 863=A.I.R. 1937 Lah. 497 (S.B.); 40 C.W.N. 1285; 156 I.O. 1055=39 C.W.N. 770. *See also* I.L.R. (1944) Bom. 333=46 Bom.L.R. 94=1944 Bom. 127; 44 Bom.L.R. 249=1942 Bom. 154; 1943 Nag. 334=1943 N.L.J. 505; 1944 Bom. 127. The idea underlying the Act is that if a person can be sufficiently punished by some other tribunal, then the High Court should not entertain summary proceedings for contempt. 1943 Nag. 334=1943 N.L.J. 505. A Court subordinate to the High Court has no jurisdiction to entertain contempt proceedings if the contempt is not committed in its presence. 1943 Nag. 334=1943 N.L.J. 505. An order made by the Chief Judge of the Bombay Small Cause Court, directing a mutawalli of a wakf to furnish within a specified period a statement of accounts and particulars, is an order directing him to do a specific thing within a limited time. An order of such a nature, if disobeyed, can be enforced by proceedings for contempt by the High Court under the Contempt of Courts Act of 1926. 43 Cr.L.J. 667=44 Bom.L.R. 249=A.I.R. 1942 Bom. 154 (1). Chief Court of Sind has power to punish for contempt. I.L.R. (1944) Kar. 396. Apart from the inherent jurisdiction of the High Court, such jurisdiction has been expressly conferred on the High Court by the Contempt of Courts Act (1926), in all cases of contempt except those which amount to offences under the Indian Penal Code. 57 A. 573=1935 A. 117=1935 A.L.J. 29. The Judicial Commissioner's Court although it is the highest Court of Judicature in the Provinces and has general superintendence over other Subordinate Courts in the Province, cannot be held to derive its authority from the Court of King's Bench, nor has it been established by Royal Charter. The Judicial Commissioner's Court, hence, is not a Court of record and has no power either by statute or otherwise to punish contempt of Subordinate Courts either in civil or criminal cases. 1935 N. 46=31 N.L.R. 154=156 I.O. 666. But *see also* 18 Lah. 69=A.I.R. 1937 Lah. 497=40 C.W.N. 1285; A.I.R. 1940 Sind 239; A.I.R. 1939 Oudh 131 (F.B.). If the Official Receiver considers that members of his staff have been obstructed to an extent which amounts to a contempt of Court, it is entirely within his discretion either to take proceedings for contempt or to initiate criminal proceedings. It is, however, a salutary principle that where the contempt is some form of physical violence or obstruc-

tion and is as such punishable by a Criminal Court, it should be dealt with there. 41 C. W.N. 1325. The High Court in insolvency has jurisdiction to commit to prison for contempt not, only the insolvent, but other persons who deliberately aid the insolvent in defying an order of the Court deliberately passed in the exercise of insolvency jurisdiction. The Court's powers are not limited by sec. 58 of the Presidency Towns Insolvency Act. The wife and son of the insolvent, though they are not parties to the proceedings, can be proceeded against, if they at the instigation of the insolvent refuse to vacate possession of the properties of the insolvent as ordered by the Court. 48 L. W. 462=(1938) 2 M.L.J. 609. The power to commit for contempt is not to be lightly used and should be reserved for cases where the contempt is deliberate and of such a nature that committal is called for. 49 L. W. 29=I.L.R. (1939) Mad. 466=A.I.R. 1939 Mad. 257=(1939) 2 M.L.J. 843 (F.B.). The Court's jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with the course of justice. It is not every theoretical tendency that will attract the attention of the Court to its very special jurisdiction. Where in the course of a newspaper article it was suggested that a political party was in sympathy with a terrorist gang against whom criminal proceeding was pending, held, that the comments were improper but did not amount to contempt. (Essentials for prosecution for contempt stated.) 58 C. 884=35 C.W.N. 189=1931 C. 257. *The Chief Court of Sind* has a right to punish in a summary way contempt of itself. A.I.R. 1940 Sind 239 (F.B.). It is a *duty of a Court, not so much to itself but to the public in whose interest it administers justice*, that it should preserve its proceedings from misrepresentation. There is no distinction between a misrepresentation of the action of a Chief Court when it exercises its undoubted powers of superintendence of Magisterial Courts under sec. 224, Government of India Act, 1935, and sec. 17, Sind Courts Act, 1926, and the misrepresentation of the action of the Court or a Judge in a judicial as distinct from an administrative capacity, provided always that that action relates to the administration of justice. A.I.R. 1940 Sind 239 (F.B.). See also A.I.R. 1939 Oudh 181 (F.B.).

JURISDICTION OF COURT—RESIDENCE OF ACCUSED IF MATERIAL.—Contempt of Court is not an offence within the ambit of the Penal Code, but yet it conforms to the ordinary rule that the jurisdiction of the Court is determined by the place where the offence is committed and not by the place where the offender may happen to reside. If the offender removes himself beyond the territorial jurisdiction there might be difficulty in securing his appearance and executing the sentence but that would not deprive the Court of jurisdiction over the offence. This

is especially so where the accused has appeared and has submitted to the Court's jurisdiction. 57 M. 831=1934 M. 423=66 M.L.J. 650. The High Court has jurisdiction to hear a notice of motion for contempt of Court against a party who, though not resident within the limits of its ordinary original jurisdiction, is yet a resident of British India, because as a subject of British India, he is governed by and bound to obey the laws of British India and to recognise the authority of Courts established by laws prevailing in British India. 36 Bom. L.R. 992=1934 B. 452=59 B. 10. *Persons who are not parties to the proceedings can be proceeded against in contempt* if they at their investigation the insolvent refuses to vacate possession of the properties as ordered by the Court. 48 L.W. 462=(1938) 2 M. L.J. 609. [Reversing 46 L.W. 900=1937 M. W. N. 125.] Where a person is restrained by a judicial order of one High Court from proceeding with certain action and the person commits contempt of that High Court by defying the order in the jurisdiction of other High Court, the former High Court has jurisdiction to commit the person for contempt. [I.L.R. (1937) 1 Cal. 345, Foll.] A.I.R. 1937 Cal. 601. See also 40 C.W.N. 1285. As to jurisdiction of *Oudh Chief Court in respect of contempt of subordinate Courts*, see 1939 O.W.N. 296=A.I.R. 1939 Oudh 181 (F.B.).

INHERENT POWER TO PUNISH.—The power to punish for contempt of Court is a power inherent in superior Courts of Record, which in India are the High Courts. Each High Court has inherent power to punish contempt of itself; but no other Court has any power to deal with contempt of Court. If a High Court considers that a person has committed contempt of that Court although the contempt may have been committed outside the jurisdiction of that Court, it can deal with that person if he were within its jurisdiction. But there is no power in any High Court to arrest for contempt of Court a man outside the jurisdiction of that Court. 46 Bom.L.R. 94=A.I.R. 1944 Bom. 127. See also 1944 A.L.J. 459. The fact that criminal proceedings under sec. 194, Cr. P. Code, may be directed against a person who has defamed the Court generally is no bar to his being proceeded against for contempt of Court as well. The inherent power of a Court to punish for contempt of Courts is essential in the interests of the administration of justice and that power is not restricted in any degree by the provisions of the Cr. P. Code, relating to proceedings which may be instituted with the sanction of the Government in case of defamation of the Courts or His Majesty's Judges. 1935 A. 1=154 I.C. 955.

SOME ILLUSTRATIVE CASES—COMMENT ON PENDING CASES.—All proceedings in suits pending in a Court of Justice are privileged, and any comment on the subject-matter of the suits and any abuse of the parties or holding them up to ridicule and contempt in

the eyes of the public, whilst the suit is pending are not allowed. The object of proceedings in contempt in such cases is not so much to vindicate the dignity of the Court or of the person of the Judge, as to ensure that every litigant in a Court of justice has a fair and unprejudiced hearing at the trial on the merits of his case. Whether an article in a newspaper will *in fact* prejudice a party or not, or scare away his witnesses, or lead him to compromise the suit, is not the real and proper test in such a case. The Court has to read the article and see whether the article *may have that effect*, and thereby tend to interfere with the proper course of justice. If it has that tendency it constitutes contempt of Court justifying the Court in taking action. 39 Bom.L.R. 471=38 Cr.L.J. 942=A.I.R. 1937 Bom. 305. See also 1943 Lah. 329 F. B. A libel on the parties to a suit which does not amount to an interference with the course of administration of justice is not a matter in respect of which contempt proceedings can be taken. The aggrieved party has his remedies elsewhere, namely, he can either prosecute the offender in a Criminal Court or sue him for damages in a Civil Court. (*Ibid.*) It is well settled that any act done or writing published which is calculated to interfere with or obstruct the due course of justice or the legal process of the Court is contempt of Court, although the Court will not take action for contempt unless it thinks that the conduct of the party in question is calculated seriously to interfere with the course of justice. Proceedings in contempt are not taken merely in respect of technical offences. To suggest in a newspaper article that evidence intended to be used in a prosecution which is either proceeding or is plainly contemplated, has been obtained by improper means and is unreliable or to suggest that admissions by the accused have been improperly obtained is such as is calculated to interfere with the due course of justice, and amounts to contempt of Court, as such allegations introduce at once into the trial an element of prejudice against the prosecution evidence. 40 Bom.L.R. 73. It is of the *very essence of contempt of Court that proceedings should be pending*, when the article alleged to constitute contempt is published. It is not necessary that the accused in a criminal case which is the subject of comment should have been committed for trial or even for him to have been brought before a committing Magistrate provided he has been arrested and is in custody when the article is published. 21 Pat.L.T. 980.

Dhavia, J.—It is contempt of Court to publish a newspaper article containing comments on the facts of a case which is pending before a Court or is about to come before a Court, if the comments are calculated to obstruct or interfere with the course of justice. In such cases the contempt takes the form of prejudicing mankind against persons who are on their trial raising an atmosphere of prejudice against them by

comment which is addressed to the public at large. 21 Pat.L.T. 980=1940 P.W.N. 902. As to what are *pending proceedings*, see 185 I.C. 86=41 Cr.L.J. 148. Any publication which tends to excite prejudice against the parties to a pending litigation or their litigation while it is pending constitutes contempt of Court. Attacks on or abuse of a party, his witnesses or solicitor constitute contempt, but a mere libel on a party, not amounting to an interference with the course of justice, does not the party being left to his remedy by action. To publish injurious misrepresentations directed against a party to the action, especially when they are holding that party to hatred or contempt is liable to affect the course of justice, because it may, in the case of a plaintiff, cause him to discontinue the action from fear of public dislike, or it may cause the defendant to come to a compromise which he otherwise would not come to, for a like reason. The fact that the trial Judge would not be affected by the article has no bearing in the matter. I.L.R. (1938) Mad. 545=A.I.R. 1938 Mad. 248=(1938) 3 M.L.J. 81. The comment on a case which is *sub judice* or to suggest that the Court should take a certain course in respect of a matter before it undoubtedly constitutes contempt and honesty of motive cannot remove it from this category. If this were to be allowed persons in a position to assist the Court by their evidence might be prevented from coming forward, and persons appearing as witnesses might be influenced in their testimony. The criterion is not whether the Court will be influenced, but whether the action complained of is calculated to prejudice the course of justice. Good intention is not the deciding factor in a matter of contempt, though the intention and *bona fide* nature of the action constituting contempt have an important bearing on the question whether the Court should take action. To comment on a case which is about to come before the Court with knowledge of that fact is just as much contempt as comment on a case actually launched. A discussion in a newspaper of the rights and wrongs of a case when pending before a Court is improper and constitutes contempt of Court. This does not mean that reference cannot be made to pending cases or that items of news which are concerned with pending cases should not be published. What cannot be permitted is a discussion of the attitude which the Court should adopt when considering the case. 49 L.W. 29=I.L.R. (1939) Mad. 466=A.I.R. 1939 Mad. 257=(1939) 2 M.L.J. 843 (F.B.). A pamphlet which assumes the truth of certain facts which are connected directly or indirectly with the matters under consideration and awaiting decision in a pending litigation, amounts to contempt of Court. So also a document containing reflections of the gravest possible nature upon the conduct and the character of certain of the persons concerned in a pending proceeding and predict-

ing that a certain party will win and thereby justice will be defeated. 43 C.W.N. 333 = I.L.R. (1939) 1 Cal. 394. Where a member of the Legislative Assembly wrote a letter to a Magistrate making certain suggestions with reference to proceedings under sec. 107, Cr. P. Code, pending before him, it was held that it grossly offended against the law of contempt of Court and that no member of the Legislative Assembly had any right to interfere in such a manner in the course of administration of criminal justice. 185 I.C. 754 = A.I.R. 1940 Oudh 178. A pamphlet published during the pendency of proceeding comes within the definition of "contempt of Court" if (1) it assumes the truth of certain facts which are connected directly or indirectly with the matters under consideration and awaiting decision in the proceeding itself, (2) if the document contains reflections of the gravest possible nature upon the conduct and the character of certain of the persons in the proceedings, and (3) if the pamphlet purports to predict that certain party will be or is likely to be successful in the proceeding and adds the comment in effect that if he is successful, law and justice will be defeated. 43 C.W.N. 333 = A.I.R. 1939 Cal. 672 = I.L.R. (1939) I.C. 399. *Writing of letters to a Magistrate in respect of a matter pending before him grossly offends against the law of contempt* It is in the clearest terms an attempt to prejudice the mind of the Magistrate in regard to the trial of the case before him. 181 I.C. 714 = 1939 O.W.N. 525 = A.I.R. 1939 Oudh 180. *See also* 14 Luck. 649; 14 Luck. 653. Every private communication to a Judge for the purpose of influencing his decision upon a pending matter, is contempt of Court as tending to interfere with the course of justice. On the facts of the case it was held that a letter addressed to a Magistrate at a time when no proceedings were pending before him did not amount to contempt, as it was not the intention of the writer to influence the Magistrate by means of that letter. 181 I.C. 466 = 1939 O.W.N. 522 = A.I.R. 1939 Oudh 182. Where a party to a pending case wrote a letter to the Judge seized of the case containing the following statement 'you have on your responsibility caused all these proceedings against law to be taken with a view to cause loss to me. In case I succeed in appeal, you yourself shall be responsible for the property or the value thereof due to the above-mentioned unlawful acts,' it was held that it amounted to contempt of a serious nature and that it contained a threat and an imputation against the Judge's impartiality and that it was a serious matter which could not be treated lightly. 1940 N.L.J. 425 = A.I.R. 1940 Nag. 407. Where a member of the Legislative Assembly writes letters to a District Magistrate about certain pending criminal cases he is attempting to interfere with the administration of criminal justice which nobody is entitled to. 1939 A.W.R. (H.C.) 128 = 1939 A.L.J. 99 = 1939

A. 247. Though a printed article may not have any effect on the mind of the Magistrate or Judge, the essence of contempt of Court being conduct calculated to produce an atmosphere of prejudice in the midst of which the proceedings must go on, publications with such a tendency will be punished as contempts. Where the respondent, the editor of a newspaper, after reproducing an accurate statement of a criminal complaint lodged against the accused, added in big headlines that "thousands of rupees were missing" as a fact, instead of "as alleged," held, the respondent was guilty of contempt. 1931 M.W.N. 1058 = 34 L.W. 727 = 61 M.L.J. 848. Where during the pendency of a suit relating to the genuineness of a will the editor of a newspaper published a copy of the will in the paid advertisement column and it appeared that the publication was likely to prejudice the mind of the public, held, that the act of the persons responsible for the paper amounted to contempt of Court. 1931 A.L.J. 647 = 1931 A. 420. *The special privilege of the press is a time-worn fallacy, and the sooner the misconception that the press is not accountable to the law is removed the better it will be.* No editor has a right to assume the role of investigator or try to prejudice the Court against any person. Writing and publishing an article in a newspaper likely to prejudice the course of justice relating to a pending case amounts to a contempt of Court. 15 Luck. 268 = 41 Cr.L.J. 169 = 1939 O.W.N. 1132 = A.I.R. 1940 Oudh 137. *See also* A.I.R. 1940 Rang. 70 = 41 Cr.L.J. 445. Far from there being any special privilege of the press, there is on the other hand a special responsibility affecting the editor of a newspaper, namely that he is in duty bound always to bear in mind the danger of prejudicing the course of justice by the publication of articles in his newspaper which though innocent in appearance may easily be so read by members of the public as to prejudice the course of litigation. 1940 O.W.N. 1197. It is not possible to say that criticism of Court is protected and can be justified where there is no good faith, where there are misstatements and misrepresentations and where necessarily the Court is brought into contempt and disrepute. The writer cannot claim to act in good faith when he ignores the sources of the truth which were open to him. A.I.R. 1940 Sind 239 (F.B.). Guardian celebrating marriage of ward in breach of undertaking given to Court—Offence—Persons assisting guardian whether liable. 31 Bom.L.R. 1120; 1940 Nag. 203; I.L.R. (1942) Nag. 45. *See also* A.I.R. 1938 Cal. 38; 1933 Pat. 142 = 12 Pat. 1. Where a person is restrained by a judicial order from proceeding with certain action, the person so ordered is not justified in disobeying the order merely because he is advised or thinks that the order is wrong in law. A.I.R. 1937 Cal. 601. *See also* 44 Bom.L.R. 231 = 1942 Bom. 154. Where in the course of a series of newspaper arti-

cles the editor alleged that the Judges had convicted a person after having expressed a doubt of his guilt, that the conduct of cases before the Chief Justice was such that arguments and authorities were ignored and that the life and liberty of the subject brought before him was in peril, and further that the Chief Justice passed monstrous sentences and unjustifiably convicted persons on the uncorroborated testimony of an approver and accused the people of the province as habitual liars thus prostituting the position of a Judge. *Held*, that the articles were intended to lower the prestige of the High Court and the dignity of the Judge and that the editor could be punished for contempt. 8 P. 323=117 I.C. 180 (2)=30 Cr.L.J. 741 (F.B.). It is indeed difficult and well nigh impossible to frame a comprehensive and complete definition of 'contempt of Court'. Anything that tends to curtail or impair the freedom of the limits of the judicial proceeding must of necessity result in hampering the due administration of law and in interfering with the course of justice. It must therefore be held to constitute contempt of Court. Where a party sends threatening letters to the opposite party and his advocate demanding the withdrawal of certain allegations in the pleadings it is calculated to interfere with and obstruct or divert the course of justice and hence the party sending such communications is therefore clearly guilty of a contempt of Court. I.L.R. (1940) Nag. 69=1939 N.L.J. 461. Where a person accused of an offence under secs. 420 and 406, I. P. Code, files a complaint for defamation against a witness in that case and during its pendency, in respect of certain statements made by that witness it was held that inasmuch as the complaint was made more than 6 months after the examination of all the witnesses and not straightaway as soon as the particular witness was examined, it was a *bona fide* act intended for the protection of the complainant's own good name and not an act aimed at putting pressure to bear on witnesses and as such there was not even a technical offence of contempt committed. 181 I.C. 575=40 Cr.L.J. 569=A.I.R. 1939 Oudh 225. The essence of an offence of contempt of Court lies in the fact that the person complained against has done something which might have the effect of prejudicing the fair trial of a pending case; inasmuch as it is of great importance to the administration of justice that it should be allowed to take an unfettered course and not be sullied and besmirched in any manner: Where a person files a complaint for defamation in respect of various allegations against him contained in a petition to adjudicate him an insolvent and also says that he had told the other party that if insolvency proceedings are started, he would take counter proceedings, there is nothing done from which an inference could be drawn that if the allegations in the insolvency proceedings are withdrawn, the cri-

minal proceedings for defamation would also be dropped. There is a distinction between a threat before proceedings are instituted and a threat after proceedings have been instituted. If when the earlier proceedings have been taken a threat is held out then to the person who institutes the proceedings by the opposite party to the effect that unless the proceedings are withdrawn drastic action would be taken, the holder of the threat would be guilty of contempt of Court; but where the threat is held out before the institution of the proceedings it amounts only to a warning so that an unguarded action may not be taken. There may well be action in the nature of a blackmail and it would be dangerous to hold that if the person attempted to be blackmailed were to hold out a counter threat, he would be guilty of contempt of Court. 1940 A.L.J. 798. Where during the course of a guardianship proceedings, one of the parties files an affidavit containing aspersions on the other party and he thereupon files an applications under sec. 476, Cr.P. Code, for enquiry into the falsity of the allegations in the affidavit and for necessary action and also files a complaint against the other under sec. 500, I.P. Code, neither the application under sec. 476, Cr. P. Code, nor the complaint under sec. 500, I.P. Code, constitutes contempt of Court. 1940 A.L.J. 579=1940 All. 497. Where a person not a party to the suit sends a registered notice to the defendant, demanding the withdrawal of an abusive epithet used in the written statement with reference to him, and threatening to file a suit for damages, if it was not withdrawn, it is merely the formal preliminary notice for a suit for damages for libel and does not constitute contempt of Court. This is quite different from putting pressure on a party to withdraw a plea in a civil suit, which may amount to contempt of Court. 187 I.C. 65=1939 A.L.J. 1157=1940 All. 114. See also I.L.R. (1942) Nag. 506=43 Cr.L.J. 98. Where A aids and abets B in his disobedience of an injunction, it is a wrong remedy to petition the Court to issue notice upon A to show cause why he should not be committed for contempt for disobedience of the injunction. The petition should ask the Court that A be committed for aiding and abetting B in his disobedience. In the first case the Court might dismiss the application and ask the petitioner to apply again in proper form. 1938 P.W.N. 895=19 Pat. L.T. 867=1938 P.C. 295. The Government granted certain lease of quarrying rights to A. A took possession of the quarries. In a dispute concerning lease the Government and its servants were restrained by an injunction from disturbing possession of A, B, who was not a party to the injunction proceedings, but who derived his supposed interest from the Government, continued to work the quarries. A brought an action for contempt proceedings against the Government for disobedience of the injunction, and against B

for aiding and abetting the disobedience. *Held*, that Government could not be said to have disobeyed the injunction. It was for A, who had the immediate right to possession or was in possession under the order of the Court, and not for the Government, who was not in actual possession to eject B. The duty of the Government was to leave those who claimed entitled to the possession of the soil to take the appropriate measures. *Held*, further, as Government was not liable, B, who derived his interest through it, could also not be held liable for disobedience. [16 Pat 159=1937 Pat. 65=166 I.C. 966 (S. B.), reversed]. 19 Pat.L.T. 867=178 I.C. 490. *See also* 41 C.W.N. 821=1938 P.O. 295 (P.C.). Any act done or writing published which is calculated to bring a Court or a Judge into contempt or to lower his authority is contempt of Court. It is a class of contempt usually known as "scandalising the Court"; the principle on which the Court proceeds in taking notice of this class of contempt is based on the interest of the public and not on the interest of the particular Court or Judge who is attacked. Where attacks are made on the personal character of a Judge, or where base or improper motives in the decision of a case are attributed to a Judge, the process of the Court should be used; but the process of contempt for scandalising the Court is one which should be sparingly used. A general expression of opinion hostile to the utility of Courts of Justice, without any attack on any particular Judge or comment on any particular case, is not likely to affect the public and need not disturb the equanimity of Judges, and does not amount to such a contempt of Court as should be dealt with by the process of contempt. I.L.R. (1938) Bom. 179=40 Bom.L.R. 75=1938 Bom. 197. Scandalizing the Court amounts to contempt of Court. It is immaterial whether the attack on the Judge is with reference to a case about to be tried or actually under trial or recently adjudged. And the offence is in no way mitigated when the attack is not upon a particular Judge but upon the Court as a whole, indeed, upon all the Judges. Contempt is not only committed when there is a detailed discussion of the facts and merits, but when, for instance, some presumptuous person states that the case of the party is sound in law and fact before such case is heard and decided. *An article suggesting abuse by Chief Court of its powers*, a desire on the part of that Court to enter into a conflict with the executive Government and containing a plain invitation to Magistrates to disregard the authority of that Court and to subordinate themselves to the alleged wishes of the executive Government, is an article tending to embarrass the administration of justice and calculated to create in the minds of the general public grave apprehension that the Chief Court is not entitled to public confidence in its discharge of its

duties. Such article amounts to contempt of Court. 1940 Sind 229 (F.B.). Where a suit was concluded by a decree of Court embodying the terms of settlement between the parties one of which was an undertaking given by the defendant not to dispose of his properties until the decree was fully satisfied, and the defendant mortgaged the properties before the satisfaction of the decree. *Held*, that the breach of the undertaking given to the Court amounted to contempt of Court and that the breach was not so trivial a matter as to be beneath the dignity of the Court to notice or punish it. 42 O. W. N. 203. Newspaper article—Imputations against jail authorities likely to prejudice fair trial—Offence—Sentence. 26 A. L.J. 1307=113 I.C. 754=1929 A. 81 (F. B.). Proceedings for contempt—Nature of—Evidence—Receiver's report based on hearsay evidence as the basis of sentence—Legality. 118 I.C. 565=1929 C. 115.

PRACTICE AND PROCEDURE—Summary proceedings taken by the High Court for contempt of itself are proceedings derived from the Common Law of England. There is inherent right to take such proceedings in the High Court by virtue of its position as a superior Court of record. The power to punish for contempt is a power *sui generis* and not a power which is or can be exercised under the ordinary criminal jurisdiction of the Court. 39 C.W.N. 823. A rule for contempt can be issued by any single Judge or any number of Judges of a Court of record. It is not necessary that the rule should be issued by the High Court as an entire body after consultation with all its members. 8 P. 323=117 I.C. 180 (2)=80 Cr.L.J. 741 (F.B.). *See also* 7 E. 844=122 I.C. 282=31 Cr.L.J. 397. Where an application is made to the High Court on behalf of the Legal Remembrancer for taking proceedings against a person for contempt of Court, it is not proper that the affidavit in support of the application should be that of a clerk. It should be the affidavit of some responsible officer. 21 Pat.L.T. 980=1940 P.W.N. 902. The Legal Remembrancer of Bihar is competent to represent the Government or the Governor in proceedings for contempt in Bihar and can move the Court to take proceedings. His functions and duties are wide enough to empower him to move on behalf of the Government or the Governor and to instruct the Advocate-General to carry on proceedings for contempt in the High Court. 1940 P.W.N. 902=21 Pat.L.T. 980. *Summary jurisdiction in contempt* is a powerful weapon in the hands of the Court and is to be used sparingly. But its use must in large part depend upon those who by their misconduct invite its application. 1940 Sind 239 (F.B.). There can be no doubt that a Court need not and should not interfere in all cases of contempt. It is a very arbitrary method of dealing with an offence and *contempt proceedings should be sparingly insti-*

2. (1) Subject to the provisions of sub-section (3), the High Courts of Judicature established by Letters Patent shall have

Power of superior Courts to punish contempts of court.

and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to them as they have and exercise in respect of contempts of themselves.

tuted, and a person should not be convicted unless it is essential in the interests of justice that he should be. Where the matter complained of tends to prejudice and tends to cause substantial prejudice, it does call for action, as it cannot be said to be a mere technical contempt. A mere technical contempt of Court is not sufficient to warrant the High Court interfering and convicting the offender. There must be a substantial contempt, that is, something which tends in a substantial manner to interfere with the due course of justice or tends substantially to prejudice the public against the accused in a pending criminal case. If the Court is satisfied that there is a danger of grave prejudice and a danger of substantial and real interference with the due course of justice, the Court will take action and commit the offender for contempt. 1940 P.W.N. 902 = 21 Pat.L.T. 980.

INTENTION.—Any act done or writing published, which is calculated to interfere with the due course of justice is a contempt of Court, and writings prejudicing the public for or against a party are similarly contempts. No intent to interfere with the due course of justice or to prejudice the public need be proved if the effect of the article or matter alleged to constitute contempt is to create prejudice or to interfere with the due course of justice. The writer of an article can be guilty of contempt without intending to interfere with the due course of justice. The test is not what the writer intends but what effect the words would have. An article written with the deliberate intention of interfering with the due course of justice would be an extremely serious matter meriting very severe punishment. Once it is held that the words are likely to cause substantial interference with the due course of justice or likely substantially to prejudice the hearing of a case or the trial of an accused person, then the writer is guilty of contempt whether or not he intended such results. The question of intention is irrelevant in considering whether the offence has been committed, though, of course, it is a most important matter in considering the appropriate punishment to be awarded. 1940 P.W.N. 902 = 21 Pat.L.T. 980. *See also* 49 L.W. 29; 1943 Lah. 329 (F.B.); 47 C.W.N. 854; 1945 Nag. 83 = 1945 N.L.J. 30. In contempt proceedings before the High Court it cannot be said that in every case the party if represented must appear through an advocate instructed by an attorney. Nature of High Court's jurisdiction in matters of contempt indicated. 34 C.W.N. 928. (*See*

also notes under sec. 2, infra.) Notice of motion for contempt—Nature of proceedings—Particulars to be stated. 36 Bom.L.R. 992 = 1934 B. 452. When the High Court as a Court of record thinks fit to exercise summary jurisdiction and under that jurisdiction punishes for a contempt of Court, it is not open to the person concerned to ask the High Court for leave to appeal to His Majesty in Council. Summary proceedings for contempt of Court are not only competent, but the decision, that is to say judgment, order and sentence must be taken to be final and not open to appeal. A Court of record is the sole judge of what constitutes a contempt. 39 C.W.N. 823.

SEC. 2.—The Chief Court of Sind is also a Court of Record and has power to punish in a summary way contempt of itself. I.L.R. (1944) Kar. 396. The words "*Subordinate Court*" in the Contempt of Courts Act are used in a wide sense as including any Court over which the High Court has superintendence for the purposes of s. 85, Government of Burma Act. 1935, that is to say, all Courts subject for the time being to its appellate jurisdiction. Sub-Divisional Magistrate when holding an inquiry under sec. 176, Cr. P. Code, is acting as a Court subordinate to the High Court for the purposes of the Contempt of Courts Act. 1940 Rang. L.R. 188 = 41 Cr.L.J. 470 = A.I.R. 1940 Rang. 68. The High Court of its own motion can issue a rule calling upon a person to show cause why he should not be committed for contempt of the High Court or for contempt of a Subordinate Court. The powers of the High Court with regard to contempt of Subordinate Courts are precisely the same as its powers with regard to contempt of itself. Under sec. 2 (1) of the Contempt of Courts Act of 1926, the High Court can do in the case of contempt of a Subordinate Court whatever it can do in the case of contempt of the High Court itself. Therefore even if an application for taking proceedings is not competent, as being taken out by a person not competent to represent the Executive Government, the High Court can take notice of the contempt alleged of its own motion and issue a rule. 1940 P.W.N. 902 = 21 Pat.L.T. 980. *Comment upon an Advocate which has reference to the conduct of his cases may amount to contempt of Court.* 58 C. 884 = 35 C.W.N. 189 = 1931 C. 257.

ARREST OF COUNSEL PROCEEDING TO COURT.—In cases where a counsel who is proceeding to file or appear in a case is arrested by the police, to constitute contempt there must be something more than arrest without

(2) Subject to the provisions of sub-section (3), a Chief Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice in respect of contempt of itself as a High Court referred to in sub-section (1).

(3) No High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.

legal justification. There must be something in the nature of *mala fides*, that is, an intention directly or indirectly to interfere with the due course of justice. The arrest must have been intended to interfere with the due course of justice or calculated to interfere with the due course of justice. An honest, though mistaken arrest, though it might interfere with the due course of justice, cannot amount to contempt. The arrest of a counsel by the police in order to prevent him from filing an application to the High Court under sec. 491, Cr. P. Code, for the release of a detainee and appearing on behalf of the detainee or to prevent other counsel from so appearing and to prevent the counsel from obtaining an order from the High Court for an interview with the detainee in jail amounts to interference with the due course of justice and constitutes contempt of Court. A.I.R. 1944 Lah. 196 (S.B.).

WITHHOLDING PETITION (HABEAS CORPUS) FROM PERSON DETAINED IN JAIL.—Petitions addressed by detained persons to the High Court under sec. 491, Cr. P. Code, must be forwarded without any delay. Whether the petition has in the events that have happened become infructuous is a matter in every case for the High Court to decide and no one has the right to take upon himself that responsibility. It is no business at all of any official to form any conclusion about an application addressed to the High Court. Withholding any application addressed to the High Court under sec. 491, Cr. P. Code, does amount to a technical contempt even when such withholding does not tend substantially to interfere with the due course of justice. In order to amount to a punishable or serious contempt of Court the withholding of the application must tend substantially to interfere with the due course of justice. A.I.R. 1944 Lah. 196 (S.B.). See also 1945 Nag. 33. Where the jail Superintendent deliberately and intentionally withheld the application from the High Court and declined to forward it, *held*, he interfered with the administration of justice and was guilty of a criminal contempt. 1945 N.L.J. 30=A.I.R. 1945 Nag. 33.

PERSON RELEASED BY COURT ON HABEAS CORPUS WRIT RE-ARRESTED UNDER REGULATION III OF 1818 WITHIN COURT PRECINCTS.—Per *Curiam*.—A person who is directed by Court to be released from illegal detention in *habeas corpus* proceedings

of proceedings under sec. 491, Cr. P. Code, is only free from arrest on civil process until he reaches home from Court, but not free from arrest on criminal process. As a warrant of commitment under Regulation III of 1818 is akin to criminal process, the re-arrest of that person under such a warrant in the Court room when the Court is not sitting or within the precincts of the Court even when the Court is sitting will not amount to contempt unless it is a fraudulent proceeding for evading the order of the Court which is made in *habeas corpus* proceedings or proceedings under sec. 491, Cr. P. Code, or the arrest is made in the face of the Court so as to create a disturbance of the Court's business. 48 C.W.N. 854. Per *Mitter, J.*—It would amount to contempt if the person holding the warrant says to the face of the Court that he would not release the person ordered to be released by it. Such a warrant issued by the Governor-General or by the Governor of a province does not amount to a decision of a Court but is only an executive act and as such it cannot be set up against the order of the Court directing the release. 47 C.W.N. 854. When an application addressed to the High Court has been written on the 22nd but is not handed over to the jail authorities till the 23rd, the latter figure should not be added. Such tampering with a document addressed to the High Court is improper and is in itself a contempt. The jail authorities can endorse the date of receipt by them separately if they so desire but they have no business to alter or add to or tamper with any portion of a document intended for and addressed to the High Court. It is most objectionable to add a figure to the date so as to make it appear that the document bears a different date to the one which it originally bore. 1945 N.L.J. 30=A.I.R. 1945 Nag. 33. In cases of contempt of *mofussil Courts* the aggrieved person should make his application direct to the High Court. Where the alleged contempt is in the form of *obstruction to the receiver* appointed by the Court, the application may be made either by the party or by the receiver himself or by the Court which appointed him. Ordinarily however it is for the parties who are damaged to prefer the complaint. In contempt applications the same procedure should be followed as in applications in contempt to the High Court on the original side. (Application made to lower Court converted into one made to High Court.) 35 C.W.N.

1265. *See also* 36 C.W.N. 645. The Court of Commissioners appointed under the Bengal Criminal Law Amendment Act is a subordinate Court and the High Court can entertain proceedings for contempt committed before the Commissioners. 37 C.W.N. 276 = 1933 C. 118 = 60 C. 603 = 34 Cr.L.J. 662. The expression "*man in the street has lost confidence in the administration of justice in the province*" used by a lawyer in a meeting of the Bar Association within the premises of the Court is contempt of Court. 144 I.C. 63 = 34 Cr.L.J. 726 = 1933 O. 118. During the course of a trial the counsel for the accused observed in reply to a suggestion that the accused was proposing to leaving the jurisdiction of the Court, that he would not be appearing if that were so. The accused in fact left during the trial. *Held*, that the accused cannot be proceeded against for contempt. 35 C.W.N. 1082. A statement made by a counsel before the Judge of a Full Bench to the effect that his instructions are that his client does not wish the matter to be argued before the bench as constituted is a *deliberate and intentional insult to the Court*. It is highly improper on the part of the counsel to make such a statement and the statement amounts to a contempt of Court. 1932 L. 485 (F.B.). Where a contempt of Court committed by a counsel is due to his *erroneous view of law* and not to any improper intention on his part, the ends of justice can be met by the Judges of the Full Bench recording grave disapproval of his action. 138 I.C. 878 = 33 Cr.L.J. 675 = 1932 L. 502 (F.B.). Where a leading advocate commits the offence of contempt of Court unconsciously and *tenders a written apology* to the Court, such apology can be accepted as sufficient amends. 1933 O. 118. *See also* notes under sec. 3, *infra*. Attempts to *interfere with the possession of a receiver* (appointed by Court) and to intercept the rents properly payable by the tenants to the receiver undoubtedly amount to contempt of Court. (20 Beav. 332 and 18 C.W.N. 289, Ref.) 140 I.C. 140 = 36 C.W.N. 645 = 1932 C. 705. *See also* 35 C.W.N. 1265; 159 I.C. 180 = 1935 C. 684. The case of interference with or obstruction to a receiver appointed by the Court is treated as a contempt of a criminal nature. It is not necessary in such a case that the order appointing receiver should be served on the respondent as a condition precedent to a motion for contempt. It is enough if the applicant shows that the respondent was aware of the appointment of the receiver. The act of interference or obstruction is not a matter of infringement of any order, but amounts to interference with the administration of justice and with its officers. 36 Bom. L.R. 992 = 1934 Bom. 452. *Interference with receiver* may amount to contempt. That the person guilty of contempt is no party to the suit in which the receiver is appointed is no bar to jurisdiction. 59 B. 10 = 36 Bom.L.R. 992 = 1934 Bom. 452. But

Court would act with caution and reluctance when outsiders are concerned, (*Ibid.*) It is well settled that when receivers are appointed by a Court, interference with them and obstruction to them will amount to contempt of Court, and that the forcible taking of the rents and profits for which the receiver has been appointed or of chattels in his possession as receiver will amount to such interference and obstruction. 44 C.W.N. 925 = A.I.R. 1940 Cal. 487. The jurisdiction to deal with people for contempt of Court is quasi-criminal and the Court has no right to punish people merely because it might disapprove of what they do, if their conduct does not clearly bring them within the four walls of some offence known to law. Where the Court comes to a decision that it will appoint a Receiver but does not name any officer or individual as receiver, it is not a contempt of Court for a person who knows that that decision has been arrived at even if he is a party to the proceedings who knows—to collect and disburse moneys which it is intended are to fall within the powers of the Receiver. It cannot be said that for a party bound by a judgment to do anything which will make that judgment ineffective, is in itself a contempt of Court. The equitable rule of deeming that to be done which ought to be done could not apply to such case, for it could not be imported into the realms of criminal or quasi-criminal law. 1941 Rang.L.R. 747. The publication of a proceeding in Chamber in the High Court is not permitted without the express leave of the Judge, and if a newspaper does so, it amounts to contempt of Court. Proceedings relating to the appointment of a guardian *ad litem* of a minor are proceedings relating to a ward of Court, and if they are published in a newspaper without the express leave of the Judge that would amount to contempt. I.L.R. (1942) Bom. 151 = 44 Bom.L.R. 95 = A.I.R. 1942 Bom. 86. *Obstruction offered to a public servant* in the discharge of his public function is an offence by itself though the public servant may not be acting under the orders of a Court of justice so long as he was performing a legal function. But if that public servant is carrying out an order of a Court the offender commits another offence, namely, the offence of contempt of the Court whose order the public servant is carrying out. Sec. 186, I. P. Code, does not take note of this second offence which can be the subject of contempt proceedings. 12 P. 172 = 1933 P. 204 = 14 Pat.L.T. 77. Where the Sheriff's officer who, accompanied by the plaintiff's men, went to serve the defendant with a writ of summons in a suit which had been instituted against him was prevented from doing so because of the threats and the apprehensions into which he was put by the conduct of the defendant who made offensive remarks against him and called his employees who assaulted one of the plaintiff's men. *Held*, that the defendant was

in contempt and that the powers of the High Court could rightly be invoked. 48 C.W.N. 825. A criticism of an executive officer, no matter how severe, cannot amount to contempt of Court unless such criticism contains a matter calculated substantially to interfere with the due course of justice. It is one thing to say during the pendency of proceedings that an executive officer should not have taken a certain course. It is quite a different thing to say that the course he took was wholly illegal. A.I.R. 1943 Lah. 329 (F.B.). In so far as criminal contempts are concerned, the offence is committed if among other things, the acts complained of either obstruct, or have a tendency to obstruct, the administration of justice. It is not necessary to establish an actual obstruction or interference. It is enough to show that the acts have a tendency to interfere. 1945 N. L.J. 30=A.I.R. 1945 Nag. 33. The necessity for personal service of an order of the Court (appointing the receiver) does not exist when the contempt complained of is obstruction of the Court's officers. 140 I.O. 140=36 C.W.N. 645=1932 C. 705. Where the accused were convicted by the trial Court but were released on bail the same day by the Sessions Court which later on confirmed the conviction and issued warrants of arrest against them and the accused evaded those warrants of arrest and applied to the High Court, in revision, making it appear to the High Court that they were in jail, while in fact they were at no time in jail, it was held that both their evasion and misrepresentation amounted to contempt of Court. I. L.R. (1940) All. 507=1940 A.L.J. 309=A.I.R. 1940 All. 386. The widowed mother of a minor girl had re-married and thereupon her sister applied to the Court stating that the minor girl should be removed from the custody of the mother. The applicant was directed to take charge of the minor and she undertook not to marry the minor without the permission of the Court. Subsequently the mother under whose custody the minor continued got the minor married without the permission of the Court. Held, (1) that the mother was not guilty of an offence under sec. 228, I. P. Code, the insult or interruption of a public servant while sitting in a judicial proceeding is not a phrase which applies to mere disobedience of an order of the Court; (2) that the accused might be proceeded against under the Contempt of Courts Act. 12 P. 1=1933 P. 142=34 Cr. L.J. 770. Contempt of Court is either (1) criminal contempt consisting of words or acts obstructing or intending to obstruct the administration of justice or (2) contempt in procedure, consisting of disobedience to the judgments, orders or other process of the Court and involving private injury. Ordinarily a party to an action who disobeys a prohibitory order, such disobedience though wilful is contempt in procedure, whereas persons who aid and abet such disobedience and are not parties to the action are guilty

of criminal contempt. Where in spite of an order of prohibition a father performs the marriage of his minor daughter he is guilty of contempt along with the person who married the girl knowing of the prohibition. 189 I.O. 813=A.I.R. 1940 Nag. 203. See also I.L.R. (1942) Nag. 45; 31 Bom.L. R. 1120. A Guzerati person applied for restoration of his minor boy from an Anglo-Indian lady who looked after him for a long time with the father's concurrence. In a previous proceedings the father was appointed as the guardian of the boy and the father was ordered to have the custody of his boy and was to arrange to take the child for a change. The father made the arrangement but the lady refused to deliver the child to its father in spite of many requests. Held, that the lady was guilty of contempt. A.I. R. 1938 Cal. 38=174 I.O. 785. The meaning of sec. 2 (3) is that where under the I. P. Code there is already a provision for punishing a contempt of Court as a contempt of Court the Contempt of Courts Act itself shall have no application. It does not mean that when the Act which has constituted the contempt of Court also constitutes an offence under the Penal Code it may not be punished under the Contempt of Courts Act. A single act may be both an offence under the Penal Code and may also be a contempt of Court and may be punishable in either or both capacities. 12 P. 1=1933 P. 142=144 I.O. 351. See also 1940 180=1935 C. 684; 1938 A.L.J. 430. Where an application under sec. 100, Cr. P. Code, an application under sec. 100 Cr. P. Code, directed against a particular individual has terminated, the filing of complaints under sec. 500, I. P. Code and sec. 195 Cr. P. Code, by the individual against whom the disposed off application was directed does not in any way affect the trial of any pending proceedings and hence an application under sec. 2 of the Contempt of Courts Act on the basis of such complaints would not be maintainable. 1943 O. 14=1943 O.W.N. 331=1943 O.A. (G.C.) 212=45 Cr.L.J. 108.

SECS. 2 (2) AND (3): CHIEF COURT OF OUDH—JURISDICTION AS REGARDS CONTEMPT OF SUBORDINATE COURTS.—The Chief Court of Oudh is by virtue of the Oudh Courts Act and secs. 219 and 220 of the Government of India Act, the High Court of Oudh and the one and only Court of record and by virtue of its position akin to that of the Court of King's Bench. It has its power of superintendence over all inferior Civil and Criminal Courts and it has power to protect its subordinate Courts from improper interference in the administration of Justice. It would be absurd to think that such a Court, which is the custodian and protector of public Justice throughout the province of Oudh, has no power to deal with the contempt of Courts subordinate to it. Its powers in that respect are defined and limited by the Contempt of Courts Act of 1926. The Act is silent as to the powers of the Chief Court

to deal with contempts of Court subordinate to it, but such power cannot be negatived by silence and is to be inferred from the wording of sub-cl. (2) of sec. 2 in which the words "subject to the provisions of sub-cl. (3)" would be otherwise meaningless and in fact unnecessary. 14 Luck. 492=A.I.R. 1939 Oudh 181 (F.B.). As to *Jurisdiction of Sind Chief Court*, see I.L.R. (1944) Kar. 396.

PRACTICE AND PROCEDURE.—The fact that the rule for contempt is unsigned is by itself no ground for discharge of the rule. 37 C.W.N. 276=1933 C. 118=80 C. 603. When signing a petition for launching contempt proceedings a Secretary to Government should be presumed to be acting within the scope of the authority conferred on him until the contrary is shown (*Ibid.*) The legal remembrancer is *ex officio public prosecutor* on the Appellate Side of the High Court and as such has the power to instruct counsel, his authority to act for the local Government being in no way dependant on anything in the nature of a vakalatnama or warrant of attorney. (*Ibid.*) Applications for contempt cannot be subject-matter of reference by the lower Court to the High Court. Such applications cannot be heard by a Bench of the High Court hearing criminal appeals unless they are specially referred by the Chief Justice. 35 C.W.N. 1266. When the contempt is committed in the face of a Court it is that Court which is the proper tribunal to decide the whole matter. 138 I.C. 878=1932 L. 502 (F.B.). In a case where a party is required to do something by order of Court, it is necessary before an application is made for committal of a person to jail for disobedience of the Court's order, that he should have been personally served with notice of the order. Service upon his attorney is not sufficient nor is personal service after notice of motion for contempt. 34 Bom.L.R. 1416=1932 B. 638. The precise breach or breaches of the order complained of should be set out in the notice of motion itself and the other party should not be left to ascertain, if he can, from the affidavit relied upon in support what the charges are. (*Ibid.*) In cases of contempt the parties charged with contempt cannot be called upon to answer to anything which is not set out specifically in the grounds used before the Court at the time when the rule was issued; where the grounds are insufficient the only course open to the Court is to discharge the rule. To such a case allegations set out in an affidavit cannot be taken notice of unless the source of the deponent's information is disclosed. 35 C.W.N. 1267. There can be no justification of contempt of Court even if the writer or speaker believes all that he states to be true; and a person guilty of contempt is not entitled to lead evidence to establish the truth of his allegations. 36 Cr.L.J. 620=1935 A.L.J. 46=1935 All. 88. The general

rule is a party in contempt is not entitled to be heard but the rule has never been applied to a case in which the order, for the breach of which contempt is alleged, is challenged on the ground of want of jurisdiction. 55 B. 803=33 Bom.L.R. 725=1931 B. 402. In an enquiry by the Court for contempt consisting of alleged disobedience of the order of Court, it is unnecessary to go into the previous history of the matters which led to the passing of the order. (7 B. 5, Ref.) 34 Bom. L.R. 1416=1932 B. 638. Where the breach of an order of Court complained of is a failure to pay a sum of money, the Court has no power to commit a private party for contempt. But a receiver is an officer of Court and on his failure to comply with an order of Court—even though it be only an order for the payment of money—he may be committed for contempt. (19 B. 152, Dist.; 4 C. 655 Foll.) 34 Bom.L.R. 1416=1932 B. 638. Sec. 556, Cr.P. Code, does not apply to summary proceedings taken for punishing a contempt. In such a case the practice has been for the Judges who have been defamed to hear the case and to state in their judgment the facts within their knowledge or their reasons for taking a particular course of action. While it is unpleasant for any Judge to have to sit in judgment in a case in which he has been personally attacked, it is his duty to do so where he has been the subject of a malicious and impudent publication containing imputations which are obviously false and of the falsity of which he himself has the best knowledge. In fact he has no alternative but to sit as it is impossible to vindicate the reputation of the Court which has been attacked by taking proceedings in any Court for libel or otherwise. The sole object of these summary proceedings is to vindicate the prestige of the Court. They are not to establish the position of an individual Judge. I.L.R. (1942) Lah. 411=44 P.L.R. 206=1942 Lah. 105 (F.B.). In a proceeding for contempt of Court, it is not open to a contemner to show that the allegations are true. Any attempt to justify a libel on a Judge by attempting to show that the libel was justified would itself be a fresh contempt. A contemner who has been called upon to show cause why he should not be punished for an attack on the Court or its judges does not occupy the position of a defendant in a libel action, where he may plead or prove justification or the position of an accused person in a prosecution for defamation. I.L.R. (1942) Lah. 411=44 P.L.R. 206=1942 Lah. 105 (F.B.). The provisions of the Code of Criminal Procedure are not applicable to summary proceedings taken for punishing a contempt. But even if sec. 344 of the Code be applicable, the Court will not be disposed to adjourn the proceedings in a case where the Court is scandalised and an attempt is made by a scurrilous publication to undermine and impair the autho-

3. Save as otherwise expressly provided by any law for the time being in

Limit of punishment for
contempt of court.

force, a contempt of Court may be punished with simple imprisonment for a term which may extend to six months, or with fine, which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court:

ity of the Court, as immediate action is necessary with a view to vindicate the authority of the Court. I.L.R. (1942) Lah. 411=44 P.L.R. 206=1942 Lah. 105 (F.B.). See also 1944 A.L.J. 459.

SEC. 2 (3).—The prohibition contained in sec. 2 (3) of the Act, refers to offences punishable as contempt of Court by the Indian Penal Code and not to offences punishable there otherwise than as contempt. 1940 N.L.J. 425=1940 Nag. 407. See also 1938 A. L. J. 480; 1935 Cal. 684. Where in answer to interrogatories, a party to a proceeding in a Magistrate's Court stated that the Chief Reader of that Court had friendly relations with and influence over the Court which acted dishonestly and imposed a fine, the statement is clearly defamatory of the presiding officer and a criminal offence under the Penal Code. But the appropriate procedure is for the officer to file a complaint under the Penal Code and the High Court will not take cognisance under the Contempt of Courts Acts. 36 C.L.J. 967=1935 A. L.J. 950 (1)=1935 All. 896.

Sub-sec. (3), sec. 2, means that the contempt must be punishable as a contempt under the Penal Code and not punishable only because it otherwise is an offence. 165 I.C. 813=1936 Lah. 917. The true interpretation of cl. (3) to sec. 2 of the Contempt of Courts Act is that where there is already a provision in the Penal Code for publishing a contempt of Court as such the Contempt of Courts Act itself shall have no application. But where an act amounts to an offence under the Penal Code and also under the Contempt of Courts Act, it will be punishable under both Acts. I.L.R. (1938) All. 548=1938 A.L.J. 430=1938 All. 358.

SECS. 2 AND 3.—Where a leading advocate commits the offence of contempt of Court unconsciously and tenders a written apology to the Court, such apology can be accepted as sufficient amends. 144 I.C. 63 (2)=1933 O. 118.

SEC. 3.—An allegation that a Judge hearing a case has prejudged on issue of fact, before any evidence whatever has been called on either side, is to charge the Judge with grossly improper conduct. It means that the Judge has some outside knowledge. When a solicitor makes such an allegation in a letter written by him to another solicitor, the inevitable result would be that public confidence in the judiciary would be shaken. That is always the basis of contempt proceedings of the

nature known as scandalizing the Court. 44 Bom. L.R. 796=1942 Bom. 331. Threat used by Advocate to judge an offence. Where an Advocate wrote a letter to a Judge informing him that steps were being taken to put a certain decree in execution while a revision was pending in the High Court and further stated that in case further action in execution was taken his client would constitute a suit for damages against him, *held*, that the intention of the Advocate was to influence the mind of the Judge by the threat held out to him and that the Advocate was liable to be convicted under sec. 3. 147 I.C. 330=1934 A.L.J. 145=1934 A. 317. See also 1939 N.L.J. 461. But see 18 Lah. 69 noted under sec. 1, as regards the extent of punishment that can be given under inherent power of High Court. The Court has jurisdiction to direct the payment of costs of the Crown by the person punished under the Contempt of Courts Act. The proper method by which these costs should be recovered should be on the lines on which decrees are executed by the Civil Court. 36 Cr. L. J. 1365=1935 A. L. J. 1153=1935 All. 1013. Where the contempt is of a very grave nature, the party is contempt may be punished in spite of apology tendered. (1938) 2 M.L.J. 520=1938 Mad. 975. The proviso to sec. 3 no doubt, seems to contemplate an apology at a late stage. But where the accused takes such action as any reasonable man must realise to be likely to prejudice the trial of a case and where instead of apologising at the earliest possible opportunity he or his counsel contends most strenuously that no contempt has been committed, his apology thereafter can only be regarded as an after-thought put forward in the hope of avoiding the wrath to come. 1940 O.W.N. 1197. Except in scandalous and outrageous cases an unconditional apology is ordinarily considered to purge the contempt. Where, however, in spite of several opportunities instead of apologising the person persists in justifying his action the contempt is aggravated. 1945 N.L.J. 30=1945 Nag. 33. Where a contemner states that he is 'extremely sorry, it may amount to an expression of regret, but it is certainly not an apology—which is the word used in the Contempt of Courts Act. 1942 O.W.N. 6=1942 A. Cr. C. 28. See the same case reversed on appeal to P.C. (1943) 2 M.L.J. 568 (P.C.). An apology is not a weapon of defence forged to purge the guilty of their offences. Nor is it

¹[Provided further that notwithstanding anything elsewhere contained in any law no High Court shall impose a sentence in excess of that specified in this section for any contempt either in respect of itself or of a Court subordinate to it.]

THE INDIAN COPYRIGHT ACT (III OF 1914).

Year.	No.	Short title.	Amendment.
1914	III	The Indian Copyright Act, 1914.	Amended, IV of 1924. Repealed in part XII of 1927.

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THE FIRST SCHEDULE.

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REPEAL OF ENACTMENTS.

[24th February, 1914.

An Act to modify and add to the provisions of the Copyright Act, 1911.

WHEREAS it is expedient to modify and add to the provisions of the

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¹ Second Proviso inserted by Act XII of 1937.

intended to operate as a universal panacea. It is intended to be evidence of real contriteness. Only then is it of any avail in a Court of Justice. It must be tendered at the earliest opportunity unreservedly and unconditionally. Everything depends on the circumstances as well as upon the nature of the apology and the manner in which it is tendered. 1940 N.L.J. 425=1940 Nag. 407. See also 1940 O.W.N. 1197=1940 O. A. 1137. It does not follow that because an apology is offered the Court must accept it and is disarmed. A Court can refuse to accept an apology which it does not believe is genuine; it can even when it accepts the apology, commit an offender to prison or otherwise punish him. Furthermore, there cannot be both justification and apology. The two things are incompatible. 1940 Sind 239 (F.B.). The principle underlying the case in which persons have been punished for

attacks upon Courts and interferences with the due execution of their orders is not the protecting of either the Court as a whole or the individual Judges of the Court from a repetition of them, but the protecting of the public and especially those who either voluntarily or by compulsion are subject to its jurisdiction, from the mischief they will incur if the authority of the tribunal be undermined or impaired. An article in newspaper containing comments on the finding of the Magistrate in an inquest under sec. 176, Cr. P. Code, into the death of certain person amounts to contempt of Court if the comments impute deliberate perversity, incapability and partiality to the police on the part of the Magistrate in question. For the publication of this article, the publisher and editor are liable to be dealt with for contempt of Court and they cannot be allowed to go unpunished merely because they have tendered an apology. 187 I.C. 308=41 Cr.L.J. 445=1940 Rang. 70. See also 1933 Oudh 113. 118.

Copyright Act, 1911, in its application to British India; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title and extent.

1. (1) This Act may be called THE INDIAN COPYRIGHT ACT, 1914.

(2) It extends to the whole of British India including British Baluchistan, the District of Angul and the Sonthal Parganas.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “the Copyright Act” means the Act of Parliament entitled the Copyright Act, 1911; and

(2) words and expressions defined in the Copyright Act have the same meanings as in that Act.

CHAPTER II.

CONSTRUCTION AND MODIFICATION OF THE COPYRIGHT ACT.

3. In the application to British India of the Copyright Act (a copy of which Act, except such of the provisions thereof as are expressly restricted to the United Kingdom, is set out in the First Schedule), the following modifications shall be made, namely:—

(1) the powers of the Board of Trade under section 3 shall, in the case of works first published in British India, be exercised by the Governor-General in Council;

(2) the powers of the Board of Trade under section 19 shall, as regards records, perforated rolls and other contrivances, the original plate of which was

SEC. 1.—Distinction between ‘copyright’ and ‘patent’, 1938 A.L.J. 390. In a case relating to infringement of copyright, it is not only proper but essential that the case should be tried with the help of experts who might be appointed commissioners to investigate and report similarities. (*Ibid.*) The compiler of a work in which absolute originality is by the very nature of the work excluded is entitled, without exposing himself to a charge of piracy, to make use of preceding works upon the subject, where he bestows such mental labour upon what he has taken, and subjects it to such revision and correction as to produce an original result. But no one is entitled to convey the same information, merely with some additions. (*Ibid.*)

ASSIGNMENT OF COPYRIGHT—DIRECT WORDS NOT USED—EVIDENCE OF PARTIES—IF A GUIDE. Where direct words are not used to convey a right and the matter is one of inference by implication from the phrases used, then the evidence of the parties, if they are not interested one way or the other in the matter, is the surest of all guides as to the meaning of the phrases used. A.I.R. 1939 Lah. 433.

ASSIGNMENT—FUTURE WORK.—There cannot possibly be a transfer of copyright or assignment of copyright in a non-existing work. Where there is no proof that the work was substantially completed at the time when document transferring copyright was drawn up and on the face of it the document refers to a future work copyright cannot be transferred by it. 41 P.L.R. 879=

A.I.R. 1939 Lah. 433. Assignment of—Registration not necessary. I.L.R. (1939) A. 275=A.I.R. 1939 All. 305=1939 A.L.J. 71.

INFRINGEMENT—BURDEN OF PROOF.—In an action for infringement of a copyright, it is not for the defendant to prove that there has been no infringement. It is for the plaintiff, on whom the onus lies, to prove that in fact there has been an infringement. I.L.R. (1939) Bom. 295=41 Bom.L.R. 530=A.I.R. 1939 Bom. 347. Author agreeing to grant to publishers sole and exclusive licence to print, publish and sell his work—Agreement is merely a *publishing arrangement* and does not amount to an *assignment of copyright*. See I.L.R. (1938) Lah. 84=40 P.L.R. 622=A.I.R. 1938 Lah. 173. Where a person produces and publishes a picture of an idol with several variations and points of difference and embellishments which are the result of his own imagination, he acquires a copyright in the reproduction, as it is an original work containing skill and artistic merit. If another person brings out a picture of the same idol with the same variations and points of difference and embellishments, he infringes the copyright of the former in the picture. The test and the best way of detecting the piracy in an alleged infringing work is to make a careful examination of it to see whether any of the deviations and mistakes which artistic licence permits in the original have been reproduced in the alleged infringing copy. 46 Bom.L.R. 679.

made in British India, be exercised by the Central Government; and the confirmation of Parliament shall not be necessary to the exercise of any of these powers;

(3) the references in section 19, sub-section (4) and in section 24, sub-section (1), to arbitration shall be read as references to arbitration in accordance with the law for the time being in force in that part of British India in which the dispute occurs;

(4) as regards works the authors whereof were at the time of the making of the works resident in British India, and as regards works first published in British India, the reference in section 22 to the Patents and Designs Act, 1907, shall be construed as a reference to the Indian Patents and Designs Act, 1911, and the reference in the said section to section 86 of the Patents and Designs Act, 1907, shall be construed as a reference to section 77 of the Indian Patents and Designs Act, 1911;

(5) as regards works first published in British India, the reference in section 24, sub-section (1), proviso (a), to the London Gazette and two London newspapers shall be construed as a reference to the Gazette of India and two newspapers published in British India; and the reference in proviso (b) of the same sub-section of the same section to the 26th day of July, 1910, shall, as regards works the authors whereof were at the time of making of the works resident in British India, and as regards works first published in British India, be construed as a reference to the 30th day of October, 1912.

4. (1) In the case of works first published in British India, copyright shall be subject to this limitation that the sole right to produce, reproduce, perform or publish a translation of the work shall subsist only for a period of ten years from the date of the first publication of the work:

Modification of copyright as regards translation of works first published in British India.

Provided that if within the said period the author, or any person to whom he has granted permission so to do, publishes a translation of any such work in any language, copyright in such work as regards the sole right to produce, reproduce, perform or publish a translation in that language shall not be subject to the limitation prescribed in this sub-section.

(2) For the purposes of sub-section (1) the expression "author" includes the legal representative of a deceased author.

5. In the application of the Copyright Act to musical works the authors whereof were at the time of the making of the works resident in British India, or to musical works first published in British India, the term "musical work" shall, save as otherwise expressly provided by the Copyright Act, mean "any combination of melody and harmony, or either of them, which has been reduced to writing."

Musical works made by resident of, or first published in British India.

6. (1) Copies made out of British India of any work in which copyright subsists, which if made in British India would infringe copyright, and as to which the owner of the copyright gives notice in writing by himself or his agent to the Chief Customs officer, as defined in the Sea Customs Act, 1878, that he is desirous that such copies should not be imported into British India, shall not be so imported, and shall, subject to the provisions of this section, be deemed to be prohibited imports within the meaning of section 18 of the Sea Customs Act, 1878.

Importation of copies.

SEC. 5.—There cannot be an *infringement of performing right in a musical composition* (assuming it to exist) unless there has been a public performance of the musical composition by the defendant. A musical composition is performed by audible reproduction, by the voice or by musical instruments or by mechanical methods of repro-

duction. *Where not a word of a song is repeated in any form in a talkie film except that the title of the song is thrown on the film at the outset this does not constitute infringement of performing right in musical composition.* 187 I.C. 449=21 P.L.T. 355 =A.I.R. 1940 P.C. 55 (P.C.).

(2) Before detaining any such copies, or taking any further proceedings with a view to the confiscation thereof, such Chief Customs officer, or any other officer appointed by ¹[the Chief Customs authority] in this behalf, may require the regulations under this section, whether as to information, security, conditions or other matters, to be complied with, and may satisfy himself, in accordance with these regulations, that the copies are such as are prohibited by this section to be imported.

(3) The Central Government may, by notification in the Official Gazette make regulations, either general or special, respecting the detention and confiscation of copies the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and confiscation; and may, by such regulations, determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4) Such regulations may apply to copies of all works the importation of copies of which is prohibited by this section, or different regulations may be made respecting different classes of such works.

(5) The regulations may provide for the informant reimbursing the ²[Central Government] all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention, and may provide that notices given under the Copyright Act to the Commissioners of Customs and Excise of the United Kingdom, and communicated by that authority to any authority in British India, shall be deemed to have been given by the owner to the said Chief Customs officer.

(6) This section shall have effect as the necessary modification of section 14 of the Copyright Act.

CHAPTER III.

PENALTIES.

Offences in respect of
infringing copies.

7. If any person knowingly—

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¹ Substituted for the words "the Local Government" by Act IV of 1924, Sch.

² Substituted for "Secretary of State for India in Council" by A.O., 1937.

SEC. 7.—The mere failure of an author to make the payment prescribed by sec. 5 of Act XX of 1847 does not deprive him of his copyright in his book. On the other hand, the proviso to sec. 14 of the Act definitely states the contrary. It is only the right to sue under that Act that is prohibited if the registration fee has not been paid. 53 M.L.J. 529=105 I.C. 669=1927 M. 981. The procedure about payment of fees prescribed by Act XX of 1847 has no place in the present Act III of 1914, and therefore a complaint under sec. 7 of the new Act cannot be thrown out on the ground of non-payment of fees. (*Ibid.*) An acquittal will be set aside in revision in a case where the Court below has proceeded on a wrong view of the law, and where the matter is of great importance to the complainant in his position as author of a book, which, if the acquittal stands, will be pirated by the accused who will secure for himself the gains that ought legitimately to go to the complainant. (*Ibid.*) Under the old Act "copyright" did not include the exclusive right of translation but the author of a book who made a translation of it was entitled to a copyright in it as if it were

an original work. 13 A.L.J. 636=16 Cr.L.J. 656=30 I.C. 480; offence when complete. 28 P.R. 1916 (Cr.). On this section, see also 51 M. 180.

COLOURABLE IMITATION—QUESTION OF FACT.

—The question whether there has been an infringement of copyright depends on whether a colourable imitation has been made. Whether a work is a colourable imitation of another is a question of fact. Similarity is a great point to be considered but mere similarity is not enough. A conglomeration of similarities which cannot be mere coincidence is evidence of infringement. 126 I.C. 197=51 C.L.J. 243=34 C.W.N. 540. But see also 142 I.C. 815=1933 P.C. 26=64 M.L.J. 193 (P.C.). *Infringement of copyright of pictures*—Offending pictures must be copies of substantial portion of copyright pictures. 112 I.C. 784=30 Cr.L.J. 16=33 C.W.N. 172. As to *infringement of right in a musical composition*, see 52 L.W. 10=1940 P.C. 55 (P.C.). In a criminal proceeding started for infringement of copyright of books the order was "summon the accused under sec. 7, Act III of 1914." From the order it did not appear under which clause of sec. 7 the accused was being summoned nor was it clear from the order sheet that the accused knew under what clause of sec. 7 he was going to be tried. *Held*, that the accused had not had a fair trial. 152 I.C. 248=1934 P. 522.

(a) makes for sale or hire any infringing copy of a work in which copyright subsists; or

(b) sells or lets for hire, or by way of trade exposes or offers for sale or hire, any infringing copy of any such work; or

(c) distributes infringing copies of any such work, either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or

(d) by way of trade exhibits in public any infringing copy of any such work; or

(e) imports for sale or hire into British India any infringing copy of any such work;

he shall be punishable with fine which may extend to twenty rupees for every copy dealt with in contravention of this section, but not exceeding five hundred rupees in respect of the same transaction.

8. If any person knowingly makes, or has in his possession, any plate for the purpose of making infringing copies of any work in which copyright subsists, or knowingly and for his private profit causes any such work to be performed in public without the consent of the owner of the copyright, he shall be punishable with fine which may extend to five hundred rupees.

9. If any person, after having been previously convicted of an offence punishable under section 7 or section 8, is subsequently convicted of an offence punishable under either of these sections, he shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

10. (1) The Court before which any offence under this Chapter is tried may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies, or plates for the purpose of making infringing copies, be destroyed or delivered up to the owner of the copyright, or otherwise dealt with as the Court may think fit.

(2) Any person affected by an order under sub-section (1) may, within thirty days of the date of such order, appeal to the Court to which appeals from the Court making the order ordinarily lie; and such appellate Court may direct that execution of the order be stayed pending consideration of the appeal.

11. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence against this Act.

12. The provisions of this Chapter shall not apply to any case to which section 9 of the Copyright Act, regarding the restrictions on remedies in the case of a work of architecture applies.

CHAPTER IV.

MISCELLANEOUS.

Courts having civil jurisdiction regarding infringement of copyright.

13. Every suit or other civil proceeding regarding infringement of copyright shall be instituted and tried in the High Court or the Court of the District Judge.

Sec. 13.—Madras City Civil Court has no jurisdiction to try a suit for infringement of copyright. Sec. 3, City Civil Court Act,

gives general jurisdiction to the City Civil Court, but the Copyright Act which deals with the special subject-matter of copyright

14. No suit or other civil proceeding instituted after the 30th of October, 1912, regarding infringement of copyright in any book the author whereof was at the time of making the book resident in British India, or of any book first published in British India, shall be dismissed by reason only that the registration of such book had not been effected in accordance with the provisions of the Indian Copyright Act, 1847.

15. The enactments mentioned in the Second Schedule are hereby repealed to the extent specified in the fourth column thereof.

Repeals.

[Repealed by Act XII of 1927.]

THE FIRST SCHEDULE.

Portions of the Copyright Act applicable to British India.

(See section 3.)

COPYRIGHT ACT, 1911.

[1 & 2 GEO. V, CH. 46.]

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SCHEDULES.

[16th December, 1911.]

An Act to amend and consolidate the law relating to copyright.

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, as follows:—

clearly restricts jurisdiction to hear a suit or proceeding relating to copyright to the High Court and the District Courts. A.I.R.

1937 Mad. 94.

SEC. 14.—Effect of non-registration. See 53 M.L.J. 529=105 L.C. 669.

PART I.
IMPERIAL COPYRIGHT.
Rights.

1. (1) Subject to the provisions of this Act, copyright shall subsist throughout the parts of His Majesty's dominions to which this Act extends for the term hereinafter mentioned in every original literary, dramatic, musical and artistic work, if—

SECS. 1 AND 2, GEO. V., c. 46—LAW BEFORE—EXTENT OF COPYRIGHT.—Even under the Copyright Act, XX of 1847, copyright is infringed not merely by printing and publication but also by performance of the works. 38 C.W.N. 611=1934 C. 671. The Imperial Copyright Act of 1911 is applicable to India under the Indian Copyright Act except in so far as it has been modified by the latter Act. The sole right to offer for sale the copyright in certain dramas belongs to the owner of the copyright and hence an advertisement by another claiming that he had the right to sell the same, clearly comes under the definition of the word "Infringement" of "copyright". The language of sec. 2 of the Imperial Copyright Act is wide enough to include not only a sale of the copyright by a person not entitled to sell the same but also an attempted sale, and the owner can in such a case claim a declaration and if necessary an injunction. Wherever the advertisements circulated, there is a cause of action for the plaintiff and jurisdiction for the Courts. 1944 A.L.J. 496.

CONSTRUCTION OF ACT.—All laws which put a restraint upon human activity and enterprise, must be construed in a reasonable and generous spirit. Under the guise of a copyright a plaintiff cannot ask the Court to close all the avenues of research and scholarship and all frontiers of human knowledge. 1934 L. 777.

SEC. 1 (1).—"Original" does not relate to ideas. 46 M.L.J. 637=51 I.A. 109=48 B. 308=28 C.W.N. 613=1938 A.L.J. 390. The laws of copyright do not protect ideas. Its protection falls within the patent laws. While a patentee has the sole right to use his invention within certain limits and if anybody uses the patent, though on independent investigations, there is infringement of the patent. In the case of an infringement of copyright, it must be shown that the defendant has derived his work from the plaintiffs. I.L.R. (1938) All. 370=1938 A.L.J. 390=A.I.R. 1938 All. 266. The compiler of a work in which absolute originality is by the very nature of the work excluded is entitled, without exposing himself to a charge of piracy, to make use of preceding works upon the subject, where he bestows such mental labour upon what he has taken, and subjects it to such revision and correction as to produce an original result. But no one is entitled to convey the same information, merely with some additions. I.L.R. 1938 All. 370=1938 A.L.J. 390=1938 All. 266. Where certain tables (for instances list of dates and abridgement from post office guide) inserted in the plaintiff's diary are original in the

sense that the tables were arranged by somebody, and are not to be found elsewhere, copyright may well subsist in them. The collection of such tablets is a compilation which is entitled to copyright. (1943) 1 All. E. R. 322 (C.A.).

ORIGINAL WORKS include photographs taken from paintings, drawings or other photographs, or from engravings from pictures. (1868) L.R. 3 Q.B. 387; 37 L.J.Q.B. 161; (1869) L.R. 4 Q.B. 715; 39 L.J.Q.B. 31. If current traditional poems embodying the main incidents of legend are given a literary form demanding considerable powers of adaptation and polishing, the result is an original literary work within the meaning of sec. 1. 42 C.W.N. 541=1938 Cal. 594. A man who gets another to sing or recite traditional poems for the express purpose of recording the words and then publishes the record, is entitled to a copyright. 178 I.C. 106=42 C.W.N. 541=1938 Cal. 594.

"ARTISTIC WORK".—Means not merely the suggestion of the subject of a painting as executed by another. (1890) 25 Q.B.D. 99; or the employer of a photographer, (1853) 11 Q.B.D. 627; 52 L.J.Q.B. 767; distinguished in (1895) 2 Ch. 531; 65 L.J. Ch. 41. In *Kenrick, v. Lawrence*, (1890) 25 Q.B.D. 99, cards with a hand holding a pencil in the act of completing a cross in a ballot paper were held unprotected. It would appear that the work must be something—apart from work specifically included in the definitions in sec. 35—that is capable of being printed and published. *See* (1908) 1 K.B. 821; 77 L.J. K.B. 577; (1921) 1 Ch. 503; 90 L.J. Ch. 318.

ARCHITECT'S COPYRIGHT.—In or about 1912 *H & Sons* employed the firm *S & B* as architects in connection with buildings which shortly afterwards were erected on part of the premises of *H & Sons*. In 1935 *H & Sons* employed *M* as their architect in connection with as extension of the original building. The claim in the action was made by the sequels in title of *S & B*, who alleged that the buildings put up in accordance with *M*'s plans, and the plans themselves, infringed the copyright vested in the plaintiffs both in the artistic design of the buildings for which *S & B* were responsible and in the relative plans. The main defence was that it was implicit in the transaction between *H & Sons* and *S & B* that *H & Sons* and any architect employed by them should stand authorised to do what in fact had been done.

Held, that (i) no such term can be implied in the original transaction on the facts of this case. (ii) An architectural plan finds its meaning and purpose in the use to which it is put and the copyright vests in the archi-

(a) in the case of a published work, the work was first published within such parts of His Majesty's dominions as aforesaid; and

(b) in the case of an unpublished work, the author was at the date of the making of the work a British subject or resident within such parts of His Majesty's dominions as aforesaid;

but in no other works, except so far as the protection conferred by this Act is extended by Orders in Council thereunder relating to self-governing dominions to which this Act does not extend and to foreign countries.

(2) For the purposes of this Act, "copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public; if the work is unpublished, to publish the work or any substantial part thereof; and shall include the sole right—

(a) to produce, reproduce, perform, or publish any translation of the work;

(b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work;

tection in regard to the building as well as the plans. The builder is only part of the machinery employed in the production of the structure which embodies the design and ideas of the architect. For copyright purposes, the author of the architectural work of art is the author of the plans and not the builder. (iii) 'In'ough the damages are presumably at large to a certain extent, the Court should proceed in fixing the same on the basis of considering what sum might fairly have been charged for a licence to use the copyright for the purpose for which it was used and one is entitled to take into account all the surrounding circumstances in exactly the same way as one is entitled to do in the case of the invasion of a common law right of property. (1941) 3 All. E.R. 144 (Ch. D.).

SEC. 1 (1) (b).—The Act does not define "the date of the making." It is submitted that such date does not mean the completion of the work, but it must be in so advanced a state that some more or less permanent record of it exists. Thus a mere idea or artistic conception cannot claim copyright. See (1887) 19 Q.B.D. 629, 636; 56 L.J. Q.B. 553; and as to proving the commencement of writing a play, see (1893) 2 Q.B. 308.

TITLE OF A WORK.—In general a title is not by itself a proper subject-matter of copyright. As a rule a title does not involve literary composition and is not sufficiently substantial to justify a claim to protection. That statement does not mean that in particular cases a title may not be on so extensive a scale and of so important a character as to be a proper subject of protection against being copied. Where theme of a film is different from that of a song the use for the film of a title of song is too unsubstantial to constitute infringement of literary copyright. 187 I.C. 449=21 P.L.T. 355=52 L.W. 10=A.L.R. 1940 P.C. 55 (P.C.). *Musical composition*, see 52 L.W. 10=1940 P.C. 55 (P.C.).

BROADCAST OF PERFORMANCE OF MUSICAL WORK.—INFRINGEMENT OF COPYRIGHT.—LIABILITY OF BROADCASTERS.—The acoustic repre-

sentation of a musical work by means of wireless so that the musical work is heard many miles away from the transmitting studio or place of actual performance, is a performance (public or private) of the work within the meaning of sec. 19 of the Copyright Act. Here it is necessary to remember that the sole right of the owner of the musical work is to perform it *in public*, and that any one may perform the work in private. The original performance in the studio may be, and generally will be, a performance in private. In such a case the broadcasted performance at the receiving end, if in public and unlicensed, will be an infringement of copyright at that place. If there is merely a broadcast from the studio where the piece is performed in studio, there is obviously no performance in public at all. A broadcast *per se* is not an *acoustic* representation of the work. If the broadcast is picked up only by listeners in private it might be difficult to establish that there is a public performance; for each performance would be separate and each would be private. But a broadcast to all and sundry listeners will include hotels and other places of entertainment or refreshment where, if not forbidden, will perform the piece to a number of members of the public, and such a performance will be a public performance within the meaning of the Act by the owners or occupiers of those places; for their actions in connection with the receivers which have been installed there and which they control have caused the public performances to take place. Whether the studio performance is public or private, if the persons who are responsible for that performance are also responsible for the broadcasting of the piece, there is no doubt that they have facilitated the performance of the work in public by any listener who is in a position to use a loud-speaker and thus to perform the piece in public. The question as to the position of the broadcasters in such a case, so far as regards infringement, is answered by the language of sec. 1 (2) of the Act. It is sufficient to show that they have "authori-

(c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise;

(d) in the case of a literary, dramatic, or musical work, to make any record, perforated roll, cinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered;

and to authorise any such acts as aforesaid.

(3) For the purposes of this Act, publication, in relation to any work, means the issue of copies of the work to the public, and does not include the performance in public of a dramatic or musical work, the delivery in public of a lecture, the exhibition in public of an artistic work, or the construction of an architectural work of art, but, for the purposes of this provision, the issue of photographs and engravings of works of sculpture and architectural works of art shall not be deemed to be publication of such works.

2. (1) Copyright in a work shall be deemed to be infringed by any person

sed" the performance in public of the works; and this will generally be established by proving that listeners with a licence were entitled to tune in their receivers and thus to perform the musical works in question in public as well as in private. 188 I.C. 237 = A.I.R. 1940 P.C. 111 (P.C.). The principal object of the Copyright Act, 1911 is to safeguard the property of authors or their transferees in their copyright; and if employers of labour were entitled to cause compositions to be performed before their employees merely by buying a piece of music or gramophone record or paying for the ordinary licence for a broadcasting set, an author would very soon have his public seriously diminished and the protection of the Act would be to a great extent illusory. Accordingly the diffusion of music by broadcast and gramophone records with loudspeakers in a factory to the workmen amounts to a performance in public and an infringement of copyright. [(1943) 1 All.E.R. 388, affirmed.] (1943) Ch. 167 = 112 L.J. (Ch.) 148 = (1943) 1 All.E.R. 413 (C.A.).

SEC. 1 (2): "SOME SUBSTANTIAL PART".—Means some material and substantial part. (1878) 3 A.C. 483; 47 L.J. C.P. 545.

LECTURE.—A reporter of a speech may have copyright in the report. (1900) A.C. 539; 69 L.J. Ch. 699.

SEC. 1 (2) (a): "REPRODUCE".—These words do not include the representation of a picture by a *tableau vivant*, formed by grouping in the same way as the figures in the picture living persons dressed in the same way and placed in the same attitudes as the figures in the picture. (1894) 2 Ch. 1; 63 L.J. Ch. 417.

SEC. 1 (2) (c).—A person who employs another to adapt a foreign play is not the "author" of the adaptation. (1856) 25 L.J. C.P. 127.

SEC. 1 (2) (d).—The term "*musical work*" is not defined in the Act; but see the partially repealed definition in sec. 3 of the (English) Musical Copyright Act, 1906. An arrangement for the pianoforte of the score of an opera by a person other than the composer of the opera is an independent musical composition, of which the person who ar-

ranges the score for the pianoforte, and not the composer of the original opera, is the "author or composer." (1867) L.R. 3 Q.B. 223; 37 L.J.Q.B. 84. See also 52 L.W. 10 = A.I.R. 1940 P.C. 55 (P.C.).

"AND TO AUTHORIZE ANY SUCH ACTS AFORESAID."—In the absence of any stipulation to the contrary, the vendor of a copyright may, after the sale of the copyright sell any copies which were printed before such sale. (1869) L.R. 7 Eq. 418. The word "authorise" in sec. 1 (2) of the Act covers anything done with the knowledge and connivance of a person. 1939 Rang.L.R. 121 = A.I.R. 1939 Rang. 266.

SEC. 1 (3): "COPIES".—No definition is given in the Act as to what will constitute a "copy". But see (1905) 1 Ch. 519; 74 L.J. Ch. 304; (1898) 14 T.L.R. 550; 55 Sol. J. 272.

"ISSUE OF COPIES OF THE WORK TO THE PUBLIC".—Under the Copyright Act, 1842, the legislature only contemplated publication within the country. (1868) L.R. 3 H.L. 100; 37 L.J. Ch. 454; but this was altered by the International Copyright Act, 1886, and the Orders in Council thereunder. Even gratuitous circulation would seem to amount to a publication. See (1852) 12 C.B. 177; 2 V. & B. 23.

SEC. 2: COPYRIGHT IN COMPILATION.—Though a book is a compilation from other works and is not original, the fact that its contents have been arranged on a new plan will give the compiler a copyright in the book. 43 A. 412 = 61 I.C. 394 = 19 A.L.J. 180. Where in an action for breach of copyright of a book much stress was laid by the plaintiff upon similarities with regard to the plan of the book, the scheme, upon phrasal identities and certain mistakes. *Held*, that the evidence was fantastic, and such actual coincidences as do exist were quite explicable; and should be explained that both the authors had to rely upon the accumulation of information which had been made by many authors before them and to which they have had to have recourse in writing their books. 1933 A.L.J. 393 = 1933 P.C. 26 = 64 M.L.J. 193 (P.C.); 39 C.W.N. 945 = 61 C.L.J. 573. See also 1938 A.L.J. 390; 126 I.O.

Infringement of copy- who, without the consent of the owner of the copy-
right. right, does anything the sole right to do which is by
this Act conferred on the owner of the copyright:

Provided that the following acts shall not constitute an infringement of
copyright:—

(i) Any fair dealing with any work for the purposes of private study,
research, criticism, review, or newspaper summary:

197=34 C.W.N. 540.

WHAT AMOUNTS TO WAIVER OF COPYRIGHT.
—34 I.C. 357=14 A.L.J. 724=38 A. 484.

FINE ARTS—COPYRIGHT IN—ENGLISH AND
INDIAN LAW.—The Fine Arts Copyright Act
(25 and 26 Vic., C. 68) does not extend to
any part of the British Dominions outside
the United Kingdom. [(1903) A.C. 496, F.]
In England before the Statute of Anne (8
Anne, c. 19) there was no copyright at com-
mon law for an author or a publisher in his
productions. 22 Bom.L.R., 808=57 I.C. 592
=44 B. 720 (4 H.L.C. 815; 19 B. 557,
Foll.).

TEST OF INFRINGEMENT OF COPYRIGHT—
DAMAGES DIRECTORY.—67 I.C. 983. Innocence
is no defence to a charge of infringement of
copyright. The offence is complete even if
the offender authorises the performance of
a musical piece without any knowledge of
infringing the rights of any other person.
32 P.L.R. 20=124 I.C. 894=1930 P.C. 314
(P.C.). The question, what is an infringe-
ment of an author's copyright is frequently
one of great difficulty, and is one which
must depend upon the circumstances of each
particular case, having regard to the nature
of the work into which the pirated parts are
imported, and the value and extent of the
infringement. See 1878 A.C. 483; 47 L.J.
C. P. 545 and (1873) L.R. 8 Exch. 1; 45 L.J.
Ex. 28, where the defendant was held to
have been guilty of an infringement of copy-
right in publishing copies of all the car-
toons which had appeared in Punch relating
to the Emperor Napoleon III. Although
there are some subjects which must lead to
the same result if accurately performed, the
compiler has a right to restrain others from
using the result of his labours, or to sue him
for doing so, as in the case of translations.
(1814) 3 V. & B. 77; roadbooks, (1807) 1
East 358; directories. (1806) 12 Ves. 270;
(1809) 16 Ves. 269; (1866) L.R. 1 Eq. 697;
35 L.J. Ch. 423; (1870) L.R. 5 Ch. 279; the
heading of trades directors though the
letterpress consists only of advertisements.
(1893) 1 Ch. 218; 62 L.J. Ch. 404; statisti-
cal tables, (1867) L.R. 3 Eq. 718; 36 L.J.
Ch. 729, diaries, (1872) L.R. 14 Eq. 431; 41
L.J. Ch. 781; a telegraph code, (1884) 26
Ch. D. 637; 53 L.J. Ch. 589, or law reports
(1823) cited in 5 Ves. 709; (1838) 3 Myl. &
Cr. 711; (1840) 11 Sim. 51; 9 L.J. Ch. 323.
In such cases the question is whether the
alleged infringement is a legitimate use of
the author's publication, in the fair exercise
of a mental operation deserving the charac-
ter of an original work. (1810) 17 Ves. 422;
11 R.R. 118. As to trade catalogues; see
(1875) L.R. 19 Eq. 623 and (1882) 21 Ch. D.

369; 52 L.J. Ch. 67. As to dramatisation
of novel, see (1890) 63 L.T. 762. To obtain
protection, a work must have literary value.
Protection has been in the case of a photo-
graph album. (1886) 33 Ch. D. 546; 55 L.J.
Ch. 892 and a perforated card, (1882) 47 L.
T. 539; 52 L.J. Ch. 107. It has been held
that a *fair abridgment* is no infringement of
a copyright. (1740) 2 Atk 141; 3 *ib.* 269;
5 Ves. 709; (1785) 1 Bro. C.C. 451, cited in
3 Swanst. 879; (1761) Amb. 402; (1801) 5
Ves. 709; and see 93 L.J.P.C. 113; but there
appears to be reason for doubting the sound-
ness of those decisions: See Scrutton on
Copyright, 2nd Edn. at page 125, Every Day
St. Vol. I, pp. 516-517. An *abridgment of a
book* after the coming into force of Act III
of 1914 may under certain circumstances
amount to a reproduction of a substantial
part of a book and therefore come within the
rule of prohibition. 154 I.C. 207=1934 A.
922. See also 48 Bom. 308=51 I.A. 109=
46 M.L.J. 637 (P.C.). With respect to
encyclopaedias and compilations of that kind,
a certain licence is allowed in extracting
passages from other works. (1807) 1 Camp.
94; (1817) 2 Swans. 428; (1839) 8 L.J. Ch.
141. *Quotations are necessary for the pur-
pose of reviewing*, and quotations for such a
purpose are not to have the appellation of
piracy affixed to them; but quotations may
be carried to the extent of manifesting pira-
tical intention. (1826) 2 Russ. 393; (1846)
10 Jur. 420. As to music, see (1835) 1 Y.
& C. 288; 4 L.J. Ex. Eq. 21. *Similarities
due to mere coincidence* are not an infringe-
ment. (1911) 28 T.L.R. 69. The register-
ed owner of a copyright in a work is entitled
to have all the unsold copies of a piratical
edition delivered up to him for his own use,
without making any compensation for the
cost of production or publication. (1857)
3 K. & J. 581. In (1887) 12 A.C. 326; 57
L.J.P.C. 2 in which a professor of the Uni-
versity of Glasgow was held by the House
of Lords in 1887 to be entitled to restrain
other persons from publishing his *lectures*—
delivered orally to students on payment of
fees—was decided independently of the Lec-
tures Copyright Act of 1835, which though
it preserved the law, was silent as to what
the law was. *A reporter has copyright in
his own report.* (1900) A.C. 539; 69 L.J.
Ch. 699.

UNPUBLISHED WORK — COPYRIGHT IN.—

Where P purchased the right to publish and
sell 90 songs composed by D and shortly
afterwards D sold 40 of these to M, who pub-
lished the same and sold them, *held*, that P
was entitled to sue M for an injunction re-
straining him from publishing and selling the

(ii) Where the author of an artistic work is not the owner of the copyright therein, the use by the author of any mould, cast, sketch, plan, model, or study made by him for the purpose of the work, provided that he does not thereby repeat or imitate the main design of that work;

(iii) The making or publishing of paintings, drawings, engravings, or photographs of a work of sculpture or artistic craftsmanship, if permanently situate in a public place or building, or the making or publishing of paintings,

40 songs in violation of the right exclusively acquired by him. 12 L.W. 151=39 M.L.J. 341=59 I.C. 229.

BOOK PRODUCED BY AUTHOR AFTER FURTHER STUDIES AND RESEARCH.—Every man can take what is useful from the original work, improve, add and give to the public the whole, compromising the original work, with the additions and improvements; and in such a case there is no invasion of any right. But a copy, much less a servile copy of a work cannot be allowed. Where in a case of infringement of copyright, the new book is a work which the author has produced after further studies, and represents the result of ten years of research work, and represents a mature art and a greater wealth of details in depicting the various incidents, and the imagery is of a superior type and there are fresh incidents and details, which are the result of researches made by the author into works which had existed before as well as those which came into existence after the first work had been written and published; the two works are substantially different and there is no infringement of copyright. 1934 L. 777.

LAW REPORTS.—EXTRACTS BY REPORTER.—A plaintiff's copyright is infringed when the defendant reproduced not only the judgments but also part of the plaintiff's reports not forming parts of judgments and facts collected by the plaintiff from the records of cases. The reporter has no copyright in the reports of judgment, but he has protection of the law in selecting and reporting cases which he obtains by expenditure of time, labour and money. 26 I.C. 30=18 C.W.N. 1078.

INJUNCTION.—In a suit for a perpetual injunction against the defendants who, it was alleged, had infringed the plaintiff's copyright by copying a large number of judgments from the plaintiffs' journal "Lahore Law Times" and compiling and publishing a book called "Consolidated Revenue Rulings," it appeared that the allegation referred to the rulings portion only of the "Law Times" and that of past years; secondly, the defendants' publication consisted not merely of Lahore rulings, but those of other places as well; thirdly, the plaintiffs had, by bringing out a similar book at a cheaper price, substantially reduced the chance of a loss to themselves; lastly, the trial Court had, by directing the defendant to keep a separate account of their sales, amply safeguarded their interests. *Held*, in the circumstances, a temporary injunction was not necessary. 1933 L. 448=34 P.L.R. 249. *But see also* 1931 L. 624. The power of the Court to

grant a temporary injunction is not limited by the absence of any finding on the question of jurisdiction which has been raised in the case. *Prima facie* until such a question is decided in the negative, a Court has jurisdiction to do all acts and take any action that may be sanctioned by law in connection with the case. 132 I.C. 586=1931 L. 624.

ABBREVIATION—MERELY SELECTING PASSAGES AND KNITTING THEM TOGETHER NO INFRINGEMENT—RAW MATERIAL OR THE ORIGINAL WORKS ARE OPEN FOR CONSULTATION FOR ALL.—USE OF ANOTHER'S LABOUR AND SKILL ONLY IS PROHIBITED.—48 B. 308=51 I.A. 109=1924 P.C. 75=46 M.L.J. 637 (P.C.). On appeal from 23 Bom.L.R. 1299 the word "original" does not mean that the work must be the expression or original or inventive thought. Copyright Acts are not concerned with the origin of ideas, but with the expression of thought; and in the case of "literary work with the expression of thought in print or writing", (*Ibid.*) The originality which is required relates to the expression, which must be in an original or novel form, but the work must not be copied from another work, that is, it should not originate from another. (*Ibid.*) *See also* 1934 All. 922.

EVIDENCE.—In an action for breach of copyright the plaintiff relied upon the intrinsic evidence to be derived from a comparison of the two works; and urged that on comparison between the two works it would be found that there was such an accumulation of similarities, of like omissions, of plan, of phrases, of mistakes, that the inference was irresistible that defendant did in fact have her work before him before he composed his work. *Held*, that the Board were not prepared to say that in the case of two literary works intrinsic evidence of that kind might not be sufficient to establish a case of copying even if the direct evidence was all the other way and appeared to be evidence that could be accepted; but such evidence must be of the most cogent force before it could be accepted as against the oath of respectable and responsible people whose evidence otherwise would be believed by the Court. 1933 A.L.J. 393=1933 P.C. 26=64 M.L.J. 193 (P.C.). *See also* 126 I.C. 197=34 C.W.N. 540.

PRESUMPTION—BURDEN OF PROOF.—Where the defendants in an action for damages for infringement of copyright in respect of a work do not put into issue the existence of the copyright in the work, there is an irrebuttable presumption that the alleged work was a work in which copyright existed and that the plaintiff was the owner of the copy-

drawings, engravings or photographs (which are not in the nature of architectural drawings or plans) of any architectural work of art;

(iv) The publication in a collection, mainly composed of non-copyright matter, *bona fide* intended for the use of schools, and so described in the title and in any advertisements issued by the publisher, of short passages from published literary works not themselves published for the use of schools in which copyright subsists: provided that not more than two of such passages from works by the same author are published by the same publisher within five years, and that the source from which such passages are taken is acknowledged;

(v) The publication in a newspaper of a report of a lecture delivered in public, unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given, and, except whilst the building is being used for public worship, in a position near the lecturer; but nothing in this paragraph shall affect the provisions in paragraph (i) as to newspaper summaries;

(vi) The reading or recitation in public by one person of any reasonable extract from any published work.

(2) Copyright in a work shall also be deemed to be infringed by any person who—

(a) sells or lets for hire, or by way of trade exposes or offers for sale or hire; or

(b) distributes either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or

(c) by way of trade exhibits in public; or

(d) imports for sale or hire into any part of His Majesty's dominions to which this Act extends,

any work which to his knowledge infringes copyright or would infringe copyright if it had been made within the part of His Majesty's dominions in or into which the sale or hiring, exposure, offering for sale or hire, distribution, exhibition, or importation took place.

right. In this class of cases, the Court should be reluctant to sit as experts and to decide the question of infringement of copyright without the aid of expert evidence. The proper course, in such cases, is to get the opinion of experts who might be appointed Commissioners to investigate and report on the matters in issue. The opinion and findings of experts are not conclusive on the Court, but may be reviewed on exceptions. 39 C.L.J. 134=81 I.C. 754=1924 C. 595. The defence of having had no reasonable ground for suspecting that the performances of a musical piece would be infringement of copyright should be proved by the defendants affirmatively. 1930 A.C. 377=124 I.C. 894=1930 P.C. 314 (P.C.). Where a person complaining of infringement of his copyright produces the book and the certificate of registration of the copyright, the burden of proving that the portion of the book which had been copied by the accused was also contained in a previous book published by the accused's father and that the complainant had, therefore, no subsisting copyright at the time of the infringement, is on the defence. 131 I.C. 865=1931 A.L.J. 304=1931 A. 353.

SEC. 2 (1) PROVISIO: CONSTRUCTION.—The

CR. C. M.-I—30

proviso does not say that not more than two passages from each work of the same author are published, but says "not more than two passages from work by the same author". Obviously, the proviso is not intended to protect a man who brings out an unauthorized edition of a poet's poems by taking out two poems out of each of many works published by him separately. *Quære*.—Whether when a number of poems are brought out in one volume the whole volume is to be considered a literary work of the author or whether each separate poem in that volume is to be considered as separate literary work. 55 All. 564=1933 A.L.J. 791=1933 All. 474.

COPYRIGHT—ASSIGNMENT—WHAT AMOUNTS TO—SALE OF FIRST EDITION OF CERTAIN NUMBER OF COPIES, EFFECT OF.—A sale of a first edition of 1,100 copies of a certain book, to be published in a particular form, amounts to an assignment of an interest in the copyright until the last copy is sold. Until then the purchaser has the right exclusively to the copyright, at any rate as far as the right to publish the book in any form is concerned. It is not merely a sale of a right to print and sell 1,100 copies in the particular form. 62 Cal. 57=39 C.W.N. 224.

(3) Copyright in a work shall also be deemed to be infringed by any person who for his private profit permits a theatre or other place of entertainment to be used for the performance in public of the work without the consent of the owner of the copyright, unless he was not aware, and had no reasonable ground for suspecting, that the performance would be an infringement of copyright.

3. The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author and a period of fifty years after his death:

Term of copyright. Provided that at any time after the expiration of twenty-five years, or in the case of a work in which copyright subsists at the passing of this Act thirty years, from the death of the author of a published work, copyright in the work shall not be deemed to be infringed by the reproduction of the work for sale if the person reproducing the work proves that he has given the prescribed notice in writing of his intention to reproduce the work and that he has paid in the prescribed manner to, or for the benefit of, the owner of the copyright royalties in respect of all copies of the work sold by him calculated at the rate of ten per cent. on the price at which he publishes the work; and, for the purposes of this proviso, the Board of Trade may make regulations prescribing the mode in which notices are to be given, and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, including (if they think fit) regulations requiring payment in advance or otherwise securing the payment of royalties.

4. If, at any time after the death of the author of a literary, dramatic, or musical work which has been published or performed in public, a complaint is made to the Judicial Committee of the Privy Council that the owner of the copyright in the work has refused to republish or to allow the republication of the work or has refused to allow the performance in public of the work, and that by reason of such refusal the work is withheld from the public, the owner of the copyright may be ordered to grant a licence to reproduce the work or perform the work in public, as the case may be, on such terms and subject to such conditions as the Judicial Committee may think fit.

5. (1) Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Ownership of copyright, etc.

Provided that—

(a) where, in the case of an engraving, photograph, or portrait, the plate

SEC. 2 (3): "FOR THE PERFORMANCE IN PUBLIC".—The performance in public, though not necessarily for profit will be infringement. (1884) 13 Q.B.D. 843; 53 L.J.Q.B. 338. See (1911) 27 T.L.R. 554. To constitute infringement, it is not necessary to show that the defendant knowingly invaded the right. See (1859) 29 L.J.C.P. 20.

"CONSENT OF THE OWNER OF THE COPYRIGHT".—It need not be in the handwriting of the author, and may be given by any agent having due authority. (1855) 16 C.B. 517; 24 L.J.C.P. 169; see further, (1856) 25 L.J.C.P. 127; 17 C.B. 427; (1888) 20 Q.B.D. 378; 57 L.J.Q.B. 227. Under the English Dramatic Copyright Act, 1833, such person only was liable who, by himself or his agent, actually took part in the representation which was a violation of the copyright, and therefore the landlord of the rooms in which the performance took place was not, as such, liable. (1849) 8 C.B. 836; 19 L.J.C.P. 33; and see further as to this point. 5 B. & S.

751; (1864) 17 C.B. (N.S.) 418; 33 L.J.C.P. 319. As to *infringement by a co-owner*, see (1916) 2 K.B. 325; 85 L.J.K.B. 1504. As to *proof of infringement by interrogatories*, see (1887) 18 Q.B.D. 625.

SEC. 3.—If a copyright is shown to have subsisted when Act III of 1914 came into force, the period of copyright substituted by that Act would be 50 years from the death of the author. Where the complaint for infringement is made after the new Act the question to be considered is whether the copyright was subsisting under the new Act and not whether it was subsisting under the old Act XX of 1847. 131 I.C. 865=1931 A.L.J. 304=A.I.R. 1931 All. 553.

SEC. 5.—See 1930 A.C. 377=124 I.C. 894=1930 P.C. 314.

SEC. 5 (1) (a).—A husband can prohibit the exhibition of a photograph of his wife and children, the inference being that the wife who ordered the photograph acted as the husband's agent. (1901) 18 T.L.R. 126.

or other original was ordered by some other person and was made for valuable consideration in pursuance of that order, then, in the absence of any agreement to the contrary, the person by whom such plate or other original was ordered shall be the first owner of the copyright;

(b) where the author was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright, but where the work is an article or other contribution to a newspaper, magazine, or similar periodical, there shall, in the absence of any agreement to the contrary, be deemed to be reserved to the author a right to restrain the publication of the work, otherwise than as part of a newspaper, magazine, or similar periodical.

(2) The owner of the copyright in any work may assign the right, either wholly or partially, and either generally or subject to limitations, to the United Kingdom or any self-governing dominion or other part of His Majesty's dominions to which this Act extends, and either for the whole term of the copyright or for any part thereof, and may grant any interest in the right by licence, but no such assignment or grant shall be valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by his duly authorized agent:

Provided that, where the author of a work is the first owner of the copyright therein, no assignment of the copyright, and no grant of any interest therein, made by him (otherwise than by will) after the passing of this Act shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal personal representatives as part

SEC. 5 (1) (b).—In order to give the proprietor of a periodical a copyright in articles composed for him by others, it is not necessary that there should be an express contract that he should have the property in the copyright. Where the defendants published a monthly periodical, professing to be a digest of the cases decided in the Courts during the previous month, and inserted among others, head-notes or marginal notes copied verbatim from the plaintiff's publication, it was held that the defendants were guilty of piracy. (1855) 24 L.J.C.P. 175. *See* (1893) 1 Ch. 218; 72 L.J. Ch. 404; approved in (1904) A.C. 17; 7 L.J.Ch. 85, and *see* (1859) 29 L.J.C.P. 20. The proprietor of an encyclopaedia, who employs a person to write an article for publication in that work, cannot, without the writer's consent, publish the article in a separate form, or otherwise than in the encyclopaedia, unless the article was written on the terms that the copyright therein should belong to the proprietor of the encyclopaedia for all purposes. (1848) 16 Sim. 190; 17 L.J. Ch. 210. Where the publishers of a magazine employ and pay an editor, and the editor employs and pays persons for writing articles in the magazine, the copyright in such articles is not vested in the publishers under this section. (1846) 16 L.J. Ch. 140. As to a map, *see* (1871) L.R. 6 Ch. 346; 40 L.J. Ch. 489. The republication of the Christmas number of a periodical under a different title, form and

price is a "separate publication" of an article contained in such number, which the author is entitled to restrain. (1860) 1 J. and H. 312.

TRANSLATION.—The copyright of an English work translated by a foreigner is infringed by a re-translation of it by an Englishman into English. (1853) 1 Drew. 353; 22 L.J. Ch. 457.

SEC. 5 (2).—*See* A.I.R. 1939 Lah. 433; 1939 A.L.J. 71; A.I.R. 1938 Lah. 173, cited under sec. 1, *supra*. A sale, valid by the law of the country where made, has been held to pass the interest of the assignor. (1848) 5 C.B. 860 (Eng.) Since the assignment or grant must be in writing. (1876) 4 Ch.D. 419; 46 L.J. Ch. 103; evidence that the plaintiff in an action for printing a musical work acquiesced in the defendant's publication of it six years ago does not raise a presumption that the plaintiff has transferred his interest in the copyright; nor does a receipt given by the plaintiff for money received by him as the price of the copyright. (1818) 2 Stark. 382; or on admission of an assignment, *ibid.*; (1814) 4 Camp. 9, n.; (1723) Vin. Abr. "Books", etc., 3. A receipt in writing for the price of the copyright operates as an effectual assignment. 3 Macq. H. L. 611. It would seem that a copyright of a book not in existence can be assigned at law. (1906) 2 Ch. 550; 75 L.J. Ch. 732, and the assignment may take the form of an agreement (*ibid.*); but *see* (1839)

of his estate, and any agreement entered into by him as to the disposition of such reversionary interest shall be null and void, but nothing in this proviso shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.

(3) Where, under any partial assignment of copyright, the assignee becomes entitled to any right, comprised in copyright, the assignee, as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of the copyright, and the provisions of this Act shall have effect accordingly.

Civil Remedies.

6. (1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction or interdict, damages, accounts, and otherwise, as are or may be conferred by law for the infringement of a right.

(2) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the absolute discretion of the Court.

(3) In any action for infringement of copyright in any work, the work shall be presumed to be a work in which copyright subsists and the plaintiff shall be presumed to be the owner of the copyright, unless the defendant puts in issue the existence of the copyright, or, as the case may be, the title of the plaintiff, and where any such question is in issue, then—

(a) if a name purporting to be that of the author of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the author of the work;

(b) if no name is so printed or indicated, or if the name so printed or

8 L.J. Ch. 216; (1838) 9 Sim. 151. On bankruptcy, the copyright would pass to the trustee without any writing. (1826) 2 Russ. 392. Actual payment is a condition precedent to the vesting of the copyright of the article in the proprietor of the work; a contract for payment is not sufficient. (1851) 1 Sim. 336; 20 L.J. Ch. 553.

SEC. 6.—A book containing selections from the works of different authors can be the subject-matter of copyright. The principle applicable to such cases is that one person is not at liberty to use or avail himself of the labour which another has been at for the purpose of producing his work, and so take away the result of that other's labour, i.e., his property. 156 I.C. 841=A.I.R. 1935 Lah. 282. Where the legal right of the plaintiff, namely, his copyright in a particular book, was admitted and only its violation by the threatened publication of an alleged similar book was not denied and it further appeared that if the injunction was not issued irreparable injury or inconvenience might result to the plaintiff. *Held*, that it was a proper case in which a temporary injunction should be issued. Principles applicable to grant of interlocutory injunctions considered. 132 I.C. 586=1931 L. 624. *See also* 34 P.L.R. 249. In a case of infringement of copyright the application for temporary injunction is governed by sec. 6 of the Copyright Act and not by sec. 56 (f) of the Specific Relief Act. 132 I.C. 586=1931 Lah. 624. As to measure of damages, *see*

(1898) 1 Ch. 58; 67 L.J. Ch. 6; and as to when damages are recoverable, *see* (1899) 1 Ir. R. 386. The owner of a copyright in any book has no right in a Court of equity to more than the usual account of the net profits of all copies of the book. He has no right to an account of the gross proceeds. (1857) 3 K. & J. 581.

SECS. 6 AND 7.—Where in a case of infringement of copyright the plaintiff asked for damages under sec. 6 on the footing of the loss sustained and in the alternative under sec. 7 for the delivery of the unsold infringing copies and damages on the footing of conversion in respect of the infringing copies sold, and the Court awarded damages under sec. 6 and also decreed delivery of the unsold copies, *held*, that the plaintiff could not claim damages under sec. 7 also. *Quære*, whether the Court was justified in awarding damages under sec. 6 and also ordering delivery of the unsold copies when the prayers had been cast in the alternative. 126 I.C. 197=51 C.L.J. 243=34 C.W.N. 540. Though the remedies given by sec. 6, are not alternative to those given by sec. 7, yet when an owner of a copyright obtains damages under sec. 6, it often happens that he can recover nothing further in respect of damages under sec. 7. Where the amount of damages awarded under sec. 6 covers the price for permission to publish the work in question, the author is not entitled to damages also under sec. 7. A.I.R. 1938 Lah. 173=40 P.L.R. 622.

indicated is not the author's true name or the name by which he is commonly known, and a name purporting to be that of the publisher or proprietor of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the owner of the copyright in the work for the purposes of proceedings in respect of the infringement of copyright therein.

7. All infringing copies of any work in which copyright subsists, or of any substantial part thereof, and all plates used or intended to be used for the production of such infringing copies shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of the possession thereof or in respect of the conversion thereof.

8. Where proceedings are taken in respect of the infringement of the copyright in any work and the defendant in his defence alleges that he was not aware of the existence of the copyright in the work, the plaintiff shall not be entitled to any remedy other than an injunction or interdict in respect of the infringement if the defendant proves that at the date of the infringement he was not aware, and had not reasonable ground for suspecting, that copyright subsisted in the work.

9. (1) Where the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work has been commenced, the owner of the copyright shall not be entitled to obtain an injunction or interdict to restrain the construction of such building or structure or to order its demolition.

(2) Such of the other provisions of this Act as provide that an infringing copy of a work shall be deemed to be the property of the owner of the copyright, or as impose summary penalties, shall not apply in any case to which this section applies.

10. An action in respect of infringement of copyright shall not be commenced after the expiration of three years next after the infringement.

Limitation of actions.

11.	*	*	*	*	*	*
12.	*	*	*	*	*	*
13.	*	*	*	*	*	*

Importation of Copies.

14. (1) Copies made out of the United Kingdom of any work in which copyright subsists which if made in the United Kingdom would infringe copyright, and as to which the owner of the copyright gives notice in writing by himself or his agent to the Commissioners of Customs and Excise, that he is desirous that such copies should not be imported into the United Kingdom, shall not be so imported, and shall subject to the provisions of this section, be deemed to be included in the

SEC. 7.—The offence is complete as soon as the book infringing the copyright is printed and consequence contemplated in sec. 179, Cr. P. Code, are not necessary for the completion of the offence. 28 P.E. 1916 (Cr.)=38 I.C. 737=18 Cr.L.J. 353. Under sec. 7, all infringing copies of any work in which copyright subsists, become the property of the owner of the copyright. He has, therefore, a right to recover the possession of the infringing copies unsold and the price of the copies sold. 1938 A.L.J. 390=A.I.R. 1938

All. 266.

SEC. 8.—Where in an action for infringement of a copyright, the defendant alleges that he was not aware of the existence of the alleged copyright, in order to come within the provisions of sec. 8 of the English Copyright Act which has been incorporated in the Indian Act (III of 1914), it is for the defendant to allege and prove that the infringement was innocent. I.L.R. (1939) Bom. 295=41 Bom.L.R. 530=A.I.R. 1939 Bom. 347.

table of prohibitions and restrictions contained in section forty-two of the Customs Consolidation Act, 1876, and that section shall apply accordingly.

(2) Before detaining any such copies or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Commissioners of Customs and Excise may require the regulations under this section, whether as to information, conditions, or other matters, to be complied with, and may satisfy themselves in accordance with those regulations that the copies are such as are prohibited by this section to be imported.

(3) The Commissioners of Customs and Excise may make regulations, either general or special, respecting the detention and forfeiture of copies, the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may, by such regulations, determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4) The regulations may apply to copies of all works, the importation of copies of which is prohibited by this section, or different regulations may be made respecting different classes of such works.

(5) The regulations may provide for the informant reimbursing the Commissioners of Customs and Excise all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention; and may provide for notices under any enactment repealed by this Act being treated as notices given under this section.

(6) The foregoing provisions of this section shall have effect as if they were part of the Customs Consolidation Act, 1876: Provided that, notwithstanding anything in that Act, the Isle of Man shall not be treated as part of the United Kingdom for the purposes of this section.

(7) The section shall, with the necessary modifications, apply to the importation into a British possession to which this Act extends of copies of works made out of that possession.

Delivery of Books to Libraries.

15. (1) The publisher of every book published in the United Kingdom shall, within one month after the publication, deliver, at his own expense, a copy of the book to the trustees of the British Museum, who shall give a written receipt for it.

(2) He shall also, if written demand is made before the expiration of twelve months after publication, deliver within one month after receipt of that written demand or, if the demand was made before publication, within one month after publication, to some depot in London named in the demand a copy of the book for, or in accordance with the directions of the authority having the control of each of the following libraries, namely, the Bodleian Library, Oxford, the University Library, Cambridge, the Library of the Faculty of Advocates at Edinburgh and the Library of Trinity College, Dublin; and, subject to the provisions of this section, the National Library of Wales. In the case of an encyclopædia, newspaper, review, magazine, or work published in a series of numbers or parts, the written demand may include all numbers or parts of the work which may be subsequently published.

(3) The copy delivered to the trustees of the British Museum shall be a copy of the whole book with all maps and illustrations belonging thereto, finished and coloured in the same manner as the best copies of the book are published, and shall be bound, sewed, or stitched together, and on the best paper on which the book is printed.

(4) The copy delivered for the other authorities mentioned in this section shall be on the paper on which the largest number of copies of the book is printed for sale, and shall be in the like condition as the books prepared for sale.

(5) The books of which copies are to be delivered to the National Library of Wales shall not include books of such classes as may be specified in regulations to be made by the Board of Trade.

(6) If a publisher fails to comply with this section, he shall be liable on summary conviction to a fine not exceeding five pounds and the value of the book, and the fine shall be paid to the trustees or authority to whom the book ought to have been delivered.

(7) For the purposes of this section, the expression "book" includes every part or division of book, pamphlet, sheet of letter-press, sheet of music, map, plan, chart or table separately published, but shall not include any second or subsequent edition of a book unless such edition contains additions or alterations either in the letter-press or in the maps, prints, or other engravings belonging thereto.

Special Provisions as to certain Works.

16. (1) In the case of a work of joint authorship, copyright shall subsist during the life of the author who first dies and for a term of fifty years after his death, or during the life of the author who dies last, whichever period is the longer, and references in this Act to the period after the expiration of any specified number of years from the death of the author shall be construed as references to the period after the expiration of the like number of years from the death of the author who dies first or after the death of the author who dies last, whichever period may be the shorter, and in the provisions of this Act with respect to the grant of compulsory licences a reference to the date of the death of the author who dies last shall be substituted for the reference to the date of the death of the author.

(2) Where, in the case of a work of joint authorship, some one or more of the joint authors do not satisfy the conditions conferring copyright laid down by this Act, the work shall be treated for the purposes of this Act as if the other author or authors had been the sole author or authors thereof:

Provided that the term of the copyright shall be the same as it would have been if all the authors had satisfied such conditions as aforesaid.

(3) For the purposes of this Act, "a work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors.

(4) Where a married woman and her husband are joint authors of a work the interest of such married woman therein shall be her separate property.

17. (1) In the case of a literary, dramatic or musical work, or an engraving, in which copyright subsists at the date of the death of the author or, in the case of a work of joint authorship at or immediately before the date of the death of the author who dies last, but which has not been published, nor, in the case of a dramatic or musical work, been performed in public nor, in the case of a lecture, been delivered in public, before that date, copyright shall subsist till publication, or performance or delivery in public, whichever may first happen, and for a term of fifty years thereafter and the proviso to section 3 of this Act, shall, in the case of such a work, apply as if the author had died at the date of such publication or performance or delivery in public as aforesaid.

(2) The ownership of an author's manuscript after his death, where such ownership has been acquired under a testamentary disposition made by the author and the manuscript is of a work which has not been published nor performed in public nor delivered in public, shall be *prima facie* proof of the copyright being with the owner of the manuscript.

18. Without prejudice to any rights or privileges of the Crown, where any work has, whether before or after the commencement of this Act, been prepared or published by or under the direction or control of His Majesty or any Gov-

ernment department, the copyright in the work shall, subject to any agreement with the author, belong to His Majesty, and in such case shall continue for a period of fifty years from the date of the first publication of the work.

19. (1) Copyright shall subsist in regards perforated rolls, and other contrivances by means of which sounds may be mechanically reproduced, in like manner as if such contrivances were musical works, but the term of copyright shall be fifty years from the making of the original plate from which the contrivance was directly or indirectly derived, and the person who was the owner of such original plate at the time when such plate was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts.

Provisions as to mechanical instruments.

(2) It shall not be deemed to be an infringement of copyright in any musical work for any person to make, within the parts of His Majesty's dominions to which this Act extends, records, perforated rolls or other contrivances by means of which the work may be mechanically performed, if such person proves—

(a) that such contrivances have previously been made by, or with the consent or acquiescence of, the owner of the copyright in the work; and

(b) that he has given the prescribed notice of his intention to make the contrivances, and has paid in the prescribed manner to or for the benefit of, the owner of the copyright in the work royalties in respect of all such contrivances sold by him, calculated at the rate hereinafter mentioned:

Provided that

(i) nothing in this provision shall authorise any alterations in, or omissions from, the work reproduced, unless contrivances reproducing the work subject to similar alterations and omissions have been previously made by, or with the consent or acquiescence of, the owner of the copyright, or unless such alterations or omissions are reasonably necessary for the adaptation of the work to the contrivances in question; and

(ii) for the purposes of this provision, a musical work shall be deemed to include any words so closely associated therewith as to form part of the same work, but shall not be deemed to include a contrivance by means of which sounds may be mechanically reproduced.

(3) The rate at which such royalties as aforesaid are to be calculated shall—

(a) in the case of contrivances sold within two years after the commencement of this Act by the person making the same, be two and one-half per cent.; and

(b) in the case of contrivances sold as aforesaid after the expiration of that period, be five per cent.

on the ordinary retail selling price of the contrivance calculated in the prescribed manner, so however that the royalty payable in respect of a contrivance

SEC. 19 does not in terms provide that the making of the record must be a lawful act or with the consent of the owner of the copyright in the original work, if such a person exists. But the section must be limited to a lawful making of the record. The copyright conferred by the section on the owner of the plate from which the record is made presupposes, therefore, that that plate came into existence lawfully. I.L.R. (1937) Bom. 724=39 Bom.L.R. 654=A.I.R. 1937 Bom. 472. Where the original work is the subject-matter of the copyright, it necessarily follows that the consent of the owner of that copyright must be obtained

to the making of the plate. Obviously it would be lawful for the owner to refuse his consent. It would also be legitimate for him to give his consent subject to certain conditions and those conditions may involve restricting the copyright which the owner of the plate would otherwise acquire under sec. 19. Such copyright might be restricted in various ways, amongst others, by restricting the public performance of records made from the plate. (*Ibid.*) *Quære*.—Whether the rights which accrue to the maker of a record or plate under sec. 19, are subject or subsidiary to the rights of the owner of copyright in the original work? (*Ibid.*)

shall, in no case, be less than a half-penny for each separate musical work in which copyright subsists reproduced thereon, and, where the royalty calculated as aforesaid includes a fraction of a farthing, such fraction shall be reckoned as a farthing:

Provided that, if, at any time after the expiration of seven years from the commencement of this Act, it appears to the Board of Trade that such rate as aforesaid is no longer equitable, the Board of Trade may, after holding a public inquiry, make an order either decreasing or increasing that rate to such extent as under the circumstances may seem just, but any order so made shall be provisional only and shall not have any effect unless and until confirmed by parliament; but, where an order revising the rate has been so made and confirmed, no further revision shall be made before the expiration of fourteen years from the date of the last revision.

(4) If any such contrivance is made reproducing two or more different works in which copyright subsists and the owners of the copyright therein are different persons, the sums payable by way of royalties under this section shall be apportioned amongst the several owners of the copyright in such proportions as, failing agreement, may be determined by arbitration.

(5) When any such contrivances by means of which a musical work may be mechanically performed have been made, then, for the purposes of this section, the owner of the copyright in the work shall, in relation to any person who makes the prescribed inquiries, be deemed to have given his consent to the making of such contrivances if he fails to reply to such inquiries within the prescribed time.

(6) For the purposes of this section, the Board of Trade may make regulations prescribing anything which under this section is to be prescribed, and prescribing the mode in which notices are to be given and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, and any such regulations may, if the Board think fit, include regulations requiring payment in advance or otherwise securing the payment of royalties.

(7) In the case of musical works published before the commencement of this Act, the foregoing provisions shall have effect, subject to the following modifications and additions:

(a) The conditions as to the previous making by, or with the consent or acquiescence of, the owner of the copyright in the work, and the restrictions as to alterations in or omissions from the work shall not apply;

(b) The rate of two and one-half per cent. shall be substituted for the rate of five per cent. as the rate at which royalties are to be calculated, but no royalties shall be payable in respect of contrivances sold before the first day of July, nineteen hundred and thirteen, if contrivances reproducing the same work had been lawfully made, or placed on sale, within the parts of His Majesty's dominions to which this Act extends before the first day of July, nineteen hundred and ten;

(c) Notwithstanding any assignment made before the passing of this Act of the copyright in a musical work, any rights conferred by this Act in respect of the making, or authorising the making, of contrivances by means of which the work may be mechanically performed shall belong to the author or his legal personal representatives and not to the assignees, and the royalties aforesaid shall be payable to, and for the benefit of, the author of the work or his legal personal representatives;

(d) The saving contained in this Act of the rights and interests arising from, or in connexion with, action taken before the commencement of this Act shall not be construed as authorising any person who has made contrivances by means of which the work may be mechanically performed to sell any such contrivances, whether made before or after the passing of this Act, except on the terms and subject to the conditions laid down in this section;

(e) Where the work is a work on which copyright is conferred by an Order in Council relating to a foreign country, the copyright so conferred shall not, except to such extent as may be provided by the Order, include any rights with respect to the making of records, perforated rolls, or other contrivances by means of which the work may be mechanically performed.

(8) Notwithstanding anything in this Act where a record, perforated roll, or other contrivance by means of which sounds may be mechanically reproduced has been made before the commencement of this Act, copyright shall, as from the commencement of this Act, subsist therein in like manner and for the like term as if this Act had been in force at the date of the making of the original plate from which the contrivance was directly or indirectly derived:

Provided that—

(i) the person who, at the commencement of this Act, is the owner of such original plate shall be the first owner of such copyright; and

(ii) nothing in this provision shall be construed as conferring copyright in any such contrivance if the making thereof would have infringed copyright in some other such contrivance, if this provision had been in force at the time of the making of the first-mentioned contrivance.

20. Notwithstanding anything in this Act, it shall not be an infringement of copyright in an address of a political nature delivered at a public meeting to publish a report thereof in a newspaper.

Provisions as to political speeches.

21. The term for which copyright shall subsist in photographs shall be fifty years from the making of the original negative from which the photograph was directly or indirectly derived, and the person who was owner of such negative at the time when such negative was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts.

Provisions as to photographs.

22. (1) This Act shall not apply to designs capable of being registered under the Patents and Designs Act, 1907, except designs which, though capable of being so registered, are not used or intended to be used as models or patterns to be multiplied by any industrial process.

Provisions as to designs registrable under 7 Edw. VII, c. 29.

(2) General rules under section 86 of the Patents and Designs Act, 1907, may be made for determining the conditions under which a design shall be deemed to be used for such purposes as aforesaid.

23. If it appears to His Majesty that a foreign country does not give, or has not undertaken to give, adequate protection to the works of British authors, it shall be lawful for His Majesty by Order in Council to direct that such of the provisions of this Act as confer copyright on works first published within the parts of His Majesty's dominions to which this Act extends, shall not apply to works published after the date specified in the Order, the authors whereof are subjects or citizens of such foreign country, and are not resident in His Majesty's dominions and thereupon those provisions shall not apply to such works.

Works of foreign authors first published in parts of His Majesty's dominions to which Act extends.

24. (1) Where any person is immediately before the commencement of

SEC. 20.—“Public meeting” is not defined in this Act, but see sec. 4 of the English Law of Libel Amendment Act, 1888 (51 and 52 Vic., c. 64).

SEC. 24.—Under sec. 24 no new right was conferred on an author in respect of an ex-

isting book. Whatever copyright he had at the commencement of the Act was continued in his favour. 154 L.C. 207=1934 All. 922. An entry in the Copyright Register Book under sec. 3 of the previous Copyright Act is *prima facie* evidence of the proprietorship

Existing works. this Act entitled to any such right in any work as is specified in the first column of the First Schedule to this Act, or to any interest in such a right, he shall, as from the date, be entitled to the substituted right set forth in the second column of that schedule, or to the same interest in such a substituted right, and to no other right or interest, and such substituted right shall subsist for the term for which it would have subsisted if this Act had been in force at the date when the work was made and the work had been one entitled to copyright thereunder:

Provided that—

(a) if the author of any work in which any such right as is specified in the first column of the First Schedule to this Act subsists at the commencement of this Act has, before that date, assigned the right or granted any interest therein for the whole term of the right, then at the date when, but for the passing of this Act, the right would have expired the substituted right conferred by this section shall, in the absence of express agreement, pass to the author of the work, and any interest therein created before the commencement of this Act and then subsisting shall determine; but the person who immediately before the date at which the right would so have expired was the owner of the right or interest shall be entitled at his option either—

(i) on giving such notice as hereinafter mentioned, to an assignment of the right or the grant of a similar interest therein for the remainder of the term of the right for such consideration as, failing agreement, may be determined by arbitration; or

(ii) without any such assignment or grant, to continue to reproduce or perform the work in like manner as theretofore subject to the payment, if demanded by the author within three years after the date at which the right would have so expired, of such royalties to the author as, failing agreement, may be determined by arbitration, or where the work is incorporated in a collective work and the owner of the right or interest is the proprietor of that collective work, without any such payment;

The notice above referred to must be given not more than one year nor less than six months before the date at which the right would have so expired, and must be sent by registered post to the author, or, if he cannot with reasonable diligence be found advertised in the London Gazette and in two London newspapers;

(b) where any person has, before the twenty-sixth day of July nineteen hundred and ten, taken any action whereby he has incurred any expenditure or liability in connexion with the reproduction or performance of any work in a manner which at the time was lawful, or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the passing of this Act, have been lawful, nothing in this section shall diminish or produce any rights or interests arising from or in connexion with such action which are subsisting and valuable at the said date unless the person who by virtue of this section becomes entitled to restrain such reproduction or performance agrees to pay such compensation as failing agreement, may be determined by arbitration.

of the person mentioned therein, but the absence of that provision from the new Copyright Act does not make it any the less evidence when the new Act grants to the owners of existing copyrights, rights at least as valuable as the rights given under the repealed Act. Sec. 14 of the Indian Evidence Act can, therefore, be invoked to make such evidence admissible. A High Court can in such cases interfere under sec. 15 of the Charter Act. 30 I.C. 721=16 Cr.L.J. 678. If a

copyright is shown to have subsisted when Act III of 1914 came into force the period of copyright substituted by that Act would be 50 years from the death of the author. Where the complaint for infringement is made after the new Act the question to be considered is whether the copyright was subsisting under the new Act and not whether it was subsisting under the old Act XX. 131 I.C. 865=1931 A.L.J. 304=1931 All. 353.

(2) For the purposes of this section, the expression "author" includes the legal personal representatives of a deceased author.

(3) Subject to the provisions of section 19, sub-sections (7) and (8) and of section 33 of this Act, copyright shall not subsist in any work made before the commencement of this Act, otherwise than under, and in accordance with the provisions of this section.

Application to British Possessions.

25. (1) This Act, except such of the provisions thereof as are expressly restricted to the United Kingdom, shall extend throughout His Majesty's dominions: Provided that it shall not extend to a self-governing dominion, unless declared by the Legislature of that dominion to be in force therein either without any modifications or additions, or with such modifications and additions relating exclusively to procedure and remedies, or necessary to adapt this Act to the circumstances of the dominion, as may be enacted by such Legislature.

(2) If the Secretary of State certifies by notice published in the London Gazette that any self-governing dominion has passed legislation under which works, the authors whereof were at the date of the making of the works British subjects resident elsewhere than in the dominion or (not being British subjects) were resident in the parts of His Majesty's dominions to which this Act extends, enjoy within the dominion rights substantially identical with those conferred by this Act, then, whilst such legislation continues in force, the dominion shall, for the purposes of the rights conferred by this Act, be treated as if it were a dominion to which this Act extends; and it shall be lawful for the Secretary of State to give such a certificate as aforesaid, notwithstanding that the remedies for enforcing the rights, or the restrictions on the importation of copies of works, manufactured in a foreign country, under the law of the dominion, differ from those under this Act.

26. (1) The legislature of any self-governing dominion may, at any time, repeal all or any of the enactments relating to copyright passed by Parliament (including this Act) so far as they are operative within that dominion: Provided that no such repeal shall prejudicially effect any legal rights existing at the time of the repeal, and that, on this Act or any part thereof being so repealed by the Legislature of self-governing dominion, that dominion shall cease to be a dominion to which this Act extends.

(2) In any self-governing dominion to which this Act does not extend the enactments repealed by this Act shall, so far as they are operative in that dominion, continue in force, until repealed by the Legislature of that dominion.

(3) Where His Majesty in Council is satisfied that the law of a self-governing dominion to which this Act does not extend provides adequate protection

SEC. 25.—The certificate by the Secretary of State, under sec. 25 (2), (English) Copyright Act, has merely the effect of bringing into operation the provision that the Dominion in respect of which the certificate is issued should, for the purposes of the rights conferred by the (English) Act (but for those purposes only), be treated as if it were a Dominion to which the Act extended. Thus although under sec. 1, (English) Act, an author writing in a Dominion would not, when the (English) Act was passed, have any

copyright under the (English) Act, the effect of the certificate would be that such an author would become a person entitled to "the rights conferred" by the (English) Act. Hence the authors in that Dominion will have the same rights under the (English) Act, within the area to which that Act extends as they would have if the Act extended to the Dominion. But the certificate does not and cannot extend the (English) Act to the Dominion, if it is not in force there. 171 L.C. 406=A.I.R. 1937 P.C. 326 (P.C.).

within the dominion for the works (whether published or unpublished) of authors who at the time of the making of the work were British subjects resident elsewhere than in that dominion, His Majesty in Council may, for the purpose of giving reciprocal protection, direct that this Act, except such parts (if any) thereof as may be specified in the Order, and subject to any conditions contained therein shall, within the parts of His Majesty's dominions to which this Act extends, apply to works the authors whereof were, at the time of the making of the work, resident within the first-mentioned dominion, and to works first published in that dominion; but, save as provided by such an Order, works the authors whereof were resident in a dominion to which this Act does not extend shall not, whether they are British subjects or not, be entitled, to any protection under this Act except such protection as is by this Act conferred on works first published within the parts of His Majesty's dominions to which this Act extends:

Provided that no such Order shall confer any rights within a self-governing dominion, but the Governor in Council of any self-governing dominion to which this Act extends, may, by Order, confer within that dominion the like rights as His Majesty in Council is, under the foregoing provisions of this subsection, authorized to confer within other parts of His Majesty's dominions.

For the purposes of this sub-section, the expression "a dominion to which this Act extends" includes a dominion which is for the purposes of this Act to be treated as if it were a dominion to which this Act extends.

27. The Legislature of any British possession to which this Act extends may modify or add to any of the provisions of this Act in its application to the possession, but, except so far as such modifications and additions relate to procedure and remedies, they shall apply only to works the authors whereof were, at the time of the making of the work, resident in the possession, and to works first published in the possession.

28. His Majesty may, by Order in Council, extend this Act to any territories under His protection and to Cyprus, and, on the making of any such Order, this Act shall, subject to the provisions of the Order, have effect as if the territories to which it applies or Cyprus were part of His Majesty's dominions to which this Act extends.

PART II.

INTERNATIONAL COPYRIGHT.

29. (1) His Majesty may, by Order in Council, direct that this Act (except such parts, if any, thereof as may be specified in the Order) shall apply—

(a) to works first published in a foreign country to which the Order relates, in like manner as if they were first published within the parts of His Majesty's dominions to which this Act extends;

(b) to literary, dramatic, musical, and artistic works, or any class thereof, the authors whereof were, at the time of the making of the works, subjects or citizens of a foreign country to which the Order relates, in like manner as if the authors were British subjects;

(c) in respect of residence in a foreign country to which the Order relates, in like manner as if such residence were residence in the parts of His Majesty's dominions to which this Act extends:

and thereupon, subject to the provisions of this Part of this Act and of the Order this Act shall apply accordingly:

Provided that—

(i) before making an Order in Council under this section in respect of any foreign country (other than a country which His Majesty has entered into

a convention relating to copyright), His Majesty shall be satisfied that that foreign country has made, or has undertaken to make, such provisions, if any, as it appears to His Majesty expedient to require for the protection of words entitled to copyright under the provisions of Part I of this Act;

(ii) the Order in Council may provide that the term of copyright within such parts of His Majesty's dominions as aforesaid shall not exceed that conferred by the law of the country to which the Order relates;

(iii) the provisions of this Act as to the delivery of copies of books shall not apply to works first published in such country, except so far as is provided by the Order;

(iv) the Order in Council may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities (if any) as may be prescribed by the Order;

(v) in applying the provisions of this Act as to ownership of copyright, the Order in Council may make such modifications as appear necessary having regard to the law of the foreign country;

(vi) in applying the provisions of this Act as to existing works, the Order in Council may make such modifications as appear necessary, and may provide that nothing in those provisions as so applied shall be construed as reviving any right of preventing the production or importation of any translation in any case where the right has ceased by virtue of section five of the International Copyright Act, 1886.

(2) An Order in Council under this section may extend to all the several countries named or described therein.

30. (1) An Order in Council under this Part of this Act shall apply to all His Majesty's dominions to which this Act extends except self-governing dominions and any other possession specified in the Order with respect to which it appears to His Majesty expedient that the Order should not apply.

(2) The Governor in Council of any self-governing dominion to which this Act extends may, as respects that dominion, make the like Orders as under this Part of this Act His Majesty in Council is authorized to make with respect to His Majesty's dominions other than self-governing dominions, and the provisions of this Part of this Act shall, with the necessary modifications, apply accordingly.

(3) Where it appears to His Majesty expedient to except from the provisions of any Order any part of his dominions, not being a self-governing dominion, it shall be lawful for His Majesty by the same or any other Order in Council to declare that such Order and this Part of this Act shall not, and the same shall not, apply to such part, except so far as is necessary for preventing any prejudice to any rights acquired previously to the date of such Order.

PART III.

SUPPLEMENTAL PROVISIONS.

31. No person shall be entitled to copyright or any similar right in any literary, dramatic, musical, or artistic work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act, or of any other statutory enactment for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

SEC. 30 (3).—This provision will not re- which under the previously existing law had vived a right of preventing unauthorised expired before the passing of the Act. See translations of a foreign work in England (1892) 3 Ch. 402; 61 L.J. Ch. 580.

32. (1) His Majesty in Council may make orders for altering, revoking or varying any Order in Council made under this Act, or under any enactments repealed by this Act, but any Order made under this section shall not affect prejudicially any rights or interests acquired or accrued at the date when the Order comes into operation, and shall provide for the protection of such rights and interests.

(2) Every Order in Council made under this Act shall be published in the *London Gazette* and shall be laid before both Houses of Parliament as soon as may be after it is made, and shall have effect as if enacted in this Act.

33. Nothing in this Act shall deprive any of the universities and colleges mentioned in the Copyright Act, 1775, of any copyright they already possess under that Act, but the remedies and penalties for infringement of any such copyright shall be under this Act and not under that Act.

34. There shall continue to be charged on, and paid out of, the Consolidated Fund of the United Kingdom such annual compensation as was immediately before the commencement of this Act payable in pursuance of any Act as compensation to a library for the loss of the right to receive gratuitous copies of books:

Provided that this compensation shall not be paid to a library in any year unless the Treasury are satisfied that the compensation for the previous year has been applied in the purchase of books for the use of and to be preserved in the library.

35. (1) In this Act, unless the context otherwise requires,—

“Literary work” includes maps, charts, plans, tables, and compilations;

“Dramatic work” includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise, and any cinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character;

“Artistic work” includes works of painting, drawing, sculpture and artistic craftsmanship, and architectural works of art and engravings and photographs;

“Work of sculpture” includes casts and models;

“Architectural work of art” means any building or structure having an artistic character or design, in respect of such character or design, or any model for such building or structure, provided that the protection afforded by this Act shall be confined to the artistic character and design, and shall not extend to processes or methods of construction;

SEC. 35: “LITERARY WORK”.—It is to be noted that this definition as well as ones which follow it do not purport to be exclusive and that the ordinary and popular meaning must be given to the words interpreted as well as making them inclusive of those things specifically mentioned. The word “book” does not appear in this section, but the definition of “book” given in the Copyright Act (1842), 5 & 6 Vic., c. 45, was held to include wood engravings. (1852) 5 De G. & Sm. 267; 21 L.J. Ch. 470; maps, (1871) L.R. 6 Ch. 346; 40 L.J. Ch. 489; and newspapers. (1881) 17 Ch. D. 708; 50 L.J. Ch. 621; (1899) 40 Ch. D. 425; 58 L.J. Ch. 293 (C.A.), overruling (1869) L.R. 9 Eq. 324; 39 L.J. Ch. (52) which have no right to copy from each other, (1892) 3 Ch. 489; 61 L.J.

Ch. 521; but not the title of a book in the ordinary sense, (1881) 18 Ch. D. 76; 50 L.J. Ch. 809.

“ENGRAVINGS”.—Copyright was extended to lithographs by sec. 14 of the International Copyright Act 1852 (15 & 16 Vic., c. 12).

“PHOTOGRAPHY”.—This will include, it is submitted, Copying by a process discovered after the passing of the Act. (1863) 14 C.B. (N.S.) 306; 32 L.J.C.P. 166; (1867) L.R. 2 C.P. 410; 36 L.J.C.P. 139.

“ENCYCLOPEDIA”.—“COLLECTIVE WORK”.—The infringement of articles composed at the joint expense of proprietors of several newspapers may be restrained at the joint suit of all the proprietors. (1889) 40 Ch. D. 425; 58 L.J. Ch. 293, *See* (1907) 23 T.L.R. 370.

"Engravings," include etchings, lithographs, wood-cuts, prints, and other similar works, not being photographs;

"Photograph" includes photo-lithograph and any work produced by any process analogous to photography;

"Cinematograph" includes any work produced by any process analogous to cinematography;

"Collective work" means—

(a) an encyclopædia, dictionary, year book, or similar work;

(b) a newspaper, review, magazine, or similar periodical; and

(c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated;

"Infringing" when applied to a copy of a work in which copyright subsists means any copy, including any colourable imitation, made, or imported in contravention of the provisions of this Act;

"Performance" means any acoustic representation of a work and any visual representation of any dramatic action in a work, including such a representation made by means of any mechanical instrument;

"Delivery", in relation to a lecture, includes delivery by means of any mechanical instrument;

"Plate" includes any stereotype or other plate, stone, block, mould, matrix, transfer, or negative used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which records, perforated rolls or other contrivances for the acoustic representation of the work are intended to be made;

"Lecture" includes address, speech, and sermon;

"Self-governing dominion" means the dominion of Canada, the Commonwealth of Australia, the dominion of New Zealand, the Union of South Africa, and Newfoundland.

(2) For the purposes of this Act (other than those relating to infringements of copyright), a work shall not be deemed to be published or performed in public, and a lecture shall not be deemed to be delivered in public, if published, performed in public, or delivered in public, without the consent or acquiescence of the author, his executors, administrators or assigns.

(3) For the purposes of this Act, a work shall be deemed to be first published within the parts of His Majesty's dominions to which this Act extends, notwithstanding that it has been published simultaneously in some other place unless the publication in such parts of His Majesty's dominions as aforesaid is colourable only and is not intended to satisfy the reasonable requirements of the public, and a work shall be deemed to be published simultaneously in two places if the time between the publication in one such place and the publication in the other place does not exceed fourteen days, or such longer period as may, for the time being, be fixed by Order in Council.

(4) Where, in the case of an unpublished work, the making of a work has extended over a considerable period, the conditions of this Act conferring copyright shall be deemed to have been complied with, if the author was during any substantial part of that period, a British subject or a resident within the parts of His Majesty's dominions to which this Act extends.

(5) For the purposes of the provisions of this Act as to residence, an author of a work shall be deemed to be a resident in the parts of His Majesty's dominions to which this Act extends if he is domiciled within any such part.

36. Subject to the provisions of this Act, enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule:

Repeal.

Provided that this repeal shall not take effect in any part of His Majesty's dominions until this Act comes into operation in that part.

Short title and commencement.

37. (1) This Act may be cited as THE COPYRIGHT ACT, 1911.

(2) This Act shall come into operation—

(a) in the United Kingdom, on the first day of July, nineteen hundred and twelve or such earlier date as may be fixed by Order in Council;

(b) in a self-governing dominion to which this Act extends, at such date as may be fixed by the Legislature of that dominion;

(c) in the Channel Islands, at such date as may be fixed by the States of those islands respectively;

(d) in any other British possession to which this Act extends on the proclamation thereof within the possession by the Governor.

FIRST SCHEDULE.

EXISTING RIGHTS.

Existing Right.	Substituted Right.
(a) <i>In the case of Works other than Dramatic and Musical Works.</i>	Copyright as defined by this Act. ¹
(b) <i>In the case of Musical and Dramatic Works.</i>	
Both copyright and performing right.	Copyright as defined by this Act. ¹
Copyright, but not performing right.	Copyright as defined by this Act, except the sole right to perform the work or any substantial part thereof in public.
Performing right, but not copyright.	The sole right to perform the work in public, but none of the other rights comprised in copyright, as defined by this Act.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Section and Chapter.	Short title.	Extent of Repeal.
8 Geo. 2, c. 13	The Engraving Copyright Act, 1734	The whole Act.
7 Geo. 3, c. 38	The Engraving Copyright Act, 1767	Do.
15 Geo. 3, c. 53	The Copyright Act, 1775	Do.
17 Geo. 3, c. 57	The Prints Copyright Act, 1777	Do.
14 Geo. 3, c. 56	The Sculpture Copyright Act, 1814	Do.
3 & 4 Will. 4, c. 15	The Dramatic Copyright Act, 1833	Do.
5 & 6 Will. 4, c. 65	The Lectures Copyright Act, 1835	Do.
6 & 7 Will. 4, c. 59	The Prints and Engravings Copyright (Ireland) Act, 1836	Do.
6 & 7 Will. 4, c. 110	The Copyright Act, 1836	Do.
5 & 6 Vict., c. 45.	The Copyright Act, 1842	Do.
7 & 8 Vict., c. 12	The International Copyright Act, 1844	Do.
10 & 11 Vict., c. 95	The Colonial Copyright Act, 1847	Do.
15 & 16 Vict., c. 12	The International Copyright Act, 1852	Do.
25 & 26 Vict., c. 68	The Fine Arts Copyright Act, 1862	Sections one to six. In section eight the words "and pursuant to any Act for the protection of copyright engravings," and "and in any such Act as aforesaid." Sections nine to twelve.

¹ In the case of an essay, article, or portion forming part of and first published in a review, magazine or other periodical or work of a like nature, the right shall be subject to any right of publishing the essay, article or portion in a separate form to which the author is entitled at the commencement of this Act, or would, if this Act had not been passed, have become entitled under section

eighteen of the Copyright Act, 1842. For the purposes of this schedule the following expressions, were used in the first column thereof, have the following meanings: "Copyright", in the case of a work which according to the law in force immediately before the commencement of this Act has not been published before that date and statutory copyright wherein depends on publi-

Section and Chapter.	Short title.	Extent of Repeal.
38 & 39 Vict., c. 12 39 & 40 Vict., c. 36	The International Copyright Act, 1875 The Customs Consolidation Act, 1876	The who Act. Section forty-two from "Books wherein" to "such copyright will expire". Sections forty-four, forty-five and one hundred and fifty-two.
45 & 46 Vict., c. 40	The Copyright (Musical Compositions) Act, 1882.	The whole Act.
49 & 50 Vict., c. 33	The International Copyright Act, 1886	Do.
51 & 52 Vict., c. 17	The Copyright (Musical Compositions) Act, 1888	Do.
52 & 53 Vict., c. 42	The Revenue Act, 1889	Section one, from "Books first published" to "as provided in that section."
6 Edw. 7, c. 36	The Musical Copyright Act, 1906	"In section three the words "and which has been registered in accordance with the provisions of the Copyright Act, 1842, or of the International Copyright Act, 1844, which registration may be effected notwithstanding anything in the International Copyright Act, 1886."

THE SECOND SCHEDULE.¹

REPEAL OF ENACTMENTS.

(See section 15.)

Year.	No.	Short title.	Extent of Repeal.
1847	XX	The Indian Copyright Act, 1847.	So much as has not already been repealed.
1867	XXV	The Press and Registration of Books Act, 1867.	In section 18 the following words, namely:— "Every registration under this section shall, upon the payment of the sum of two rupees to the office keeping the said Catalogue, be deemed to be an entry in the Book of Registry kept under Act No. XX of 1847 (for the encouragement of learning in the territories subject to the Government of the East India Company, by the defining and providing for the enforcement of the right called copyright therein); and the provisions contained in that Act as to the said book of Registry shall apply <i>mutatis mutandis</i> to the said catalogue."
1878	VIII	The Sea Customs Act, 1878.	Clause (a) of section 18.

cation, includes the right at common law (if any) to restrain publication or other dealings with the work; "Performing right," in the case of a work which has not been performed in public before the commencement

of this Act, includes the right at common law (if any) to restrain the performance thereof in public.

¹ Repealed by Act XII of 1927.

THE CORONERS ACT (IV OF 1871).

EFFECT OF LEGISLATION.

Year.	No.	Short title.	Repealed or otherwise how affected by Legislation.
1871	IV	The Coroners Act.	Rep. in part, Act X of 1873; Act XII of 1873; Act XVI of 1874; Act X of 1881; Act XII of 1891. Am., Act IX of 1871; Act X of 1881; Act V of 1889; Act IV of 1908; Act XXXVIII of 1920.

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An Act to consolidate and amend the laws relating to Coroners.

WHEREAS it is expedient to consolidate and amend the laws relating to Coroners in the Presidency-towns; It is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called THE CORONERS ACT, 1871.

SEC. 1.—This Act is not affected by the 16 B. 159; 7 C.W.N. 889, Cr. P. Code, 31 C. 1; 2 Ind. Jur. N. sec. 101;

Local extent.

(Repealed by Act X of 1881.)

Commencement.

(Repealed by Act XVI of 1874).

Repeal of enactment.

2. (Repealed by Act XII of 1873).

CHAPTER II.

APPOINTMENT OF CORONERS.

3. ¹[Within the local limits of the ordinary original civil jurisdiction of each of the High Courts of Judicature at Fort William and Bombay, there shall be a Coroner. Such Coroners shall be called respectively, the Coroner of Calcutta and the Coroner of Bombay.]

Their appointment, suspension, and removal.

4. Every such officer shall be appointed and may be suspended or removed by the Provincial Government. ²[* * * * *]

Coroners to be public servants.

5. Every Coroner shall be deemed a public servant within the meaning of the Indian Penal Code.

Power to hold other offices.

6. Any Coroner may hold simultaneously any other office under Government.

Oath to be taken by Coroner.

7. ³[* * * * *]

CHAPTER III.

DUTIES AND POWERS OF CORONERS.

8. When a Coroner ⁴[has reason to believe] that the death of any person has been caused by accident, homicide, suicide or suddenly by means unknown, or that any person being a prisoner had died in prison,

and that the body is lying within the place for which the Coroner is so appointed,

the Coroner shall enquire into the cause of death.

Every such enquiry shall be deemed a judicial proceeding within the meaning of section 193 of the Indian Penal Code.

9. Whenever a prisoner dies in a prison situate within the place for which a Coroner is so appointed, the Superintendent of the prison shall send for the Coroner before the body is ⁵[disposed of]. Any Superintendent failing herein shall, on conviction before a Magistrate, be punished with fine not exceeding five hundred rupees.

Nothing in the former part of this section applies to cases in which the death has been caused by cholera or other epidemic disease.

10. Whenever an inquest ought to be holden on any body lying dead within the local limits of the jurisdiction of any Coroner, he shall hold such inquest, whether or not the cause of death arose within his jurisdiction.

11. A Coroner may order a body to be disinterred within a reasonable time after the death of the deceased person, either for the purpose of taking an original inquisition where none has been taken, or a further inquisition ⁶[where the

LEG. REF.

¹ Substituted by Act V of 1889, sec. 2.

² Repealed by Act XII of 1891.

³ Repealed by Act X of 1873.

⁴ Substituted by Act X of 1881, sec. 5.

⁵ Substituted by Act IV of 1908, sec. 2.

⁶ Substituted by Act IV of 1908, sec. 2.

SEC. 8.—The jurisdiction of the Presi-

dency Magistrate is not ousted by an inquiry having been conducted by the Coroner under Act IV of 1871. Rat. 540=Cr. Rg. 14 of 1891.

There is no analogy between a Coroner's inquest and an inquiry by a Magistrate under Cr. P. Code, sec. 176. 3 C. 742 (752); 3 O.L. R. 59. On this section, see also 31 C. 1; 16 B. 159; 7 C.W.N. 889.

Coroner considers it necessary or desirable in the interests of justice to take a further inquisition].

12. On receiving notice of any death mentioned in section 8, the Coroner shall summon five, seven, nine, eleven, thirteen or fifteen respectable persons to appear before him at a time and place to be specified in the summons, for the purpose of enquiring when, how and by what means the deceased came by his death.

Inquest may be on Sunday. Any inquest under this Act may be held on a Sunday.

13. When the time arrives, the Coroner shall proceed to the place so specified, open the Court by proclamation, and call over the names of the jurors.

14. When a sufficient jury is in attendance, he shall administer an oath to each juror to give a true verdict according to the evidence, and shall then proceed with the jury to view the body.

15. The Coroner and the jury shall view and examine the body at the first sitting of the inquest, and the Coroner shall make such observations to the jury as the appearance of the body requires:

¹[Provided that the Coroner may, with the concurrence of a majority of the jury, dispense with a view of the body, if he is satisfied from medical evidence or medical certificates, that no advantage would result from such viewing.]

16. The Coroner shall then make proclamation for the attendance of witnesses, or, where the enquiry is conducted in secret, shall call in separately such as know anything concerning the death.

17. ²[It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses; the Coroner shall enquire of such circumstances and the cause of death; and if before or during the enquiry he is informed that any person, whether within or without the local limits of his jurisdiction, can give evidence or produce any document material thereto, may issue a summons requiring him to attend and give evidence or produce such document on the inquest.

Any person disobeying such summons shall be deemed to have committed an offence under section 174, section 175, or section 176 of the Indian Penal Code, as the case may be.]

For the purpose of causing prisoners to be brought up to give evidence, the Coroner shall be deemed a Criminal Court within the meaning of ³[Part IX of the Prisoners' Act, 1900].

18. The Coroner may direct the performance of a *post-mortem* examination with or without an analysis of the contents of the stomach or intestines, by any medical witness summoned to attend the inquest; and every medical witness, other than the Chemical Examiner to Government, shall be entitled to such reasonable remuneration as the Coroner thinks fit.

LEG. REF.

¹ Added by Act IV of 1908, sec. 4.

² Substituted by Act X of 1881, sec. 6.

³ Substituted by Act IV of 1908, sec. 5.

SEC. 11.—See 27 P.R. 1908 (Cr.).

SEC. 18.—Evidentiary value of *post mortem* report. See 6 C.W.N. 98.

⁴[18-A. Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Act, may be used as evidence in any inquest under this Act and in any subsequent inquiry, trial or other proceeding under the Code of Criminal Procedure, 1898.]

Report of Chemical Examiner.

Evidence to be on oath.
Evidence on behalf of accused.

19. All evidence given under this Act shall be on oath, and the Coroner shall be bound to receive evidence on behalf of the party (if any) accused of causing the death of the deceased person.

Witnesses unacquainted with the English language shall be examined through the medium of an interpreter, who shall be sworn to interpret truly as well the oath as the questions put to, and the answers given by the witnesses.

Interpreter.

After each witness has been examined, the Coroner shall enquire whether the jury wish any further questions to be put to the witness, and if the jury wish that any such questions should be put, the Coroner shall put them accordingly.

Questions suggested by jury.

20. The Coroner shall commit to writing the material parts of the evidence given to the jury, and shall read or cause to be read over such parts to the witness, and then procure his signature thereto.

Coroner to take down evidence in writing.

Witnesses to sign depositions.

Any witness refusing so to sign shall be deemed to have committed an offence under section 180 of the Indian Penal Code.

Coroner to subscribe depositions.

Every such deposition shall be subscribed by the Coroner.

²[For the purposes of section 26 of the Indian Evidence Act, 1872, a Coroner shall be deemed to be a Magistrate.]

21. The Coroner may adjourn the inquest from time to time, and from place to place.

Adjournment of inquest.

Whenever the inquest is adjourned the Coroner shall take the recognizances of the jurors to attend at the time and place appointed and notify to the witnesses when and where the inquest will be proceeded with.

Jurors' recognizances.

The amount of such recognizances shall in each case be fixed by the Coroner, ³[and the whole or such part thereof as the Coroner deems fit, shall, in default of attendance by the jurors, be recoverable in the manner as a fine imposed under section 31.]

22. When all the witnesses have been examined, the Coroner shall sum up the evidence to the jury, and the jury shall then consider of their verdict.

Coroner to sum up to jury.

LEG. REF.

¹ Added by Act IV of 1908, sec. 6.

² Added by Act X of 1881, sec. 7.

³ Added by Act X of 1881, sec. 7.

SEC. 19.—Statement by suspect confessing complicity in murder recorded by Coroner is confession and is admissible in a trial on charge of murder against confessor and co-accused. See 42 Bom.L.R. 938. But see also 1935 Bom. 479. Though under sec. 19 of the Coroners Act, a coroner recording a statement is a magistrate for the purposes of sec. 26 of the Evidence Act, it does not

mean that a coroner recording a confession by an accused should observe the formalities prescribed by sec. 164, Cr. P. Code, or by the High Court criminal circulars issued in this behalf. 47 Bom.L.R. 145 (F.B.).

SECS. 19 AND 20.—The enquiry before the Coroner although it may be a judicial proceeding is not a proceeding between the prosecutor and the accused and therefore the deposition of a witness taken in an enquiry before the Coroner cannot in the event of the death of the witness be taken into account at the trial before the High Court. 146 I.C. 544=35 Bom.L.R. 1020=1935 B. 479.

23. When the verdict is delivered, the Coroner shall draw up the inquisition according to the finding of the jury, or, when the jury is not unanimous, according to the opinion of the majority.

Coroner to draw up inquisition.

24. Every inquisition under this Act shall be signed by the Coroner with his name and style of office and by the jurors, and shall set forth—

Contents of inquisition.

- (1) where, when, and before whom the inquisition is holden,
- (2) who the deceased is,
- (3) where his body lies,
- (4) the names of the jurors, and that they present the inquisition upon oath,
- (5) where, when, and by what means the deceased came by his death, and
- (6) if his death was occasioned by the criminal act of another, who is guilty thereof.

If the name of the deceased be unknown, he may be described as a certain person to the jurors unknown.

Every such inquisition shall be in the form set forth in the second schedule hereto annexed, with such variation as the circumstances of each case require.

25. ¹[When the jury or a majority of the jury find that the death of the deceased person was occasioned by an act which amounts to an offence under any law in force in British India, the Coroner shall immediately after the inquest forward a copy of the inquisition, together with the names and addresses of the witnesses, to the Commissioner of Police.]

Procedure where death is found due to an act amounting to an offence.

26. ²[The Coroner may also, where the verdict justifies him in so doing, issue his warrant for the apprehension of the person who is found to have caused the death of the deceased person, and send him forthwith to a Magistrate empowered to commit him for trial.]

Power to arrest and commit for trial.

LEG. REF.

¹ Substituted by Act IV of 1908, sec. 8.

² Substituted by Act IV of 1908, sec. 9.

SEC. 24.—An inquisition drawn up by a Coroner, though it may have the effect of valid commitment upon which the High Court, in the exercise of its Original Criminal Jurisdiction, may act, has not that effect, until it has been accepted by the High Court, and the Officers of the Crown have drawn up a charge in accordance with it. Therefore the mere drawing up of an inquisition by the Coroner does not of itself oust the jurisdiction of a Presidency Magistrate to enquire into or try the case of an accused person. Any order of acquittal or discharge made by him will be operative, subject to the discretion of the High Court, when the times comes for it to consider whether it should take action upon the Coroner's inquisition as an effective commitment. If in any case, the accused person objects to the Magistrate proceeding with the case on the ground of his being already committed to the High Court, in the exercise of its Original Criminal Jurisdiction by virtue of the

inquisition drawn up by Coroner, an inquisition which has the chance of being accepted as a valid commitment and which if so accepted might subject him to a second trial notwithstanding that the Magistrate might try and acquit him, the difficulty raised would be one that could be solved only by a proper application to the High Court, which having regard to the circumstances of the individual case, will make such order as it thinks fit, as to whether the commitment by the Coroner is to be acted upon or whether it is proper for the Magistrate to proceed with the case. (16 B. 159, Ref.) After a Coroner has drawn up an inquisition and committed a person to jail refusing bail, the only Court which has power to grant bail is the High Court. 31 C. 1=7 C.W.N. 889.

SEC. 25.—A Presidency Magistrate is not ousted of his jurisdiction to hold a preliminary enquiry into a charge of murder, because the Coroner has held an enquiry into the cause of death and has committed the accused to the High Court under Act IV of 1871, sec. 25. 16 B. 159=31 C. 1=7 C.W.N. 889. See also notes under sec. 24.

27. ¹[* * * * *]

28. When the proceedings are closed, or before, if it be necessary to adjourn the inquest, the Coroner shall give his warrant for the disposal of the body on which the inquest has been taken.

Inquisitions not to be quashed for want of form.

29. No inquisition found upon or by any inquest shall be quashed for any technical defect.

Amendment of inquisition.

In any case of technical defect, a Judge of the High Court may, if he thinks fit, order the inquisition to be amended, and the same shall forthwith be amended accordingly.

30. It shall no longer be the duty of the Coroner to enquire whether any person dying by his own act was or was not *felo de se*, to enquire of treasure trove or wrecks, to seize any fugitive's goods, to execute process, or to exercise as Coroner any jurisdiction not expressly conferred by this Act.

Felo de se.

Deodands.

A *felo de se* shall not forfeit his goods.

Deodands are hereby abolished.

CHAPTER IV.

CORONERS' JURIES.

31. Whenever any person has been duly summoned to appear as a juror by a Coroner, and fails or neglects to attend at the time and place specified in the summons, the Coroner may cause him to be openly called in his Court three times to appear and serve as a juror; and upon the non-appearance of such person, and proof that such summons has been served upon him, or left at his usual place of abode, may impose such fine upon the defaulter, not exceeding fifty rupees, as to the Coroner seems fit.

32. The Coroner shall make out and sign a certificate, containing the name and surname, the residence and trade or calling of every person so making default, together with the amount of the fine so imposed, and the cause of such fine,

and shall send such certificate to one of the Magistrates of the place of which he is the Coroner,

and shall cause a copy of such certificate to be served upon the person so fined, by having it left at his usual place of residence, or by sending the same through the Post Office, addressed as aforesaid and registered.

Service of copy of certificate.

Levy of fine.

33. Thereupon such Magistrate shall cause the fine to be levied in the same manner as if it had been imposed by himself.

34. Unless in case of necessity, no person who has appeared, or has been summoned to appear, as a juror on an inquest, and has not made default, shall, within one year after such appearance of summons, be summoned to appear as a juror under this Act.

Jurors not to be twice summoned within the year.

35. When an inquest is held on the body of a prisoner dying within a prison, no officer of the prison and no prisoner confined therein shall be a juror on such inquest.

Jurors on inquest on prisoner.

CHAPTER V.

RIGHTS AND LIABILITIES OF CORONERS.

36. Every Coroner shall be entitled to such salary for the performance of the duty of his office as is prescribed in that behalf by the Provincial Government.

37. All disbursements duly made by a Coroner for fees to medical witness, Disbursements to be re- hire of rooms for the jury and the like, shall be repaid to him by the Provincial Government.

38. Every Coroner may from time to time, with the previous sanction of the Provincial Government, appoint by writing under his hand, a proper person to act for him as his deputy in the holding of inquests. ¹[* * * *]

All inquests taken and other acts done by any such deputy, under or by virtue of any such appointment, shall be deemed to be the acts of the Coroner appointing him:

Provided that no such deputy shall act for any such Coroner except during the illness of the said Coroner, or during his absence for any lawful and reasonable cause.

Revocation of appointment. Every such appointment may at any time be cancelled and revoked by the Coroner by whom it was made.

Exemption from serving on juries. — 39. No Coroner or Deputy Coroner shall be liable to serve as a juror.

Privilege from arrest. 40. Coroners and Deputy Coroners shall be privileged from arrest while engaged in the discharge of their official duty.

41. Any Coroner or Deputy Coroner failing to comply with the provisions of this Act, or otherwise misconducting himself in the execution of his office, shall be liable to such fine as the Chief Justice of the High Court, upon summary examination and proof of the failure or misconduct, thinks fit to impose.

42. No proceedings for anything done under this Act, or for any failure to comply with its provisions, shall be commenced or prosecuted, ²[* * * *] after tender of sufficient amends.

SCHEDULE I.

[REPEALED BY ACT XII OF 1873.]

SCHEDULE II.

FORM OF INQUISITION.

An Inquisition taken at _____ on the _____ day of _____ 18 _____ before EF, Coroner of _____ ³[in the case of A B deceased,] upon the oath of G H, I J, K L and M N, then and there duly sworn and charged to enquire when, how, and by what means the said A B came to his death.

We, the said jurors, find unanimously ³[or by a majority of _____] that the death of the said A B was caused, on or about the _____ day of _____ 18 _____ by (here state the cause of death as in the following examples)—

1. Cases of homicide—a blow on the head with a stick inflicted on him by C D, under such circumstances that the act of C D was justifiable [or accidental] homicide.

—a stab on the heart with a knife inflicted on him by C D, under such circumstances that the act of C D was culpable homicide not amounting to murder [or culpable homicide amounting to murder or a rash or negligent act not amounting to culpable homicide].

LEG. REF.

¹ Repealed by Act X of 1873.

CR. C. M.—I—33

² Repealed by Act IX of 1871.

³ Substituted by Act IV of 1908, sec. 12.

2. *Cases of accident*—falling out of a boat into the river Hughly whereby he was drowned.
——a kick from a horse which fractured his skull and ruptured blood vessels on his head.
3. *Cases of suicide*—shooting himself through the head with a pistol.
——arsenic, which he voluntarily administered to himself.
4. *Cases of sudden death by means unknown*—disease of the heart.
——apoplexy.
——sunstroke.

And so say the jurors upon their oath aforesaid.

Witness our hands, *E F*, Coroner of

G H, I J, K L, M N O P (Jurors).

THE COTTON GINNING AND PRESSING FACTORIES ACT (XII OF 1925).

[AMENDED BY ACT XIV OF 1939 AND ACT IX OF 1942.]

[18th March, 1925.]

An Act to provide for the better regulation of cotton ginning and pressing factories.

WHEREAS it is expedient to provide for the better regulation of cotton ginning and pressing factories; It is hereby enacted as follows:—

Short title, extent and commencement. 1. (1) This Act may be called THE COTTON GINNING AND PRESSING FACTORIES ACT, 1925.

(2) It extends to the whole of British India¹ [* *], including British Baluchistan and the Sonthal Parganas.

(3) It shall come into force on such date as the Governor-General in Council may, by notification in the Gazette of India, appoint.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “bale” means any pressed package of cotton of whatever size or density;

(b) “cotton” means ginned or unginned cotton, or cotton waste;

(c) “cotton ginning factory” means any place where cotton is ginned or where cotton fibre is separated from cotton seed by any process whatever involving the use of steam, water or other mechanical power or of electrical power;

(d) “cotton pressing factory” means any factory as defined in the Indian Factories Act, 1911, in which cotton is pressed into bales;

(e) “cotton waste” means droppings, strippings, fly and other waste products of a cotton mill or of a cotton ginning factory or of a cotton pressing factory, but does not include yarn waste;

(f) “Indian Central Cotton Committee” means the Indian Central Cotton Committee constituted under the Indian Cotton Cess Act, 1923 and includes any sub-committee appointed by it to perform any function of the Indian Central Cotton Committee under this Act; and

(g) “Occupier” includes a managing agent or other person authorized to represent the occupier;

(h) “prescribed” means prescribed by or under rules made under this Act.

3. (1) The owner of every cotton ginning factory shall cause to be main-

Maintenance of registers. tained at the factory in such form, if any, as may be prescribed, a ginning register containing a record of all cotton ginned in the factory and of the names of the persons for whom and the dates on which the cotton has been ginned and of the amount ginned for each person.

LEG. REF.

Council.

¹ The words [“Except Burma”] omitted by Adaptation of Indian Laws Order in S. 2 (c) AND (d).—“Factory”, mean- of. See 1937 M.W.N. 1355.

(2) The owner of every cotton pressing factory shall cause to be maintained at the factory in such form, if any, as may be prescribed, a press register containing a daily record of the number of bales pressed in the factory, the serial number of each bale, and the name of the person for whom it has been pressed.

(3) The owner or the person in charge of a cotton ginning or cotton pressing factory shall be bound to produce any ginning register or press register maintained under this section when required to do so by any person appointed by the Local Government in this behalf, and the owner or person in charge of any cotton pressing factory shall be bound to furnish to the Indian Central Cotton Committee, if so required by it in writing, a copy, certified as correct by the owner or person in charge of the factory, of the entry in any press register maintained at the factory relating to any specified bale.

(4) No register required to be maintained by this section shall be destroyed until after the expiration of three years from the date of the last entry therein.

(5) If—

(a) in any factory any register required by this section to be maintained is not maintained or is maintained in any form other than the form, if any, prescribed for the purpose, or

(b) any entry in any such register is proved to be false in any material particular, or

(c) any such register is destroyed before the expiration of the period referred to in sub-section (4),

the owner of the factory shall be punished with fine which may extend to fifty rupees or, if he has previously been convicted of any offence under this sub-section to five hundred rupees.

(6) If the owner or the person in charge of any factory fails to produce any register, or to furnish a certified copy of any entry, when required to do so under sub-section (3), or furnishes a certified copy of an entry knowing or having reason to believe such copy to be false, he shall be punished with fine which may extend to fifty rupees or, if he has previously been convicted of any offence under this sub-section, to five hundred rupees.

4. (1) The owner of every cotton pressing factory shall cause every bale pressed in the factory to be marked in such manner as may be prescribed, before it is removed from the press hours, with a serial number and with the mark prescribed for the factory.

(2) If any bale is removed from the press house of any cotton pressing factory without having been marked as required by sub-section (1), the owner of the factory shall be punished with fine which may extend to fifty rupees.

5. (1) The owner of every cotton pressing factory shall submit to the prescribed authority, within such time and in such form as may be prescribed, weekly returns showing the total number of bales of cotton pressed during the preceding week and from the commencement of the season to the end of that week, and the approximate average net weight of the bales pressed in that week.

(2) The Provincial Government shall compile from the weekly returns, and shall publish in such manner as ¹[it thinks fit direct a statement showing the total number of bales pressed in the province during the week and from the commencement of the season to the end of the week, to which the returns relate:

Provided that the number of bales pressed in any individual factory shall not be published.

(3) If default is made in submitting any return as required by sub-section (1), the owner of the factory shall be punished with fine which may extend to fifty rupees.

(4) Where the owner of a cotton pressing factory has notified to the prescribed authority that the work of pressing bales in that factory has been suspended, it shall not be necessary for the owner to submit returns under sub-section (1) until such work has been resumed.

Explanation.—In this section “season” means the period notified in this behalf by the Provincial Government in the local Official Gazette.

¹[5-A. (1) This section shall be in force in Chief Commissioners’ Provinces only; but the Provincial Government of any other Province may, by notification in the official Gazette, bring this section into force in the Province.

(2) The owner of every cotton ginning factory shall submit to the prescribed authority, within such time and in such form as may be prescribed, weekly returns showing the quantity of cotton ginned in the factory during the preceding week and from the commencement of the season to the end of that week.

(3) The Provincial Government shall compile from the weekly returns so submitted and shall publish in such manner as it thinks fit, a statement showing the total quantity of cotton ginned in the Province during the week and from the commencement of the season to the end of the week, to which the returns relate:

Provided that the quantity of cotton ginned in any individual factory shall not be published.

(4) If default is made in submitting any return as required by sub-section (2), the owner of the factory shall be punished with fine which may extend to fifty rupees.

(5) The provisions of sub-section (4) of section 5 apply to cotton ginning factories and the returns referred to in sub-section (2) of this section as they apply to cotton pressing factories and the returns referred to in sub-section (1) of section 5, and “season” in this section means the season as notified for the purposes of section 5.]

6. (1) No scales or weights shall be used in any cotton ginning or cotton pressing factory other than the scales or weights, if any, prescribed by the ²[Central Government] as standard for the district in which factory is situated.

(2) If in any factory any scale or weight is used in contravention of the provisions of sub-section (1), the owner of the factory shall be punished with fine which may extend to fifty rupees or, if he has been previously convicted of any offence under this sub-section, to five hundred rupees.

7. (1) Where the owner of a cotton ginning or pressing factory has leased the factory for a period of not less than one month, in the case of a cotton ginning factory or three months, in the case of a cotton pressing factory, and the lessor retains no interest in the management or profits of the factory and notice of the lease has been given by the lessor and the lessee to the prescribed authority, the lessee shall be deemed to be the owner of the factory, from the date of the notice and for the period of the continuance of the lease, for the purposes of section 3, in respect of the registers maintained or to be maintained from that date and for that period, and for the purposes of sections 4, 5, ³[5-A] and 6.

(2) On the termination of the lease the lessee shall hand over to the

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¹ See 5-A inserted by Act IX of 1942.

² Substituted by Adaptation Order, 1937.

³ Inserted by Act IX of 1942.

lessor the registers maintained under section 3, and the lessor shall forthwith report to the prescribed authority any default of the lessee in complying with the provisions of this sub-section or in maintaining the registers in accordance with the provisions of section 3.

(3) If default is made in handing over any register or making any report as required by this section, the lessor or the lessee, as the case may be, shall be punished with fine which may extend to fifty rupees.

8. (1) On a transfer of the ownership of a cotton ginning or pressing factory, the transferor shall hand over to the transferee the registers maintained under section 3, and the transferee shall forthwith report to the prescribed authority any default of the transferor in complying with the provisions of this sub-section or in maintaining the registers in accordance with the provisions of section 3.

(2) If default is made in handing over any register or making any report as required by sub-section (1), the transferor or the transferee, as the case may be, shall be punished with fine which may extend to fifty rupees.

9. (1) In the case of cotton ginning factories the construction of which is commenced after the commencement of this Act—

(a) gin-houses shall be provided with separate entrances and exits for the bringing in of unginned and the taking out of ginned cotton respectively, and

(b) the factories shall be constructed in accordance with plans and specifications approved by the prescribed authority:

Provided that nothing in this sub-section shall apply to any factory in which only roller gins are used where the number of such gins is not more than four.

¹[(1-A) In any cotton ginning factory, whether erected before or after the commencement of this Act—

(a) no structural alterations or additions, the construction of which commenced after the 27th day of February, 1939, shall be made so as to minimise the degree of compliance of the factory as a whole with the requirements set forth in clauses (a) and (b) of sub-section (1), and

(b) every structural addition (whether actually attached to any existing structure in the factory or not), the construction of which commenced after the last mentioned date, shall be constructed in accordance with plans and specifications approved by the prescribed authority:

Provided that nothing in this sub-section shall apply to any factory in which, after any alteration or addition has been made, only roller gins are used where the number of such gins is not more than four.]

(2) Within such period after the commencement of this Act as may be prescribed, the owner of every cotton pressing factory in which cotton is handled on the ground-floor shall cause the press-house to be paved or provided with other suitable flooring to the satisfaction of the prescribed authority.

(3) If the owner of any factory fails to comply with any provision of this section which is applicable to the factory, he shall be punished with fine which may extend to one hundred rupees.

(4) (a) Where the owner of a factory has been convicted under sub-section (3), the prescribed authority may serve on the owner of the factory an order in writing directing that such alterations shall be made in the factory before a specified date, as in the opinion of the said authority are necessary to secure compliance with the provisions of sub-section (1), ²[sub-section (1-A)] or sub-section (2), as the case may be.

(b) Where the alterations are not made in accordance with the order served under clause (a) of this sub-section, the prescribed authority may serve on the owner and on the occupier, if any, of the factory an order in writing directing that the work of ginning or pressing cotton in such factory shall be suspended until the alterations have been made in accordance with the order served under clause (a) of this sub-section and the owner and the occupier, if any, shall be jointly and severally liable to fine which may extend to fifty rupees for each day on which cotton is ginned or pressed in the factory in contravention of the order served under this clause.

10. Where the person guilty of an offence under this Act is a company, every director, manager, secretary and other officer thereof who is knowingly a party to the default shall also be guilty of the like offence and liable to the like punishment.

11. (1) No prosecution under this Act shall be instituted except by or with the previous sanction of the District Magistrate or a Chief Presidency Magistrate or a Magistrate of the first class specially empowered in this behalf by the Provincial Government.

(2) No offence punishable under this Act shall be tried by any Court inferior to that of a Presidency Magistrate or of a Magistrate of the first class.

12. The Central Government may make rules to provide for—

(a) the allotment of a special mark to be used by each pressing factory for the purpose of the marking of bales;

(b) the manner in which bales shall be marked; and

¹[(c) the standard weights and scales to be used in cotton ginning and cotton pressing factories in any part of British India and the inspection of the same.]

13. The Provincial Government may, by notification in the Official Gazette, make rules consistent with this Act to provide for all or any of the following matters, namely:—

(a) the forms in which registers, records and returns are to be maintained or submitted, and the inspection of records and registers;

(b) the appointment of the authority to whom and the time within which the returns required by ²[sections 5 and 5-A] shall be made;

(c) *[Omitted by Adaptation of Indian Laws Order in Council]*;

(d) the appointment of authorities for the purposes of sections 7, 8 and 9;

(e) the manner of service of orders made under section 9;

(f) the powers of entry and inspection which may be exercised by District Magistrates or by any officer specially empowered in this behalf by the Provincial Government;

(g) any other matter which is to be or may be prescribed or for which provision is necessary in order to carry out the purposes of this Act.

14. ³[(1)] After the expiration of one year from the commencement of this Act, any person who has made a contract for the purchase of baled cotton may require that no bales other than bales marked ³[with the mark prescribed under section 4 for the factory in which they were pressed] shall be supplied in fulfilment of such contract, and, if he does so

require, no bale not so marked shall be tenderable in fulfilment of the contract:

¹[(2) Any bale marked in accordance with the provisions of section 4 shall, within the meaning of the Indian Evidence Act, 1872, be presumed for all purposes as between the parties to a contract for the purchase of baled cotton, to have been so marked before leaving the factory in which it was pressed.]

[*Proviso.* Omitted by Act XIV of 1939.]

15. No suit or other legal proceeding shall be instituted against any person in respect of anything which is in good faith done or intended to be done under this Act.

THE CRIMINAL LAW AMENDMENT ACT (XIV OF 1908).²

Year.	No.	Short title.	Repeals and Amendments.
1901	XIV	The Criminal Law Amendment Act, 1908.	Rep. in part, Act V. of 1922. Amended temporarily, Act XXIII of 1932. Am., Act XXXVIII of 1920.

[11th December, 1908.]

An Act to provide for the more speedy trial of certain offences, and for the prohibition of associations dangerous to the public peace.

WHEREAS it is expedient to provide for the more speedy trial of certain offences; and for the prohibition of associations dangerous to the public peace; It is hereby enacted as follows:

1. (1) This Act may be called THE CRIMINAL LAW AMENDMENT ACT, 1908.

(2) It extends to the Provinces of Bengal and of Eastern Bengal and Assam; but the Provincial Government of any other province may; at any time, by ³notification in the Official Gazette, extend the whole or any Part thereof to ⁴[that Province].

⁵[(3) * * * * *]

LEG. REF.

¹ Sub-sec. (2) of sec. 14 added by Act XIV of 1939.

² For Statement of Objects and Reasons, see Gazette of India, 1908, Pt. V, p. 203 and for Proceedings in Council, see *Ibid.*, Pt. VI, p. 158.

³ The Act has been extended to the Presidency of Bombay, see Gazette of India Extraordinary, dated 4th January, 1910; to the Presidency of Madras, the U. P. of Agra and Oudh, the Punjab and the Central Provinces, see Gazette of India, Extraordinary, dated 13th January, 1910, and *ibid.*, 1910, Pt. I, p. 95.

For notification extending Pt. II of this Act to the province of Delhi, see Gazette of India, Extraordinary, dated 9th December, 1920; to N.-W. Frontier Province, see N.-W. Frontier Province Gazette, Extraordinary, dated 17th December, 1921, Part II of the

Act has been extended to the Madras Presidency by Notification No. 387, Public dated 9th December, 1921 (*Vide* Fort St. George Gazette, 1921, Part I, p. 1268).

The Act has been declared in force in Sonthal Parganas by notification under sec. 3 (3) (a) of the Sonthal Parganas Settlement Regulation, 1872 (III of 1872), B. & O. Code, Vol. I, see Calcutta Gazette, 1909, Pt. I, p. 649.

⁴ These words were substituted for the words "any other Province" by sec. 2 and Sch. I of the Devolution Act (XXXVIII of 1920).

⁵ Sub-sec. (3) of sec. 1 was repealed by sec. 3 of the Indian Criminal Law Amendment Repealing Act (V of 1922).

SEC. 1: PRACTICE AND PROCEDURE.—The application of the procedure of this Act which was intended "to provide for the more

17. (1) Whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of any such association—

Penalties.

to be used so as to make people liable to penalties for having been members of associations at a time when they were lawful and not unlawful. 55 B. 484=33 Bom.L.R. 90=1931 B. 129.

"NOTIFICATION"—MEANING OF.—"Notification" is the act of making known and not merely insertion in the Gazette. In order to prove that an association has been declared unlawful under the Act, the Government must not only insert the declaration in the Official Gazette, but must publish the Gazette in the manner usually adopted for publishing it and allow a reasonable opportunity to people concerned to see the Gazette. So in the absence of evidence to show when the Gazette, dated the 14th October, was published, the arrest of an alleged member of an assembly so declared unlawful on the early hours of the 15th October and his conviction cannot be sustained. 55 B. 356=33 Bom.L.R. 82=1931 B. 132. Where an association has been declared unlawful by the Governor-General in Council under sec. 16, it is imperative for the prosecution to prove some overt act or conduct on the part of the persons proceeded against, which establishes his connexion with the association at some time subsequent to such declaration. Also the ordinary rules of justice and common sense require that those who were connected with the association at the time when it was declared unlawful should be given a *locus penitentiae* to withdraw from its membership within a reasonable time of its notification as such. 131 I.C. 353=32 Cr.L.J. 700=1931 L. 145. See also 134 I.C. 782=32 Cr.L.J. 1233=1934 L. 36.

SEC. 17: ESSENTIALS OF OFFENCE.—EXISTENCE OF ASSOCIATION.—The offence under the Act consists in promoting, or assisting in promoting, not an unlawful association, but a meeting of such an association and therefore the association must exist before a meeting of it can be promoted. It cannot therefore be said that a person by urging his hearers to form themselves into "Jathas" promotes or assists in promoting meetings of the "Jathas" when the "Jathas" themselves had not come into existence. The person alleged to have promoted such meetings on behalf of an unlawful association must be proved to have authority from that association to convene the meetings. 88 I.C. 367=6 L. 349=1925 L. 522.

ASSISTING THE OPERATION.—There is a distinction between assisting the operation and promoting or carrying out of the same or similar objects. Therefore, a person, preaching a boycott of foreign cloth and belonging to a Sabha, whose connexion with the Congress Committee is not affirmative established, cannot be said to be assisting the

operation of the objects of the Committee, although he may be promoting or carrying out the boycott preached by the Committee. 140 I.C. 608=1932 L. 578. The word "assists" in sec. 17 (1) means intentionally assists. The accused painted on the surface of the road the words "boycott British goods" and thereby intended to assist the operations of an unlawful association, namely, the working committee of the Indian National Congress, *held*, that the accused were liable to be convicted under sec. 17 (1). 140 I.C. 767=63 M.L.J. 906. The words "in any way assists the operations of any such association" are not limited to acts which assist the operations of such associations with the co-operation of such association and they cover acts which may assist the operations of the association, but which are done without any co-operation of the association. 131 I.C. 889=33 Bom.L.R. 314=1931 B. 206. The question whether particular acts amounts to assisting the operations of an unlawful association within the meaning of sec. 17 (1) must always be one of fact to be determined in the circumstances of each case. There must be sufficient connection between the acts of the accused and the operations of the unlawful association to enable the Court to infer an intention to assist in those operations. The mere existence of a common aim between the person accused and the unlawful association is not enough to involve assistance. 55 B. 442=131 I.C. 470=33 Bom.L.R. 319=1931 B. 200. A person cannot be said to assist an association unless he has its operations in his mind and intends to help them. Identity of objects with no other connection does not amount to assisting the operations of an unlawful association. 144 I.C. 765=1933 M.V.N. 265=1933 M. 369.

ASSISTING VOLUNTEERS BY GIVING SHELTER.—The case against petitioners originated on a police report which was in these words: "I beg to report that Srijiut Permanand Agarwala has been assisting the volunteers by giving them shelter in a house belonging to him in the Tejjur town. I, therefore, request that action under the Criminal Law Amendment Act may be taken against him". Upon this, the Deputy Commissioner ordered "Issue warrant with bail under sec. 17 (2) of the Act." *Held*, this report failed to make out a *prima facie* case in respect of the offence, described in this section with the result that the proceedings based on the report were liable to be quashed. 71 I.C. 49=36 C.L.J. 179=1922 C. 538. See also 89 I.C. 392=5 L. 1=1924 L. 440.

ASSISTING IN ORGANISING MEETING.—A person who takes an active part in organising or assisting to organize a meeting must

tion, shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

clearly be regarded as promoting or assisting to promote it. 7 L. 357=1926 L. 405. Where the accused was shown to have assisted in the management of an association the objects of which were unlawful. *Held*, that he was liable to be convicted under sec. 17. 37 C.W.N. 964=1934 C. 161.

ILLUSTRATIVE CASES.—While the hoisting of the national flag is not in itself an offence, doing so on a day and time prescribed by an unlawful association together with refusal to take it down when requested to do so by a responsible Police Officer clearly amounts to conduct assisting the operations of the association and is punishable under sec. 17 (1). 145 I.C. 240=37 C.W.N. 992=1933 C. 695. *See also* 144 I.C. 765=1933 M. 369. The display of Congress flag over his shop by a shopkeeper is not in itself a criminal offence. A notification by the District Magistrate that by setting up such flags they are assisting the operations of the Congress is not equivalent to an order forbidding their use and the display or the refusal of the shopkeeper to pull it down when asked by the police so to do, does not constitute "assisting the operations" of an unlawful association. 140 I.C. 497=1933 A. 95. The mere fact that people are asked to join the Congress and the boycott of British goods is preached and also the civil disobedience movement is promoted does not make a conference identical with the associations declared to be unlawful and the speaker cannot be convicted under sec. 17 (1) or (2). If however he resists being apprehended by not allowing police to remove him he is guilty under sec. 224, Penal Code. 140 I.C. 442=1932 L. 615. An association called "Akhil Bharat Prabhat Feri Singh" was declared unlawful, but it still continued to function and conducted a procession, the members singing political songs. Persons taking part in such a procession could be said to assist the operations of the said unlawful association and be convicted under sec. 17 (1). 131 I.C. 477=33 Bom.L.R. 325=1931 B. 202. The publication of a notice in a paper circulating in Bombay stating that a meeting of an unlawful association is to take place and giving the time and place of the meeting although followed by publication of the Police Commissioner's ban of the meeting amounts to an offence under sec. 17 (1). 33 Bom.L.R. 314=1931 Bom. 206 (2). The accused reproduced in his newspaper an appeal to stop trading in foreign cloth, made by a person describing himself as the President of the War Council; he was charged under sec. 17 (1) with assisting the operations of an unlawful association. *Held*, (i) There was no evidence that the person described was in fact the president of the War Council or that he

authorised the publication. (ii) Even so, the article did not advocate any unlawful action; it only expressed his view on the economic question which anybody was free to do. So no offence was made out under sec. 17 (1). 134 I.C. 357=33 Bom.L.R. 652=1931 Bom. 413. The accused was charged and convicted with having printed and published an article entitled 'helping outlaws' in his paper the "Free Press Journal" and thereby assisted the War Council of the Bombay Provincial Congress Committee in its operations and committed an offence under sec. 17 (1). The article was reproduced from the Congress Bulletin which was alleged to be an organ of the War Council. *Held*, (i) The War Council was an unlawful association. (ii) But the prosecution had failed to prove that the Congress Bulletin was in fact an operation of the War Council. (iii) Further the article was merely a criticism—not of a profound character—upon a letter addressed by the Commissioner of Police to newspapers in Bombay and the mere reproduction of a criticism upon a letter which had been generally circulated—a criticism of a harmless character cannot possibly assist the operations of an unlawful association. 33 Bom.L.R. 652=1931 B. 413. The accused was found with two boxes containing contraband salt and belonging to an association declared unlawful by the Government of Bombay. He was convicted under sec. 47 (c) of the Bombay Salt Act of being in possession of contraband salt and also of an offence under sec. 17 (1) of this Act for assisting the operations of an unlawful association. *Held*, the accused could not be convicted under two different enactments for the same act. 33 Bom.L.R. 648=1931 B. 409. *See also* 1933 M. 337=67 M.L.J. 351. Persons who commit the offence of being members of an unlawful assembly even though they commit the offence of rioting are not necessarily guilty of being members of an unlawful association for purposes of sec. 17. 26 S.L.R. 345=140 I.C. 697=1932 Sind 211. Disobedience of a command to disperse is not an ingredient of an offence under sec. 17. An admission of not having dispersed in spite of the orders of the police is therefore not an admission for purposes of sec. 17. 26 S.L.R. 345. Exhorting the Sikhs in a meeting to enlist themselves for shahidi jathas for the purpose of going to a certain place and collecting funds for a committee which was declared as unlawful by the Government, is not an offence under sec. 17 (1) and sec. 17 (2) of the Act, but is an offence under sec. 117, Penal Code, as the accused instigated people to become members of a jatha under the orders of the said committee which jatha would be an unlawful association within the meaning of sec. 16. 26 Cr.L.J. 1374=89 I.C. 462=1926

(2) Whoever manages or assists in the management of an unlawful association, or promotes or assists in promoting a meeting of any such association, or of any members thereof as such members, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

18. An association shall not be deemed to have ceased to exist by reason only of any formal act of dissolution or change of title, but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof.

THE SCHEDULE.

[*Repealed by S. 3 of Act V of 1922.*]

N.B.—Temporary amendments made by Act XXIII of 1932 have not been incorporated in this Act. For such temporary amendments, see Criminal Law Amendment Act, 1932, *infra*.

L. 115.

KNOWLEDGE OF ASSEMBLY BEING UNLAWFUL NOT NECESSARY.—Proof of knowledge in the accused that the association is unlawful is not a condition precedent to a prosecution under the section. But where an association heretofore lawful is made unlawful, it is but just to require some notice of the illegality to be given to the members of the association so that they may regulate their conduct accordingly. 55 B. 356=33 Bom.L.R. 82=1931 B. 132.

NOTIFICATION NOT PUBLISHED IN GAZETTE.—NO OFFENCE.—No association can be considered an unlawful association till the date of publication of the notification in the official Gazette declaring it to be unlawful, and no member of that association arrested in pursuance of the order of the Local Government before the date of publication of that order in the Gazette can be held guilty of an offence under sec. 17 although the fact that it has been so declared may have been known to accused prior to the publication. 12 L. 471=131 I.C. 108=1931 L. 107. See also 55 B. 356=1931 B. 132. But see 1931 B. 203. Where everybody knew that the Act has been extended to the United Provinces and the Court convicted the accused under the said Act on the basis of a newspaper extract publishing the Government Notification and the statement of the Police Officer, *held*, that the conviction was bad in law because the Act had not been extended by means of a notification in the Gazette. 129 I.C. 443=1930 A.L.J. 1535=1931 A. 12. But it would be different whether the Gazette had been issued to the public or not, if a copy of the Gazette notifying an association unlawful, was actually shown to the accused before their arrest under sec. 17 (1). 131 I.C. 479=33 Bom.L.R. 333=1931 B. 203.

ADMISSION, EFFECT OF.—MANAGING AN UNLAWFUL ASSOCIATION.—An accused person does not plead to a section of a criminal statute. He pleads guilty or not guilty to the facts alleged to disclose an offence under that section. Where the charge stated that the accused was the jathadar of the Akali

Dal and as such addressed meetings of the Akalis and appealed to the Sikhs to organize themselves into jathas, and he admits himself to be a jathadar of that organization, he is admitting that he is a member of an unlawful association, therefore pleading guilty to an offence under sec. 17 (1). The word "jathadar" means a person who leads or controls a jatha, and if it is proved that there was any jatha being at that time led or controlled by the accused, he would obviously be guilty of managing an unlawful association. 7 L. 359=96 I.C. 219=1926 L. 406. See also 26 S.L.R. 345=140 I.C. 697=1932 Sind 211.

PROSECUTION UNDER.—BURDEN OF PROOF.—PRESUMPTION.—Where a person is charged under sec. 17 (1) as having been a member of an assembly declared unlawful, it is for the prosecution to prove not merely that the accused was a member thereof prior to the Government Notification but that he continued as a member subsequent to the notification. The Act imposes no obligation on the members of the association to do anything specific to terminate their membership, and unless some act or conduct showing his continued membership of the same is proved, it cannot be presumed in law. 55 B. 484=33 Bom.L.R. 90=1931 B. 129: 131 I.C. 479=33 Bom.L.R. 333=1931 B. 203. The mere fact that a certain person was a delegate to the Indian National Congress held in December, 1929, cannot prove his membership of the Congress Committee of a certain place after the declaration of 3rd July, 1930, that it was an unlawful association had been notified. Where none of the witnesses for the prosecution has any personal knowledge of the *factum* of the convict being a member of the Congress Committee and their statements are based on mere conjectures and inferences and the remaining evidence is worthless and irrelevant, the conviction of the accused for being a member of an unlawful association should be set aside. 131 I.C. 360=1931 L. 153.

ABETMENT OF OFFENCE OF SUMMONS CASE.—PENAL CODE, SEC. 117.—A charge of abet-

THE CRIMINAL LAW AMENDMENT ACT (XXIII OF 1932).

Year.	No.	Short title.	Repealed or otherwise how affected by Legislation.
1932	XXIII	The Criminal Law Amendment Act, 1932.	Am. XXIV of 1934; Rep., in part Act I of 1938; Cr. Law Am. Act, 1935.

[19th December, 1932.

An Act to supplement the Criminal Law.

WHEREAS it is expedient to supplement the Criminal Law and to that end to amend the Indian Press (Emergency Powers) Act, 1931, and further to amend temporarily the Indian Criminal Law Amendment Act, 1908, for the purposes hereinafter appearing;

It is hereby enacted as follows:—

Short title, extent, duration and commencement. 1. (1) This Act may be called THE CRIMINAL LAW AMENDMENT ACT, 1932.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) [* * * * *].¹

(4) The whole of the Act except [* * *]² section 7 shall come into force at once, and the Provincial Government may, by notification in the Official Gazette, direct that section 4 or section 7 shall come into force in any area on such date as may be specified in the notification.

2. [Dissuasion from enlistment.] Repealed by Criminal Law Amendment Act, 1935, S. 2.

LEG. REF.

¹SUB-SEC. (3) limiting the duration of the Act to three years from commencement was repealed by Criminal Law Amendment Act, 1935, sec. 2.

²Repealed by Criminal Law Amendment Act, 1935, sec. 4.

ment of a specific offence which offence is a summons case. Then the abetment is also a summons case. An offence under sec. 117 of Penal Code and sec. 17 (1) of this Act can therefore be tried as a summons case. 131 I.C. 472=33 Bom.L.R. 353=1931 Bom. 199.

CONVICTION UNDER SEC. 17 (1)—DOUBLE SENTENCE—LEGALITY OF.—Where the two accused, one of them President and the other a member of the Congress Committee, were charged with and found guilty of the offence of picketing foreign cloth shops, punishable alike under sec. 17 (1) of the Criminal Law Amendment Act (1908) and sec. 4 of Ordinance V of 1932 and were awarded separate sentences under each count. *Held*, that the reference to their membership of the Congress Committee was only by way of description and was not intended to add a separate charge of their having been members of an unlawful association; that the only offence involved was picketing though punishable under two separate provisions of law and that the awarding of two separate sentences for the same offence under each count was not legal. 142 I.C. 21=1933 Mad. 337=67 M.L.J. 351. See also 134 I.C. 345=33.

Bom.L.R. 348=1931 Bom. 409.

SEC. 17 (2): LIABILITY UNDER—LEADER OF PARTY.—The leader of the party which induce boys to take out and publicly exhibit Congress flags and for which those boys are given clothes and some cash in lieu of services to be rendered by them is guilty under sec. 17 (2). 146 I.C. 25=1933 Lah. 387 (2). Where a person is in charge of an office he is necessarily the person who manages or assists in managing the association which owns that office. Sec. 17 (1) renders a person liable to punishment, if he is proved to be a member of an unlawful association, without any proof being required of any active participation in its operations. It also makes it an offence to take part in its meetings or to help it in any way and it is immaterial whether the person who renders such help has been authorised to do so or whether he acts purely on his own initiative. Sec. 17, cl. (2) is directed against the ring-leaders, i.e., the persons who actually control or direct the activities of the association or who organize or help to organize any of its meetings. The word "management" conveys the idea of conduct and direction of an institution and a person cannot assist in the management of an association who has no hand in the conduct or direction of its affairs, though as an employee of that association he may carry out the orders of his managing bodies. 7 Lah. 340=96 I.C. 257=1926 Lah. 307.

3. [*Tampering with public servants.*] Repealed by Criminal Law Amendment Act, 1935, S. 2.

4. [*Boycotting a public servant.*] Repealed by Criminal Law Amendment Act, 1935, S. 2.

5. (1) Whoever publishes, circulates or repeats in public any passage from a newspaper, book or other document copies whereof have been declared to be forfeited to His Majesty under any law for the time being in force, Dissemination of contents of prescribed documents. shall be punished with imprisonment for a term which may extend to six months or with fine or with both.

(2) No Court shall take cognizance of an offence punishable under this section unless the Provincial Government has certified that the passage published, circulated or repeated contains, in the opinion of the Provincial Government, seditious or other matter of the nature referred to in sub-section (1) of section 99-A of the Code of Criminal Procedure, 1898, or sub-section (1) of section 4 of the Indian Press (Emergency Powers) Act, 1931.

6. [*Dissemination of false rumours.*] Repealed by Criminal Law Amendment Act, 1935, S. 2.

Molesting a person to prejudice of employment or business.

7. (1) Whoever—

(a) with intent to cause any person to abstain from doing or to do any act which such person has a right to do or to abstain from doing, obstructs or uses violence to or intimidates such person or any member of his family or person in his employ, or loiters at or near a place where such person or member or employed person resides or works or carries on business or happens to be, or persistently follows him from place to place, or interferes with any property owned or used by him or deprives him of or hinders him in the use thereof, or

(b) loiters or does any similar act at or near the place where a person carries on business, in such a way and with intent that any person may thereby be deterred from entering or approaching or dealing at such place, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Explanation.—Encouragement of indigenous industries or advocacy of temperance, without the commission of any of the acts prohibited by this section is not an offence under this section.

(2) No Court shall take cognizance of an offence punishable under this section except upon a report in writing of facts which constitute such offence

SEC. 7.—The Criminal Law Amendment Act of 1932 has not been repealed in its entirety by the Repealing and Amending Act XX of 1937. The effect of sec. 4 of the latter Act and sec. 6-A of the General Clauses Act (XIX of 1936) is to leave the Criminal Law Amendment Act of 1932 intact so far as sec. 7 is concerned. I.L.R. (1939) Mad. 87=A.I.R. 1939 Mad. 21=(1938) 2 M.L.J. 863. Abetment of offence under sec. 7 not punishable. (1938) 2 M.L.J. 863. There is no justification for the contention that the offence contemplated by sec. 7 (1) (a) of the Criminal Law Amendment Act of 1932 should go unpunished when it is committed in respect of a public official. (1938) 2 M.L.J. 863. This section is not in conflict with Trade Unions Act. Apart from immunity from criminal conspiracy, the T. U. Act does not allow immunity from any criminal offence. 31 N.L.B. 318=157 I.C. 618=1935 Nag. 149. This section can be applied even in cases of pic-

keting in the course of trade disputes. (*Ibid.*) But where the offence is committed in the course of a *bona fide* trade dispute for the first time, the sentence need not be severe. (*Ibid.*)

SEC. 7 (1) (b): SCOPE AND INTENTION.—“LOITERING”.—A procession through a locality with halts at times for the purpose of distributing handbills does not amount to loitering, so as to amount to an offence under sec. 7 (1) (b). A petrol passing and repassing a certain street or a certain shop at intervals may amount to loitering but a procession cannot. Loitering, to be an offence, must be done with the intention of deterring any person from entering or approaching or dealing at the particular place near which the loitering occurs. 158 I.C. 1008=1935 Nag. 19. See also 56 L.W. 222=1943 Mad. 572=(1943) 1 M.L.J. 315. (As to jurisdiction to try offences and the necessity for a report of facts constituting a particular offence).

made by a police officer not below the rank of officer in charge of a police station.

8. [Power to order parent or guardian to pay fine imposed on young person.] Repealed by Criminal Law Amendment Act, 1935, S. 2.

Procedure in offences under the Act.

9. Notwithstanding anything contained in the Code of Criminal Procedure, 1898,—

(i) no Court inferior to that of a Presidency Magistrate or Magistrate of the first class shall try any offence under this Act;

(ii) an offence punishable under section [5, or 7]¹ shall be cognizable by the police;

(iii) an offence punishable under section 4 shall be an offence in which a warrant shall ordinarily issue in the first instance; and

(iv) an offence punishable under section 7 shall be non-bailable.

10. (1) The Provincial Government may, by notification in the Official Gazette, declare that any offence punishable under

Power of Provincial Government to make certain offences cognizable and non-bailable.

sections 186, 188, 189, 190, 228, 295-A, 298, 505, 506 or 507 of the I. P. Code, when committed in any area specified in the notification shall, notwithstanding anything contained in the Code of Criminal Pro-

cedure, 1898, be cognizable, and thereupon, the Code of Criminal Procedure, 1898, shall, while such notification remains in force, be deemed to be amended accordingly.

(2) The Provincial Government may, in like manner and subject to the like conditions, and with the like effect, declare that an offence punishable under section 188 or section 506 of the Indian Penal Code shall be non-bailable.

Amendment of S. 16, Act XIV of 1908.

11. [Rep. by Act I of 1938.]

Amendment of S. 17, Act XIV of 1908.

12. [Rep. by Act I of 1938.]

Insertion of new Ss. 17-A, 17-B, 17-C, 17-D, 17-E and 17-F in Act XIV of 1908.

13. [Rep. by Act I of 1938.]

Amendment of title and preamble of Act XXIII of 1931.

14. [Rep. by Act I of 1938.]

15. [Amendment of S. 1, Act XXIII of 1931.] [Rep. by Criminal Law Amendment Act, 1935, S. 2.]

Amendment of S. 4, Act XXIII of 1931.

16. [Rep. by Act I of 1938.]

17. [Cessation of effect of section 62, Ordinance X of 1932.] [Repealed by Criminal Law Amendment Act, 1935, S. 2.]

18. Anything done or any proceedings commenced in pursuance of the provisions of Chapter VI of the Special Powers Ordinance, 1932, shall, upon the commencement of this Act, be deemed to have been done or to have been commenced in pursuance of the corresponding provisions of the Indian Criminal Law Amendment Act, 1908, as amended by this Act, and shall have effect as if this Act was already in force when such thing was done or such proceedings were commenced.

19. Anything done or any proceedings commenced in pursuance of the provisions of the Indian Press (Emergency Powers) Act, 1931, as amended by section 77 of the Special Powers Ordinance, 1932, shall, upon the commencement of this Act, be deemed to have been done or to have been commenced in pursuance of the corres-

LEG. REF.

¹ The figures "2", "3" & "6" were repealed

ed by Criminal Law Amendment Act, 1935, sec. 5.

pending provisions of the Indian Press (Emergency Powers) Act, 1931, as amended by this Act, and shall have effect as if this Act was already in force when such thing was done or such proceedings were commenced.

20. [Trial of and completion of trials of offences against ordinance X of 1932.] [Repealed by Criminal Law Amendment Act, 1935, S. 2.]

THE CRIMINAL LAW AMENDMENT ACT (XX OF 1938).

[14th September, 1938.]

An Act to amend the criminal law.

WHEREAS it is expedient to supplement the criminal law by providing for the punishment of certain acts prejudicial to the recruitment of persons to serve in, and to the discipline of, His Majesty's Forces; It is hereby enacted as follows:—

Short title, extent and commencement. 1. (1) This Act may be called THE CRIMINAL LAW AMENDMENT ACT, 1938.

(2) It extends to the whole of British India.

(3) It shall come into force in a Province on such date as the Provincial Government may, by notification in the Official Gazette, appoint in this behalf for such Province.

Dissuasion from enlistment and instigation to mutiny or insubordination after enlistment.

2. Whoever—

(a) With intent to affect adversely the recruitment of persons to serve in the Military, Naval or Air forces of His Majesty, wilfully dissuades or attempts to dissuade the public or any person from entering any such Forces, or

(b) without dissuading or attempting to dissuade any person from entering such Forces, instigates the public or any person to do, after entering any such Force, anything which is an offence punishable as mutiny or insubordination under section 27 of the Indian Army Act, 1911, or sections 10 to 12 and 14 to 17 inclusive of the Naval Discipline Act as applied to the Indian Navy (Discipline) Act, 1934, or sections 35 to 37 inclusive of the Indian Air Force Act, 1932, as the case may be, shall be punishable with imprisonment for a term which may extend to one year, or fine, or with both.

No person shall be prosecuted for any offence under this Act except with the previous sanction of the Provincial Government.

Exception 1.—The provisions of clause (a) of this section do not extend to comments on or criticism of the policy of Government in connection with the Military, Naval or Air Forces, made in good faith without any intention of dissuading from enlistment.

Exception 2.—The provisions of clause (a) of this section do not extend to the case in which advice is given in good faith for the benefit of the individual to whom it is given, or for the benefit of any member of his family or of any of his dependants.

SEC. 20: OFFENCE UNDER SEC. 17 OF ORDINANCE X OF 1932.—The ordinary rule which makes it impossible to convict a person under a section of an Ordinance of a temporary Act which has expired, prevails as regards sections not specified in sec. 20, Criminal Law

Amendment Act. A person cannot therefore be charged under sec. 17 of Ordinance X of 1932 read with sec. 21 of Ordinance II of 1932 after the expiry of the Ordinances. 145 I.C. 683=1933 A.L.J. 875=1932 A. 669 (F. B.). See also 1931 B. 129.

THE CRIMINAL TRIBES ACT (VI OF 1924).¹

Year.	No.	Short title.	Repealed or otherwise how affected by Legislation.
1924	VI	The Criminal Tribes Act, 1924.	Am. Act XXXIII of 1925; Mad. Act XXIX of 1943. Rep. in part XII of 1927; and A. O. 1937.

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[15th March, 1924.]

An Act to consolidate the law relating to Criminal Tribes.

WHEREAS it is expedient to consolidate the law relating to criminal tribes; It is hereby enacted as follows:—

Preliminary.

Short title and extent.

1. (1) This Act may be called THE CRIMINAL TRIBES ACT, 1924.
- (2) It extends to the whole of British India.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

- (1) "district" includes a Presidency-town² [* * *];
- (2) "District Magistrate" means, in the case of a Presidency-town³ [* * *] the Commissioner of Police;
- (3) "prescribed" means prescribed by rules made under this Act; and
- (4) "Superintendent of Police" means, in the case of a Presidency-town

LEG. REF.

¹ For Statement of Objects and Reasons, see *Gazette of India*, 1924, Pt. V, p. 7.

² The words "and the town of Rangoon"

omitted by A.O., 1937.

³ The words "or the town of Bangoon" omitted by *Ibid*.

¹[* *], any officer appointed by the Provincial Government to perform the duties of a Superintendent of Police under this Act.

Notification of Criminal Tribes.

3. If the Provincial Government has reason to believe that any tribe, gang or class, of persons, or any part of a tribe, gang, or class, is addicted to the systematic commission of non-bailable offences, it may, by notification in the Official Gazette, declare that such tribe, gang or class or, as the case may be, that such part of the tribe, gang or class is a criminal tribe for the purposes of this Act.

Registration of Members of Criminal Tribes.

4. The Provincial Government may direct the District Magistrate to make or to cause to be made a register of the numbers of any criminal tribe, or part of a criminal tribe, within his district.

5. Upon receiving such direction, the District Magistrate shall publish notice in the prescribed manner at the place where the register is to be made and at such other places as he may think fit, calling upon all the members of the criminal tribe or part, as the case may be,—

(a) to appear at a time and place therein specified before a person appointed by him in this behalf;

(b) to give to that person such information as may be necessary to enable him to make the register; and

(c) to allow their finger-impressions to be recorded:

Provided that the District Magistrate may exempt any member from registration and may cancel any such exemption.

6. The register, when made, shall be placed in the keeping of the Superintendent of Police, who shall, from time to time, report to the District Magistrate any alterations which ought in his opinion to be made therein, either by way of addition or erasure.

7. (1) After the register has been placed in the keeping of the Superintendent of Police, no person's name shall be added to the register, and no registration shall be cancelled, except by, or under an order in writing of, the District Magistrate.

(2) Before the name of any person is added to the register under this section, the Magistrate shall give notice in the prescribed manner to the person concerned—

(a) to appear before him or an authority appointed by him in this behalf at a time and place therein specified;

(b) to give to him or such authority such information as may be necessary to enable the entry to be made; and

(c) to allow his finger-impressions to be recorded.

8. Any person deeming himself aggrieved by any entry made, or proposed

LEG. REF.

¹The words "or the town of Rangoon" omitted by A.O., 1937.

SEC. 3.—Member of a tribe notified under sec. 3 is liable to enhanced sentence after the notification, provided he has had previous conviction. 38 I.C. 143=14 A.L.J. 687.

SEC. 5.—The District Magistrate in granting or refusing an application to take the name of a person out of the register kept under sec. 5 acts in administrative capacity and the High Court therefore is not entitled

to interfere with any order made by the Magistrate in this respect. 57 I.C. 101=24 C.W.N. 624. See also 13 Pat.L.T. 119=1932 Pat. 155.

SEC. 8.—The Deputy Commissioner of Police in refusing to direct the removal of the names of certain persons from a register maintained under the Act acts as an executive officer and does not perform a judicial function and the High Court has no authority to interfere with his refusal. 13 Pat. L.T. 119=1932 Pat. 155. (47 C. 488, Foll.). See also 57 I.C. 101=24 C.W.N. 624.

Complaints of entries in register.

to be made, in such register, either when the register is first made or subsequently, may complain to the District Magistrate against such entry, and the Magistrate shall retain such person's name on the register, or enter it therein or erase it therefrom, as he may think fit.

9. The District Magistrate or any officer empowered by him in this behalf

Power to take finger impressions at any time. registered member of a criminal tribe to be taken.

10. ¹[(1)] The Provincial Government may, by notification in the Official Gazette, issue in respect of any criminal tribe either or both of the following directions, namely, that every registered member thereof shall, in the prescribed manner,

(a) report himself at fixed intervals;

(b) notify his place of residence and any change or intended change of residence, and any absence or intended absence from his residence.

²[(2)] Where a registered member of a criminal tribe in respect of which the Provincial Government has issued a notification under sub-section (1) changes his place of residence to a district other than that in which he has been registered (whether in the same Province or not), or is for the time being in a district of a province other than that by the Provincial Government of which the said notification was issued, the provisions of this Act and of the rules made thereunder shall apply to him as if in pursuance of a direction made under section 4 he had been registered in that district; and where that district is in a province other than that by the Provincial Government of which the notifications under section 3 and sub-section (1), of this section were issued in respect of such criminal tribe, as if the said notifications had been issued by the Provincial Government of such other province.

(3) Where any such registered member changes his place of residence to a district other than that in which he has been registered (whether in the same province or not), the relevant entry in the register shall be transferred to the Superintendent of Police of that district.]

Restriction of Movements of Criminal Tribes.

Power to restrict movements of, or settle, criminal tribes.

11. (1) If the Provincial Government considers that it is expedient that any criminal tribe, or any part or member of a criminal tribe, should be—

(a) restricted in its or his movements to any specified area, or

(b) settled in any place of residence, the Provincial Government may, by notification in the Official Gazette, declare that such criminal tribe, part or

LEG. REF.

¹Sec. 10 was renumbered as 10 (1) by sec. 2 of the Criminal Tribes (Amendment) Act (XXXIII of 1925).

²Sub-secs. (2) & (3) were added by *ibid*.

SEC. 10.—Registered member of criminal tribe need not notify all temporary changes of residence, as for one or two days, 16 A.L. J. 510. Registered person should not absent himself from his village without permission. Such absence is an offence under the Act, 9 Cr.L.J. 1=20 P.L.R. 1908 (Cr.); 3 Cr.L.J. 77 =166 P.L.R. 1905.

The effect of sec. 10 (2) of the Act is that where a member of a criminal tribe goes from one district of one Province to another district of another Province, the provisions of the Act and rules apply to him in the new district of the new province as if he had been registered in pursuance of a direction,

made under sec. 4 of the Local Government of the new Province, and the notifications issued affecting him, issued by the Government of the Province he has left, are deemed to have been issued under sec. 3 and sec. 10 (1) of the Act by the Local Government of the new Province to which he has gone. Before such a person can be convicted of the offence of failure to give daily *hazuri*, it must be proved that the notification issued by the Local Government of his old Province under sec. 10 (1) required him to give daily *hazuri*. If that is not proved, he cannot be convicted of the offence under sec. 22 (2) (a) of the Act even if he pleads guilty. His plea of guilty should not be accepted in such a case, and the plea will not render the conviction legal. I.L.R. (1941) Kar. 551=199 I.C. 126=43 Cr.L.J. 476=A.I.R. 1942 Sind 51.

member, as the case may be, shall be restricted in its or his movements to the area specified in the notification, or shall be settled in the place of residence so specified, as the case may be.

(2) Before making any such declaration, the Provincial Government shall consider the following matters, namely:—

(i) the nature and the circumstances of the offences in which the members of the criminal tribe or part or the individual member, as the case may be, are or is believed to have been concerned;

(ii) whether the criminal tribe, part or member follows any lawful occupation, and whether such occupation is a real occupation or merely a pretence for the purpose of facilitating the commission of crimes;

(iii) the suitability of the restriction area, or of the place of residence, as the case may be, which it is proposed to specify in the notification; and

(iv) The manner in which it is proposed that the persons to be restricted or settled shall earn their living within the restriction area or in the place of residence, and the adequacy of the arrangements which are proposed therefor.

12. The Provincial Government may by a like notification vary the terms of any notification issued by it under section 11 for the purpose of specifying another restriction area or another place of residence, as the case may be, and

Power to vary specified area or place of residence.

any officer empowered in this behalf by the Provincial Government may, by order in writing, vary any notification made under section 11 or under this section for the purpose of specifying another restriction area, or, as the case may be, another place of residence in the same district.

13. Any notification made by the Provincial Government under section 11 or section 12 may specify, as the restriction area or as the place of residence, an area or place situated in any other province, provided that the consent of the Provincial Government of that province shall first have been obtained.

Power of Provincial Government to restrict or settle criminal tribe in another province.

14. Every registered member of a criminal tribe, whose movements have been restricted or who has been settled in a place of residence in pursuance of any notification under section 11 or section 12, shall attend at such place and at such time and before such person as may be prescribed in this behalf.

Verification of presence of members of tribe within prescribed area or place of residence.

15. (1) Where, in pursuance of any such notification, any member of a criminal tribe is restricted in his movements to an area, or is settled in a place of residence, situated in a province other than that by the Provincial Government of which the notification under section 3 relating to the criminal tribe was issued, all

Application of Act when criminal tribe is transferred from one province or district to another.

the provisions of this Act and the rules made thereunder shall apply to him as if the notification under section 3 had been issued by the Provincial Government of such other province.

(2) If any criminal tribe, or any part of a criminal tribe, which has been registered under section 4 in any district, or any member of such tribe or part, is restricted in its or his movements to an area, or is settled in a place of residence, situated in another district (whether in the same province or not), the register or, as the case may be, the relevant entries or entry therein shall be transferred to the Superintendent of Police of the last mentioned district, and all the provisions of this Act and the rules made thereunder shall apply as if the criminal tribe or part had been registered in that district, and the District Magistrate of that district shall have power to cancel any exemption granted under section 5.

Settlements and Schools.

16. The Provincial Government may establish industrial, agricultural or

Power to place tribe in settlement. reformatory settlements and may order to be placed in any such settlement any criminal tribe, or any part or member of a criminal tribe, in respect of which or of whom a notification has been issued under section 11:

Provided that no such order shall be made unless the necessity for making it has been established to the satisfaction of the Provincial Government, after an inquiry held by such authority and in such manner as may be prescribed.

17. (1) The Provincial Government may establish industrial, agricultural or reformatory schools for children, and may order to be separated and removed from their parents or guardians and to be placed in any such school or schools the children of members of any criminal tribe or part of a criminal tribe, in respect of which a notification has been issued under section 11.

Power to place children in schools and to apprentice them.

(2) For every school established under sub-section (1), a Superintendent shall be appointed by the Provincial Government.

(3) The provisions of sections 18 to 22 of the Reformatory Schools Act, 1897, shall, so far as may be, apply in the case of every school for children established under this section as if the Superintendent of such school were a Superintendent and the children placed in such school were youthful offenders within the meaning of that Act.

(4) For the purposes of this section the term "children" includes all persons under the age of eighteen and above the age of six years.

(5) The decision of the District Magistrate as to the age of any person for the purposes of this section shall be final.

18. The Provincial Government or any officer authorised by it in this behalf may at any time, by general or special order, direct any person who may be in any industrial, agricultural or reformatory settlement or school in the province,—

(a) to be discharged, or

(b) to be transferred to some other settlement or school in the province.

19. Any order made under section 16, section 17 or section 18 may specify as the settlement or school in which any person is to be placed or to which he is to be transferred, as the case may be, any industrial, agricultural or reformatory settlement or school in any other province, provided that the consent of the Provincial Government of that province shall first have been obtained.

Power to direct use of any settlement or school in British India for reception of persons.

Rules.

20. (1) The Provincial Government may make Rules to carry out the purposes and objects of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for or regulate—

(a) the form and contents of the register referred to in section 4;

(b) the manner in which the notice referred to in section 5 shall be published and the means by which the persons whom it concerns, and the village-headmen, village-watchmen and landowners and occupiers of the village in which such persons reside, and the agents of such landowners or occupiers, shall be informed of its publication;

(c) the addition of names to the register and the erasure of names there-

SECS. 20 AND 22.—The failure of a registered member of a criminal tribe to send his children to a specified school as directed by the manager of a settlement does not amount

to a contravention of any rule made under sec. 20 and is not an offence punishable under sec. 22. 56 L.W. 404—1943 Mad. 649—(1943) 2 M.L.J. 175.

in, and the mode in which the notice referred to in sub-section (2) of section 7 shall be given;

(d) the manner in which persons mentioned in section 10 shall report themselves, or notify their residence or any change or intended change of residence, or any absence or intended absence;

(e) the nature of the restrictions to be observed by persons whose movements have been restricted by notifications under section 11 or section 12;

(f) the circumstances in which members of a criminal tribe shall be required to possess and produce for inspection certificates of identity, and the manner in which such certificates shall be granted;

(g) the conditions as to holding passes under which persons may be permitted to leave the place in which they are settled or confined, or the area to which their movements are restricted;

(h) the conditions to be inserted in any such pass in regard to—

(i) the places where the holder of the pass may go or reside;

(ii) the persons before whom, from time to time, he shall be bound to present himself; and

(iii) the time during which he may absent himself;

(i) the place and time at which, and the persons before whom, members of a criminal tribe shall attend in accordance with the provisions of section 14;

(j) the authority by whom and the manner in which the inquiry referred to in section 16 shall be held;

(k) the inspection of the residences and villages of any criminal tribe;

(l) the terms upon which registered members of criminal tribes may be discharged from the operation of this Act;

(m) the management, control and supervision of industrial, agricultural or reformatory settlements and schools;

(n) the works on which, and the hours during which, persons placed in an industrial, agricultural or reformatory settlement shall be employed, the rate at which they shall be paid, and the disposal, for the benefit of such persons, of the surplus proceeds of their labour; and

(o) the discipline to which persons endeavouring to escape from any industrial, agricultural or reformatory settlement or school or otherwise offending against the rules for the time being in force, shall be subject, the periodical visitation of such settlement or school and the removal from it of such persons as it shall seem expedient to remove.

Penalties and Procedure.

Penalties for failure to comply with terms of notice under section 5 or section 7.

21. Whoever, being a member of a criminal tribe, without lawful excuse, the burden of proving which shall lie upon him,—

(a) fails to appear in compliance with a notice issued under section 5 or section 7, or

(b) intentionally omits to furnish any information required under either of those sections, or

(c) when required to furnish information under either of those sections, furnishes as true any information which he knows or has reason to believe to be false, or

(d) refuses to allow his finger-impressions to be taken by any person acting under an order passed under section 9, may be arrested without warrant, and shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

22. (1) Whoever, being a registered member of a criminal tribe, contra-

SRC. 22: CHARGE—FRAMING OF—NECESSITY OF.—Accused was convicted under this Act without framing any charge and without being given an opportunity for cross-examining the prosecution witnesses and

without any evidence that he was a registered member of Criminal Tribe. *Held*, that the accused was prejudiced and his trial was bad in law, 32 I.O. 662=17 Cr.L.J. 70 (All.) A charge can be framed against an accused

Penalties for breach of rules. venes a rule made under clause (e), clause (g) or clause (h) of section 20 shall be punishable with imprisonment for a term which may extend,—

prosecuted under this Act on his mere statement before a Magistrate if it shows that he has no real defence and he can be convicted under sec. 22 if not under sec. 24. (*Ibid.*)

CHANGE OF RESIDENCE—OMISSION TO REPORT—PREVIOUS CONVICTION.—The previous convictions referred to in sec. 22 are convictions for breach of rules made under the Act and hence prior convictions for offences under the Penal Code cannot affect the question of punishment under that Act. 203 I.C. 499=1942 O.A. 565=1942 O.W.N. 682=18 Luck. 617. *See also* (1943) 2 M.L.J. 175 cited under sec. 20 *supra*. If a member of a criminal tribe notified under sec. 10 fails to report himself and to give information of his residence or intended change of residence he is liable to conviction under sec. 22 (2). If he has been previously convicted he is liable to conviction under sec. 22 (2) (b). 56 I.C. 226; 21 Cr.L.J. 434 (All.). *See also* I.L.R. (1941) Kar. 551=1942 Sind 51; (1943) 2 M.L.J. 175. A registered member leaving his village after reporting about his departure to the chaukidar of his village and omitting to report about his arrival in the village of his destination commits an offence, which is punishable with the maximum sentence of six months' imprisonment and is triable summarily by a Magistrate 50 A. 718=1928 A. 719. A clear distinction is drawn in the Criminal Tribes Act and in the rules framed under the Act between 'residence' and 'place of residence'. The word 'residence' means the place where an individual eats, drinks and sleeps or where his family or his servants eat, drink or sleep. An accused who is a registered member under this Act can be convicted under sec. 22 on the mere proof of his absence from his house in the night without having reported in accordance with rules framed under the Act, without further proof of his absence from his place of residence, that is, the district within which by law he is confined. 1934 A. L.J. 843=151 I.C. 359 (2)=1934 A. 767.

CONVICTION UNDER—SOLITARY CONFINEMENT IF CAN BE ORDERED.—A person having been convicted under this Act the Court cannot order a portion of the punishment to be solitary confinement as sec. 73, I. P. Code, allows it only in cases of convictions under the Penal Code. 21 A.L.J. 914=46 All. 114.

SEC. 23: SCOPE OF SECTION.—The section does not lay down any substantive offence and all that it provides is minimum sentences in certain contingencies unless there are special reasons to the contrary. 116 I.C. 750=26 A.L.J. 653=1928 All. 551. It is enough for the purposes of the section, if the convict has been previously convicted whether before or after his registration as criminal. 53 I.C. 612=20 Cr.L.J. 772 (All.). Notification of the tribe as criminal at the time of the previous conviction not necessary. 17 Cr.L.J. 392=35 I.C. 824. Sec. 23 (1) of the Act relates to the time of conviction and not

to the time of the occurrence which is the subject-matter of the case which ends in his conviction. 51 L.W. 484=1940 Mad. 298=(1940) 1 M.L.J. 775. *See also* A.I.R. 1936 Sind 91. Evidence of conviction before passing of the Act is admissible. *See* 14 A.L.J. 687=17 Cr.L.J. 463=56 I.C. 143.

APPLICABILITY OF THE SECTION.—Sec. 23 refers only to convictions for offences specified in Sch. I of the Act and has no application to a conviction for an offence which is not contained in that Schedule. Sec. 23 (1) of the Act has in mind not only the previous convictions of the accused but also the offence for which he is being tried. 1938 O.W.N. 1053=A.I.R. 1939 Oudh 16=39 Cr. L.J. 1002. Sec. 23 is not applicable to the case of a person convicted under sec. 451, I. P. Code, who has been previously convicted of an offence under sec. 380, I. P. Code. Neither sec. 380 nor sec. 451, I. P. Code, is an offence mentioned in Sch. I of the Criminal Tribes Act. In such a case no enhanced sentence is called for as required by sec. 23. A.I.R. 1940 Pat. 14=40 Cr.L.J. 833 (2)=20 Pat.L.T. 879. The section refers only to conviction for offences specified in Sch. I, and sec. 454, I. P. Code, not being one of them a person convicted under sec. 457, I. P. Code, and again under sec. 454 can only be dealt with as an old offender but not under this Act. 146 I.C. 189=1932 A.L.J. 1070=1933 All. 115. So also a person previously convicted under sec. 411, I. P. Code. 40 P.L.R. 54.

SECOND AND THIRD CONVICTION.—The second conviction as under sec. 23 (1) (a) need not be second conviction under the Act, nor should it be second in fact. Taking all convictions prior to the Act as one by virtue of the proviso, the first after the Act is the second and the second after the Act is the third. 45 B. 1082=60 I.C. 1005=23 B. L.R. 347. *See also* 86 I.C. 715=26 Cr.L.J. 859=1925 Mad. 466; 40 M. 923=32 M.L.J. 212=33 I.C. 629; 17 Cr.L.J. 392=35 I.C. 824. This section does not require that the two previous convictions should have been convictions under this section. It only requires that the member of a criminal tribe should have been previously convicted of any of the offences in the Penal Code specified in Sch. I and should again be convicted of the same or of any other such offence. 116 I.C. 750=26 A.L.J. 727=1928 A. 551. (In this case though the section was applicable and the accused could be punished with transportation for life, a sentence of 7 years' rigorous imprisonment was considered sufficient as the subject-matter of the last offence was only a bundle of paddy). What sec. 23 (1) (b) means is that both the second and third convictions should be after the tribe to which the accused belongs had been declared a criminal tribe or after the accused is registered a member of the criminal tribe. 50 M. 474=1926 M. 1165=51 M.L.J.

- (a) on a first conviction, to one year,
- (b) on a second conviction, to two years, and
- (c) on any subsequent conviction, to three years,

or with fine which may extend to five hundred rupees, or with both.

(2) Whoever, being a registered member of a criminal tribe, contravenes any other rule made under section 20 shall be punishable,—

(a) on a first conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both; and

(b) on any subsequent conviction, with imprisonment for a term which may extend to one year, or with fine which may extend to five hundred rupees or with both.

(3) Any person who commits or is reasonably suspected of having committed an offence made punishable by this section which is not a cognizable offence as defined in the Code of Criminal Procedure, 1898, may be arrested without a warrant by any officer in charge of a police-station or by any police-officer not below the rank of a Sub-Inspector.

495. See also 86 I.C. 715=26 Cr.L.J. 859=1925 M. 466; 30 S.L.R. 100=164 I.C. 95=A.I.R. 1936 Sind 91. The three convictions required before the provisions of sec. 23 (1) (b) come into operation need not be convictions after the accused has become a member of a criminal tribe, and if the accused is convicted of scheduled offences before he has become a member of a criminal tribe, these must be counted against him. 30 S.L.R. 100=37 Cr.L.J. 948=A.I.R. 1936 Sind 91.

VIEW FAVOURABLE TO ACCUSED TO BE TAKEN.—Where accused's previous convictions were under secs. 457 and 380 or 441, I. P. Code, held, that the view most favourable to the accused should be taken and for purposes of enhanced punishment, the previous convictions should be assumed to be under sec. 441 and therefore sec. 23 (1) (b) did not apply. 105 I.C. 464=28 Cr.L.J. 944=1927 M. 973. Where the accused who had confessed his guilt had adhered to his confession throughout and had given material assistance to the police was convicted and sentenced to ten years' rigorous imprisonment, held, that the conduct of the accused after committing the offence afforded some extenuation and that it should be reduced to seven years' rigorous imprisonment. 146 I.C. 479=1933 Oudh 429.

GROUND FOR REDUCTION OF SENTENCE.—The circumstance that a long interval of time has passed between the last conviction and the commission of the present offence is a *special reason to the contrary* within the meaning of sec. 23 (1) of the Act for awarding a reduced sentence. 49 L.W. 457=1939 M.W.N. 314=(1939) 1 M.L.J. 617. Where there is an interval of about 5 years between the date when a member of a criminal tribe came out of prison after serving a sentence of 7 years' rigorous imprisonment, and the commission of the next offence for which he is being tried; that is a special reason to the contrary within the meaning of sec. 23 (1) of the Criminal Tribes Act for awarding a lesser sentence than transportation for life. 1941 M.W.N. 875=54 L.W. 562=

1942 Mad. 81; where the appellant, a member of a criminal tribe, had been out of jail for about 7 years after his last conviction, that may very well be considered to be a reason to the contrary under sec. 23 (1) of the Criminal Tribes Act. 1941 M.W.N. 876=43 Cr.L.J. 212=1942 Mad. 33. There is no reason for holding that the "*special reasons to the contrary*" in sec. 23 (1) must be something apart from the nature of the offence, such as youth, illness, age or sex. The fact that the offence is not of a very serious nature may form a "*special reason to the contrary*" within the meaning of sec. 23 (1) for reducing the sentence. The Court must in every case consider all the circumstances in determining whether there are special reasons for not inflicting the minimum sentence. That the previous conviction took place a long time ago, the nature of the offence of which the accused is convicted, and the seriousness of the previous offence, to be judged generally from the sentence imposed, are all circumstances which the Court must consider in determining whether there are "*special reasons*." I.L.R. (1939) Bom. 169=41 Bom.L.R. 284=A.I.R. 1939 Bom. 153. See also 26 A.L.J. 727=1928 All. 551. In considering either the enhancement or reduction of sentence the mere fact that an offence is not of a serious nature cannot form a special reason. It must be something apart from the nature of the offence such as youth, age, illness or sex and the interval of time which has lapsed between the accused person coming out of prison after serving the last sentence and the commission of the offence. 53 M. 80=57 M.L.J. 743=1929 M. 841; 50 M. 474=51 M.L.J. 495=1926 M. 1165. But see 116 I. C. 750=26 A.L.J. 727=1928 All. 551 in which the sentence was reduced as the subject-matter of the previous offence was only a bundle of paddy. Where a period of about eight years had lapsed between serving the last punishment and commission of offence, the punishment was reduced from transportation to seven years. 53 M. 80=57 M.L.J. 743=122 I.C. 655=1929 M. 841, See

23. (1) Whoever, being a member of any criminal tribe and having been convicted of any of the offences under the Indian Penal Code specified in Schedule I, is convicted of the same or of any other such offence, shall, in the absence of special reasons to the contrary which shall be stated in the judgment of the Court, be

Enhanced punishment for certain offences by members of criminal tribe after previous conviction.

punished,—

(a) on a second conviction, with imprisonment for a term of not less than seven years, and

(b) on a third or any subsequent conviction, with transportation for life:

Provided that not more than one of any such convictions which may have occurred before the first day of March, 1911, shall be taken into account for the purposes of this sub-section.

(2) Nothing in this section shall affect the liability of such person to any further or other punishment to which he may be liable under the Indian Penal Code or any other law.

Punishment for registered members of criminal tribe found under suspicious circumstances.

24. Whoever, being a registered member of any criminal tribe, is found in any place under such circumstances as to satisfy the Court,—

(a) that he was about to commit or aid in the commission of, theft or robbery, or

(b) that he was waiting for an opportunity to commit theft or robbery, shall be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine which may extend to one thousand rupees.

Arrest of registered person found beyond prescribed limits.

25. (1) Whoever, being a registered member of a criminal tribe,—

(a) is found in any part of British India, beyond the area or place of residence, if any, to which his movements have been restricted or in which he has been settled without the prescribed pass, or in a place or at a time not permitted by the conditions of his pass, or

(b) escapes from an industrial, agricultural or reformatory settlement or school, may be arrested without warrant by any police-officer, village-headman or village-watchman, and may be taken before a Magistrate, who, on proof of the facts, shall order him to be removed to such area or place or to such settlement or school, as the case may be, there to be dealt with in accordance with this Act or any rules made thereunder.

(2) The rules for the time being in force for the removal of prisoners shall apply to all persons removed under this section or under any other provision of this Act:

Provided that an order from the Provincial Government or from the Inspector-General of Prisons shall not be necessary for the removal of such persons.

also 1930 M.W.N. 1262 and 33 Bom.L.R. 338 = 131 I.C. 478 = 1931 Bom. 205.

SEC. 24.—See Notes under sec. 22, *supra*. See also 32 I.C. 662. Where all the evidence against the accused was that he was found near a pond and that he had a pair of scissors and a box of matches, *held*, that this did not in any way amount to an offence under sec. 24 (b), 1928 M. 479 = 54 M.L.J. 444.

SEC. 25.—The accused who was registered as a member of a criminal tribe and was kept in the Sholapore Settlement was sub-

sequently released on probation and allowed to leave the Settlement. During the period of probation the Criminal Tribes Settlement Officer ordered accused's probation to be cancelled for misconduct, and the accused was ordered to be returned to the Settlement. This order was communicated to the accused, but he refused to go to Sholapore and was arrested. *Held*, that the Settlement officer had power under R. 17 (1) (a) to pass the order and the accused was properly dealt with under sec. 25. 51 Bom. 409 = 29 Bom. L.R. 186 = 1927 Bom. 159,

Duties of village-headmen, village-watchmen and owners or occupiers of land to give information in certain cases.

26. (1) Every village-headman and village-watchman in a village in which any members of a criminal tribe reside, and every owner or occupier of land on which any such persons reside, and the agent of any such owner or occupier, shall forthwith communicate to the officer in charge of the nearest police-station any information which he may obtain of—

(a) the failure of any such person to appear and give information when required to do so by a notice issued under section 5; or

(b) the departure of any registered member of a criminal tribe from such village or from such land, as the case may be.

(2) Every village-headman and village-watchman in a village, and every owner or occupier of land and the agent of any such owner or occupier, shall forthwith communicate to the officer in charge of the nearest police-station any information which he may obtain of the arrival at such village or on such land, as the case may be, of any persons who may reasonably be suspected of being members of any criminal tribe.

27. Any village-headman, village-watchman, owner, or occupier of land, and the agent of any such owner or occupier, who fails to comply with the requirements of section 26, shall be deemed to have committed an offence punishable under the first part of section 176 of the Indian Penal Code.

28. The Provincial Government, if it is satisfied that adequate provision has been made by the law of any State in India for the restriction of the movements or the settlement in a place of residence of persons such as are referred to in section 3, and for securing the welfare of persons so restricted or settled, may, with the consent of the Prince or Chief of that State, direct the removal to that State of any criminal tribe, or part of a criminal tribe, for the time being in the province, and may authorise the taking of all measures necessary to effect such removal:

Provided that no person shall be so removed if the Provincial Government is satisfied that he is a subject of His Majesty.

Supplemental.

29. No Court shall question the validity of any notification issued under section 3, section 11 or section 12, on the ground that the provisions hereinbefore contained or any of them have not been complied with, or shall entertain in any form whatever the question whether they have been complied with; but every such notification shall be conclusive proof that it has been issued in accordance with law.

30. [Repeals.] *Repealed by the Repealing Act, 1927 (XII of 1927).*

SCHEDULE I.

(See section 23.)

CHAPTER XII.

SECTIONS.

- 331. Counterfeiting coin.
- 332. Counterfeiting Queen's coin.
- 333. Making or selling instrument for counterfeiting coin.

SECTION.

- 234. Making or selling instrument for counterfeiting Queen's coin.
- 235. Possession of instrument or material for the purpose of using the same for counterfeiting coin.

SEC. 26, CL. (2): DUTY OF OCCUPIER OF LAND.—Under sec. 26 (2) every occupier of land must communicate the arrival on his land of any member of a criminal tribe to the nearest police station, but a reasonable time must be allowed for the giving of such

information. 39 I.C. 984=18 Cr.L.J. 616.

SEC. 29.—The effect of sec. 29 is that no Court can enter into the question in any form whatsoever as to whether *in fact* the application of sec. 3 was justifiable. 13 Pat. L.T. 119=1932 Pat. 155.

SECTIONS.

239. Delivery of coin, possessed with the knowledge that it is counterfeit.

240. Delivery of Queen's coin possessed with the knowledge that it is counterfeit.

242. Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.

243. Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.

CHAPTER XVI.

299. Culpable homicide.

307. Attempt to murder.

308. Attempt to commit culpable homicide.

310. Being a thug.

322. Voluntarily causing grievous hurt.

324. Voluntarily causing hurt by dangerous weapons or means.

326. Voluntarily causing grievous hurt by dangerous weapons or means.

327. Voluntarily causing hurt to extort property or to constrain to an illegal act.

328. Causing hurt by means of poison, etc., with intent to commit an offence.

329. Voluntarily causing grievous hurt to extort property or to constrain to an illegal act.

332. Voluntarily causing hurt to deter public servant from his duty.

333. Voluntarily causing grievous hurt to deter public servant from his duty.

369. Kidnapping child under ten years with intent to steal from its person.

CHAPTER XVII.

382. Theft after preparation made for causing death, hurt or restraint, in order to

SECTIONS.

the committing of the theft.

383. Extortion.

385. Putting person in fear of injury in order to commit extortion.

386. Extortion by putting a person in fear of death or grievous hurt.

387. Putting person in fear of death or of grievous hurt in order to commit extortion.

390. Robbery.

391. Dacoity.

393. Attempt to commit robbery.

394. Voluntarily causing hurt in committing robbery.

397. Robbery or dacoity, with attempt to cause death or grievous hurt.

398. Attempt to commit robbery or dacoity when armed with deadly weapon.

399. Making preparation to commit dacoity.

402. Assembling for purpose of committing dacoity.

457. Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.

458. Lurking house-trespass or house-breaking by night after preparation for hurt, assault or wrongful restraint.

459. Grievous hurt caused whilst committing lurking house-trespass or house-breaking.

460. All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.

SCHEDULE II.

Repeated by the Repealing Act, 1927 (XII of 1927).

THE CRIMINAL TRIBES (MADRAS AMENDMENT) ACT (XXIX OF 1943).*

[23rd December, 1943.]

An Act further to amend the Criminal Tribes Act, 1924, in its application to the Province of Madras.

WHEREAS it is expedient further to amend the Criminal Tribes Act, 1924, in its application to the Province of Madras, for the purposes hereinafter appearing;

AND WHEREAS the Governor of Madras has, by a Proclamation under section 93 of the Government of India Act, 1935, assumed to himself all

LEG. REF.

The following Statement of the reasons which have moved His Excellency the Governor to enact the Criminal Tribes (Madras Amendment) Act, 1943, in exercise of the powers of the Provincial Legislature assumed by him under the Proclamation issued under sec. 93 of the Government of India Act, 1935, is published for general information:—

STATEMENT.—Experience in the working of the Criminal Tribes Act, 1924, has revealed the necessity for certain amendments to the Act. A Bill embodying the necessary

amendments was published for criticism. After considering the objections and suggestions received, His Excellency the Governor has enacted the Criminal Tribes (Madras Amendment) Act, 1943. The amendments liberalise the provisions of the main Act in certain respects. The principal changes made by the amending Act are briefly explained below.

The expression "notified tribe" has been substituted in the Act for "criminal tribe" as the latter expression was considered inappropriate when applied collectively to a large number of persons.

powers vested by or under the said Act in the Provincial Legislature;

NOW, THEREFORE, in exercise of the powers so assumed to himself, the Governor is pleased to enact as follows:—

Short title.

1. This Act may be called THE CRIMINAL TRIBES (MADRAS AMENDMENT) ACT, 1943.

2. In section 2 of the Criminal Tribes Act, 1924 (hereinafter referred to as the said Act), clauses (3) and (4) shall be renumbered as clauses (4) and (5) respectively, and the following shall be inserted as clause (3), namely:—

“(3) ‘notified tribe’ means any tribe, community, group or class of persons, or a part thereof, in respect of which a notification has been issued under section 3.”

Substitution of new heading and section for section 3, Act VI of 1924.

3. For section 3 of the said Act and the heading therto, the following heading and section shall be substituted, namely:—

“Application of Act.

3. If the Provincial Government have reason to believe that any tribe, community, group, or class of persons, or a substantial number of persons belonging thereto, is addicted to the commission of non-bailable offences, they may, by notification in the Official Gazette, declare that such tribe, community, group, or class or as the case may be, a part thereof, shall be subject to all or any of the

remaining provisions of this Act as specified in the notification:

LEG. REF.

NEW SEC. 3.—This enables the Government to issue a notification applying certain specified provisions of the main Act and not necessarily all its provisions, to a tribe, community, group or class of persons addicted to the commission of non-bailable offences. Such a notification can issue only after the members of the tribe, community, etc., have had an opportunity of showing cause against the action proposed.

SECS. 6 (iii) AND 7.—These sections provide that before any member of a notified tribe is registered under sec. 5 or 7 of the main Act an opportunity should be given to him to show cause against his registration. As a consequence sec. 8 of the main Act which enabled a person to make a complaint against his registration has become unnecessary and it has therefore been omitted. (Sec. 8.)

SEC. 10.—This gives the District Magistrate discretion to hold in abeyance any direction requiring a registered member of a notified tribe to report himself at fixed intervals. The object is to relax the control in respect of persons whose conduct justifies such consideration.

SEC. 15.—This enlarges the scope of sec. 17 of the main Act by enabling the Government to place the children removed from the baneful influence of their parents, in a certified school established under the Madras Children Act, 1920 or in an educational institution established or approved by the Government which need not be an industrial, agricultural or reformatory school.

Sec. 18 provides for the making of rules in regard to the following matters among others:—

(1) the periodical review of the cases of all members of notified tribes whose names have been entered in the registers prepared under the Act;

(2) the working of the “abeyance system”; and

(3) the periodical review of the cases of all persons who have been placed in a settlement under the Act.

SEC. 20.—Sec. 22 of the main Act provided for a higher punishment for a breach of any rule under clauses (e), (g) and (h) of sec. 20 (2) and a lower punishment for a breach of any other rule. New sec. 22 substituted by the amending Act removes this distinction and prescribes the lower punishment for a breach of any of the rules.

SEC. 21.—This provides that no conviction more than ten years old shall be taken into account for purposes of the enhanced punishment under sec. 23 of the main Act. A Magistrate of the First Class or a Presidency Magistrate is made competent to try a second offence if he could have tried the offence had it been the first offence. Such Magistrate is also empowered to try a third or subsequent offence committed in respect of property not exceeding fifty rupees in value if such offence could have been tried by him had it been the first offence. The maximum punishment in such cases has been reduced to imprisonment for two years.

NEW SEC. 23-A.—This section empowers the Government to place in a settlement a member of a notified tribe who is undergoing a sentence of imprisonment for an offence or any member of such tribe who is accused of an offence in lieu of prosecution therefor.

The other amendments made by the Act are formal or consequential.

Provided that before any such notification is issued, a reasonable opportunity shall be given to the tribe, community, group or class, or part thereof, which will be affected by the notification to show cause against its issue."

Amendment of the heading before section 4, Act VI of 1924.

4. In the heading before section 4 of the said Act, the words "*of Members of Criminal Tribes*" shall be omitted.

Amendment of section 4, Act VI of 1924.

5. In section 4 of the said Act, for the words "criminal tribe" in both the places where they occur, the words "notified tribe" shall be substituted.

Amendment of section 5, Act VI of 1924.

6. In section 5 of the said Act—

(i) in the opening paragraph, for the words "criminal tribe" the words "notified tribe" shall be substituted;

(ii) in the proviso, after the word "Provided" the word "further" shall be inserted;

(iii) before the proviso the following proviso shall be inserted, namely:—

"Provided that before registering any member in pursuance of this section, the District Magistrate shall give him a reasonable opportunity to show cause against such registration."

Amendment of section 7, Act VI of 1924.

7. To sub-section (2) of section 7 of the said Act, the following proviso shall be added, namely:—

"Provided that before adding the name of any person to such register, the Magistrate shall give him a reasonable opportunity to show cause against such addition."

Repeal of section 8, Act VI of 1924.

8. Section 8 of the said Act shall be omitted.

Amendment of section 9, Act VI of 1924.

9. In section 9 of the said Act, for the words "criminal tribe" the words "notified tribe" shall be substituted.

Amendment of section 10, Act VI of 1924.

10. In section 10 of the said Act—

(i) in sub-section (1), for the words "criminal tribe" the words "notified tribe" shall be substituted;

(ii) to the same sub-section, the following proviso shall be added, namely:—

"Provided that the District Magistrate may, in accordance with such rules as may be prescribed, hold in abeyance the direction issued under clause (a) in respect of any registered member";

(iii) in sub-section (2), for the words "criminal tribe" in both the places where they occur, the words "notified tribe" and for the words "has issued" the words "have issued" shall be substituted.

Amendment of heading before section 11, Act VI of 1924.

11. In the heading before section 11, the words "*of Criminal Tribes*" shall be omitted.

12. In section 11 of the said Act, for the word "considers" in the opening paragraph the word "consider" and for the words "criminal tribe" wherever they occur, the words "notified tribe" shall be substituted.

Amendment of section 11, Act VI of 1924.

Amendment of section 12, Act VI of 1924.

13. In section 12 of the said Act, for the words "issued by it" the words "issued by them" shall be substituted.

Amendment of sections 14, 15 and 16, Act VI of 1924.

14. In sections 14, 15 and 16 of the said Act, for the words "criminal tribe" wherever they occur, the words "notified tribe" shall be substituted.

Amendment of section 17, Act VI of 1924.

15. In section 17 of the said Act—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The Provincial Government may order that the children of members of any notified tribe or part of a notified tribe, or of any member of a notified tribe, in respect of which tribe, part, or member, a notification has been issued under section 11, shall be separated and removed from their parents or guardians and placed in—

(a) a certified school established under the Madras Children Act, 1920; or
(b) an industrial, agricultural or reformatory school or other educational institution for children established or approved by the Provincial Government”:

(ii) in sub-section (2), for the words, brackets and figure “school established under sub-section (1)” the words, brackets, figure and letter “school or educational institution established or approved under clause (b) of sub-section (1)” shall be substituted;

(iii) sub-sections (4) and (5) shall be renumbered as sub-sections (5) and (6) respectively, and for sub-section (3) the following sub-sections shall be substituted, namely:—

“(3) The provisions of the Madras Children Act, 1920, shall, so far as may be, apply to children sent to a certified school under sub-section (1) as if they were children, or as the case may be, youthful offenders, sent to such school under that Act.

(4) The provisions of sub-sections (1), (2) and (3) of section 33 of the Madras Children Act, 1920, shall, so far as may be, apply in the case of every school or other educational institution established or approved under clause (b) of sub-section (1) as if the Superintendent of such school or institution had all the powers of the managers of a certified school established under the Act aforesaid and the children placed in such school or institution were children, or as the case may be, youthful offenders sent to a certified school under that Act.”;

(iv) to sub-section (5) as so renumbered, the following proviso shall be added, namely:—

“Provided that children shall not be sent to a certified school under sub-section (1) unless they are under the age of sixteen years.”

Amendment of section 18,
Act VI of 1924.

16. In section 18 of the said Act—

(i) in the opening paragraph, for the words “authorised by it” the words “authorised by them” shall be substituted and after the words “reformatory settlement or school” the words and figures “or any certified school established under the Madras Children Act, 1920, or other educational institution” shall be inserted;

(ii) in clause (b), for the words “some other settlement or school” the words “any other such settlement, school or educational institution” shall be substituted.

Amendment of section 19,
Act VI of 1924.

17. In section 19 of the said Act—

(i) for the words “the settlement or school” the words “the settlement, school or educational institution” shall be substituted;

(ii) after the words “reformatory settlement or school” the words “or any certified school or other educational institution” shall be inserted.

Amendment of section 20,
Act VI of 1924.

18. In sub-section (2) of section 20 of the said Act—

(i) for the words “criminal tribe” and “criminal tribes” wherever they occur, the words “notified tribe” and “notified tribes” shall respectively be substituted;

(ii) after clause (c), the following clause shall be inserted, namely:—

“(cc) the periodical review of the cases of all persons whose names are entered in the register for ascertaining their suitability for exemption from registration.”;

(iii) after clause (d), the following clause shall be inserted, namely:—

“(dd) the circumstances in which, and the conditions, restrictions and limitations subject to which, any direction issued under clause (a) of sub-section (1) of section 10 may be held in abeyance;”;

(iv) in clause (m), after the words “settlements and schools” the words “and other educational institutions established or approved under this Act” shall be added;

(v) the word “and” at the end of clause (n) shall be omitted;

(vi) in clause (o), after the words “reformatory settlement or school” the words “or other educational institution established or approved under this Act” shall be inserted and for the words “such settlement or school” the words “such settlement, school or educational institution” shall be substituted;

(vii) after clause (o), the following clause shall be added, namely:—

“(p) the periodical review of the cases of all persons who have been placed in an industrial, agricultural or reformatory settlement, for ascertaining the desirability of removing or modifying the restrictions imposed on them.”

19. In section 21 of the said Act, for the words “criminal tribe” the words “notified tribe” shall be substituted.

Amendment of section 21,
Act VI of 1924.

20. In section 22 of the said Act, sub-section (3) shall be renumbered as sub-section (2) and for sub-sections (1) and (2), the following sub-section shall be substituted, namely:—

Amendment of section 22,
Act VI of 1924.

“22. (1) Whoever, being a registered member of a notified tribe, contravenes any rule made under section 20 shall be punishable—

(a) on a first conviction, with imprisonment for a term which may extend to six months or with fine which may extend to two hundred rupees or with both; and

(b) on any subsequent conviction, with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees or with both.”

Amendment of section 23,
Act VI of 1924.

21. In sub-section (1) of section 23 of the said Act—

(i) in the opening paragraph, for the words “criminal tribe” the words “notified tribe” shall be substituted;

(ii) for the proviso, the following provisos shall be substituted, namely:—
“Provided that no conviction which may have occurred more than ten years previously shall be taken into account for the purposes of this sub-section:

Provided further that notwithstanding anything contained in the Code of Criminal Procedure, 1898, a Presidency Magistrate or a Magistrate of the first class may try (i) a second offence if it could have been tried by him, had it been a first offence, and (ii) a third or subsequent offence if it is against property not exceeding fifty rupees in value and could have been tried by him, had it been a first offence; and the offender, if convicted by the Magistrate, shall be punished with imprisonment not exceeding two years.”

Insertion of new section
23-A in Act VI of 1924.

22. After section 23 of the said Act, the following section shall be inserted, namely:—

Power to place members
of notified tribes accused
or convicted of offences in
settlements.

“23-A. (1) The Provincial Government may direct that any member of a notified tribe who is accused of an offence shall, in lieu of prosecution therefor, be placed in a settlement established under section 16.

SECTIONS.

CHAPTER III.

OFFENCES AND PENALTIES.

10. Punishment for contravention of sec. 4.
11. Punishment for contravention of sec. 5.
12. Punishment for contravention of sec. 6.
13. Punishment for contravention of sec. 7.
14. Punishment for contravention of sec. 8.
15. Punishment for allowing premises to be used for commission of an offence.
16. Enhanced punishment for certain offences after previous conviction.
17. Enhanced punishment for offence under sec. 15 after previous conviction.
18. Security for abstaining from commission of certain offences.
19. Penalty for contravention of sec. 9.
20. Attempts.
21. Abetments.

CHAPTER IV.

PROCEDURE.

22. Power to issue warrants.
23. Power of entry, search, seizure and arrest without warrant.
24. Power of seizure and arrest in public places.
25. Mode of making searches and arrests.
26. Obligation on officers to assist each

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other.

27. Report of arrests and seizures.
28. Punishment for vexatious entry, search, seizure or arrest.
29. Disposal of persons arrested and of articles seized.
30. Power to invest Excise Officers with powers of an officer in charge of a police station.
31. Jurisdiction to try offences.
32. Presumption from possession of illicit articles.
33. Liability of illicit articles to confiscation.
34. Procedure in making confiscations.
35. Power to make rules, regulating disposal of confiscated articles and rewards.

CHAPTER V.

MISCELLANEOUS.

36. Provisions regarding rules.
 37. Recovery of sums due to Government.
 38. Application of the Sea Customs Act, 1878.
 39. Saving of local and special laws.
 40. Amendment of certain enactments.
 41. Savings of things already done.
- SCHEDULE I.—Form of bond to abstain from the commission of offences under the Dangerous Drugs Act, 1930.
- SCHEDULE II.—Amendments of local Acts.

[1st March, 1930.]

An Act to centralise and vest in the Governor-General in Council the control over certain operations relating to dangerous drugs and to increase and render uniform throughout British India the penalties for offences relating to such operations.

WHEREAS India participated in the second International Opium Conference, which was convoked in accordance with the resolution of the Assembly of the League of Nations dated the 27th day of September, 1923, met at Geneva on the 17th day of November, 1924, and on the 19th day of February, 1925, adopted the Convention relating to Dangerous Drugs (hereinafter referred to as the Geneva Convention):

AND WHEREAS India was a State signatory to the said Geneva Convention:

AND WHEREAS the Contracting Parties to the said Geneva Convention resolved to take further measures to suppress the contraband traffic in and abuse of Dangerous Drugs, especially those derived from opium, Indian hemp and coca leaf, such measures being more particularly set forth in the Articles of the said Geneva Convention;

AND WHEREAS for the effective carrying out of the said measures it is expedient that the control of certain operations relating to Dangerous Drugs should be centralised and vested in the Governor-General in Council;

AND WHEREAS it is also expedient that the penalties for certain offences relating to Dangerous Drugs should be increased, and that all penalties relating to certain operations should be rendered uniform throughout British India; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called THE DANGEROUS DRUGS ACT, 1930.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "coca leaf" means—

(i) the leaf and young twigs of any coca plant, that is, of the *Erythroxylon coca* (Lamk.) and the *Erythroxylon novogranatense* (Hiern.) and their varieties, and of any other species of this genus which the Central Government may, by notification in the Official Gazette, declare to be coca plants for the purposes of this Act; and

(ii) any mixture thereof, with or, without neutral materials; but does not include any preparation containing not more than 0.1 per cent. of cocaine.

(b) "coca derivative" means—

(i) crude cocaine, that is, any extract of coca leaf which can be used, directly or indirectly, for the manufacture of cocaine;

(ii) ecgonine, that is laevo-ecgonine having the chemical formula $C^9H^{15}NO^3H^3O$, and all the derivatives of laevo-ecgonine from which it can be recovered;

(iii) cocaine, that is, methyl-benzoyl-laevo-ecgonine having the chemical formula $C^{17}H^{21}NO^4$, and its salts;

(iv) all preparations, officinal and non-officinal, containing more than 0.1 per cent. of cocaine;

(c) "hemp" means—

(i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (*Cannabis sativa* L.) including all forms known as *bhanga*, *siddhi*, or *ganja*;

(ii) *charas*, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport; and

(iii) any mixture, with or without neutral materials, of any of the above forms of hemp or any drink prepared therefrom;

(d) "medicinal hemp" means any extract or tincture of hemp;

(e) "opium" means—

(i) the capsules of the poppy (*Papaver Somniferum* L.);

(ii) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and

SEC. 1: ACT, IF RETROSPECTIVE.—Where a conspiracy punishable under sec. 120-B, I.P. Code, and Opium Act is formed before Act of 1930 but continues to exist even subsequent to the coming into force of the Act and a prosecution is launched, reference to Act of 1930 can be made in the charge and sections of the Act can be applied. 62 C. 749—1935 Cr.C. 467—1935 Cal. 316.

TRIAL OF OFFENCE UNDER—DUTY TO AVOID DELAY.—In a case under the Dangerous Drugs Act, it is essential in the interest of justice that there should be as little delay as possible in the trial. 19 Pat.L.T. 845—1939 Pat. 172.

SEC. 2 (b) AND (g).—The expression "manufactured drug" is not exhaustively

defined in the Act. Sec. 2 (g) merely provides as to what "manufactured drug" includes. Among other things it includes all "coca derivatives" which expression is defined in sec. 2 (b). The expression "coca derivatives" also includes "crude cocaine." 155 I.C. 406—1934 All. 374.

SEC. 2 (c) (iii).—The Act does not say what percentage of *ganja* will make a mixture a dangerous drug within the meaning of sec. 2. So whatever may be the percentage in any mixture, it will be a dangerous drug, unless the case may be brought within the general maxim that the law takes no notice of trifles. $\frac{1}{2}$ per cent. *ganja* in a preparation was held to constitute it a dangerous drug. 1937 M.W.N. 174.

transport; and

(iii) any mixture, with or without neutral materials, of any of the above forms of opium; but does not include any preparation containing not more than 0.2 per cent. of morphine;

(f) "opium derivative" means—

(i) medicinal opium, that is, opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the British Pharmacopoeia, whether in powder form or granulated or otherwise or mixed with neutral materials;

(ii) prepared opium, that is, any product of opium obtained by any series of operations designed to transform opium into an extract suitable for smoking, and the dross or other residue remaining after opium is smoked;

(iii) morphine, that is, the principal alkaloid of opium having the chemical formula $C^{17}H^{16}NO^3$, and its salts;

(iv) diacetylmorphine, that is the alkaloid, also known as diamorphine or heroin, having the chemical formula $C^{21}H^{23}NO^5$, and salts; and

(v) all preparations, officinal and non-official, containing more than 0.2 per cent. of morphine, or containing any diacetylmorphine;

(g) "manufactured drug" includes—

(i) all coca-derivatives, medicinal hemp and opium derivatives; and

(ii) any other narcotic substance which the Central Government may, by notification in the Official Gazette, made in pursuance of a recommendation under Article 10 of the Geneva Convention, ¹[or in pursuance of any international convention supplementing the Geneva Convention], declare to be a manufactured drug;

but does not include any preparation which the Central Government may, by notification in the Official Gazette made in pursuance of a finding under Article 8 of the Geneva Convention, declare not to be a manufactured drug;

(h) "dangerous drug" includes coca leaf, hemp and opium and all manufactured drugs;

²[(i) "to import into British India" means to bring into British India by land, sea or air across any of the customs frontiers defined by the Central Government; ³(and includes the bringing into any port or place in British India of a dangerous drug intended to be taken out of British India without being removed from the ship or conveyance in which it is being carried);

(j) "to import inter-provincially" means to bring into a Province otherwise than across any of the said customs frontiers;

(k) "to export from British India" means to take out of British India by land, sea or air across any of the said customs frontiers;

(l) "to export inter-provincially" means to take out of a Province otherwise than across any of the said customs frontiers;

(ll) "British India" includes Berar; and]

(m) "to transport" means to take from one place to another in the same province, ⁴[*]

(n) ⁴[* * *]

3. The Central Government may make rules prescribing the method by

Calculation of percent- which percentages in the case of liquid preparations
ages in liquid preparations. shall be calculated for the purposes of clauses (a)

(b), (c) and (f) of section 2:

Provided that, unless and until such rules are made such percentages shall be calculated on the basis that a preparation containing one per cent. of a substance means a preparation in which one gramme of the substance, if a solid, or

LEG. REF.

³ Added by Act III of 1938.

¹ Inserted by Act XXVI of 1933.

² Cls. (i) to (ll) substituted by A.O., 1937.

⁴ Word 'and' in cl. (m) and cl. (n) omitted by A.O., 1937.

one millilitre of the substance, if a liquid, is contained in every one hundred millilitres of the preparation, and so in proportion for any greater or less percentage.

CHAPTER II.

PROHIBITION AND CONTROL.

Prohibition of certain operations.

4. ¹[(1)] No one shall—

- (a) cultivate any coca plant, or gather any portion of a coca plant,
- (b) manufacture or possess prepared opium, unless it is prepared from opium lawfully possessed for the consumption of the person so possessing it, or
- (c) import into British India, export from British India, tranship or sell prepared opium:

Provided that this section shall not apply to the cultivation of any coca plant or to the gathering of any portion thereof on behalf of ²[the Crown].

¹[(2) The Provincial Government may make rules restricting and regulating the manufacture and possession of prepared opium from opium which is lawfully possessed under clause (b) of sub-section (1)].

Control of Central Government over production and supply of opium.

5. (1) No one shall—

- (a) cultivate the poppy (*Papaver somniferum* L.) or
 - (b) manufacture opium,
- save in accordance with rules made under sub-section (2) and with the conditions of any licence for that purpose which he may be required to obtain under those rules.

(2) The Central Government may make rules permitting and regulating the cultivation of the poppy (*Papaver somniferum* L.), and the manufacture of opium, and such rules may prescribe the form and conditions of licences for such cultivation and manufacture, the authorities by which such licences may be granted, the fees that may be charged therefor, and any other matter requisite to render effective the control of the Central Government over such cultivation and manufacture.

(3) The Central Government may also make rules permitting and regulating the sale of opium from Government factories for export or to Provincial Governments or to manufacturing chemists.

6. (1) No one shall manufacture any manufactured drug, other than prepared opium, save in accordance with rules made under sub-section (2) and with the conditions of any licence for that purpose which he may be required to obtain under those rules.

Control of Central Government over manufacture of manufactured drugs.

(2) The Central Government may make rules permitting and regulating the manufacture of manufactured drugs, other than prepared opium, and such rules may prescribe the form and conditions of licences for such manufacture, the authorities by which such licences may be granted and the fees that may be charged therefor, and any other matter requisite to render effective the control of the Central Government over such manufacture.

(3) Nothing in this section shall apply to the manufacture of medicinal opium or of preparations containing morphine, diacetylmorphine or cocaine from materials which the maker is lawfully entitled to possess.

Control of Central Government over operations at land and sea frontiers.

7. (1) No one shall—

LEG. REF.

¹Sec. 4 of the Act has been numbered as sub-sec. (1) of sec. 4, and the new sub-sec. (2) has been newly added by Amending Act XXVI of 1933.

²Substituted for 'Government' by A.O., 1937.

SECS. 7 AND 20.—The accused was found travelling in a bus to Tranquebar carrying certain quantity of opium for delivery to a certain person in French Territory. He had to leave the bus at Tranquebar and make a journey of 6 or 7 miles. The accused hav-

- (a) import into British India,
- (b) export from British India, or
- (c) tranship

any dangerous drug, other than prepared opium, save in accordance with rules made under sub-section (2) and with the conditions of any licence for that purpose which he may be required to obtain under those rules.

(2) The Central Government may make rules permitting and regulating the import into and export from British India and the transshipment of dangerous drugs, other than prepared opium, and such rules may prescribe the ports or places at which any kind of dangerous drug may be imported, exported or transhipped, the form and conditions of licences for such import, export or transshipment, the authorities by which such licences may be granted, the fees that may be charged therefor, and any other matter requisite to render effective the control of the Central Government over such import, export and transshipment.

Control of Provincial
Government over internal
traffic in manufactured
drugs and coca leaf.

8. (1) No one shall—

(a) import or export inter-provincially, transport, possess or sell any manufactured drug, other than prepared opium, or coca leaf, or

(b) manufacture medicinal opium or any preparation containing morphine, diacetylmorphine or cocaine, save in accordance with rules made under sub-section (2) and with the conditions of any licence for that purpose which he may be required to obtain under those rules.

(2) The Provincial Government may ¹[* * * *] make rules permitting and regulating—

(a) the inter-provincial import and export into and from the territories under its administration, the transport, possession and sale of manufactured drugs, other than prepared opium, and of coca leaf; and

(b) the manufacture of medicinal opium or of any preparation containing morphine, diacetylmorphine or cocaine from materials which the maker is lawfully entitled to possess.

Such rules may prescribe the form and conditions of licences for such import, export, transport, possession, sale and manufacture, the authorities by which such licences may be granted and the fees that may be charged therefor, and any other matters requisite to render effective the control of the Provincial Government over such import, export, transport, possession, sale and manufacture.

(3) Save in so far as may be expressly provided in rules made under sub-section (2), nothing in this section shall apply to manufactured drugs which are the property and in the possession of Government:

Provided that such drugs shall not be sold or otherwise delivered to any person who, under the rules made by the Provincial Government under this section, is not entitled to their possession.

9. No one shall engage in or control any trade whereby a dangerous drug

Control of Provincial
Government over external
dealings in dangerous
drugs.

is obtained outside British India and supplied to any person outside British India, save in accordance with the conditions of a licence granted by and at the discretion of the Provincial Government.

LEG. REF.

¹ Words "subject to the control of the Governor-General in Council" omitted by A.O., 1937.

ing been prosecuted under secs. 7 and 20 of the Dangerous Drugs Act, *held*, that the

acts of the accused amounted to preparation and not to attempt and that at any rate he should be given the benefit of the doubt that he might have repented of his intention before reaching French territory. 138 I.C. 286 = 86 L.W. 127 = 1932 Mad. 507.

CHAPTER III.

OFFENCES AND PENALTIES.

Punishment for contra-
vention of S. 4.

10. Whoever—

- (a) cultivates any coca plant or gathers any portion of a coca plant,
 - (b) manufactures or possesses prepared opium otherwise than as permitted under section 4, or
 - (c) imports into British India, exports from British India, tranships or sells prepared opium,
- shall be punished with imprisonment which may extend to two years, or with fine, or with both:

Provided that this section shall not apply to the cultivation of any coca plant or to the gathering of any portion thereof on behalf of ¹[the Crown].

Punishment for contra-
vention of S. 5.

11. Whoever, in contravention of section 5, or any rule made under that section, or of any condition of a licence granted thereunder,

- (a) cultivates the poppy, or
 - (b) manufactures opium,
- shall be punished with imprisonment which may extend to two years, or with fine, or with both.

12. Whoever, in contravention of section 6, or any rule made under that section, or any condition of a licence granted thereunder, manufactures any manufactured drug, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Punishment for contra-
vention of S. 6.

Punishment for contra-
vention of S. 7.

13. Whoever, in contravention of section 7, or any rule made under that section, or any condition of a licence granted thereunder,

- (a) imports into British India,
 - (b) exports from British India, or
 - (c) tranships
- any dangerous drug, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Punishment for contra-
vention of S. 8.

14. Whoever, in contravention of section 8, or any rule made under that section, or any condition of a licence issued thereunder,

LEG. REF.

¹ Substituted for 'Government' by A.O., 1937.

SEC. 10 (b).—A registered opium consumer may in fact possess *pyaungchi* or opium refuse, or any other form of prepared opium, in any quantity, provided that the preparation of opium, has been made from the opium which he has purchased under his ticket. Hence in the absence of evidence that it was not prepared from the opium which he lawfully possessed, he cannot be convicted under sec. 10 (b). 171 I.C. 619 = 38 Cr.L.J. 1092 = 1937 Rang. 346.

SEC. 13 (b).—See 1937 M.W.N. 174.

SECS. 13 AND 32.—Mere import of opium is not an offence under sec. 13 (a) of the Act. The offence consists in importing contrary to the provisions of the Act. All that sec. 32 of the Act amounts to is that all imports, if proved, will be regarded as imports contrary to the Act until the presumption is rebutted by the accused. But the fact of import cannot be presumed from mere pos-

session of the dangerous drug. Where all that is proved that a certain amount of crude opium was found in the possession of the accused, but there is no evidence to show that he actually imported the thing from anywhere else, it cannot be presumed that the accused has committed any offence in respect of a dangerous drug and he cannot be convicted under sec. 13 (a) of the Dangerous Drugs Act. Presumption cannot be substituted for the proof of facts which go to make up an offence. 21 Pat.L.T. 976 = 1941 P.W.N. 239 = 1941 Pat. 177.

SEC. 14.—See 1934 A. 374. The word "sells" in this section is used in its popular sense, and merely denotes the transfer of a commodity for a price. The object of the buyer is not material, and so the mere fact that the transaction was brought about to entrap the seller will not render it any the less sale. 1936 A.L.J. 275 = 1936 A. 361.

SEC. 14 (a): PUNISHMENT—DETERRENT SENTENCE.—An offence under the Dangerous Drugs Act is a most serious crime and a deterrent sentence must be imposed to stamp

(a) imports or exports inter-provincially, transports, possesses or sells any manufactured drug or coca leaf, or

(b) manufactures medicinal opium or any preparations containing morphine, diacetylmorphine, or cocaine, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

15. Whoever, being the owner or occupier or having the use of any house, room, enclosure, space, vessel, vehicle, or place, knowingly permits it to be used for the commission by any other person of an offence punishable under section 10, section 12, section 13, or section 14, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Punishment for allowing premises to be used for the commission of an offence.

16. Whoever, having been convicted of an offence punishable under section 10, section 12, section 13, or section 14, is guilty of any offence punishable under any of those sections, shall be subject for every such subsequent offence to imprisonment which may extend to four years, or to fine, or to both.

Enhanced punishment for certain offences after previous conviction.

17. Whoever, having been convicted of an offence punishable under section 15, is again guilty of an offence punishable under that section, shall be subject for every such subsequent offence to imprisonment which may extend to four years, or to fine, or to both.

Enhanced punishment for offence under S. 15 after previous conviction.

18. (1) Whenever any person is convicted of an offence punishable under section 10, section 12, section 13, or section 14, and the Court convicting him is of opinion that it is necessary to require such person to execute a bond for abstaining from the commission of offences punishable under those sections, the Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for abstaining from the commission of such offences during such period, not exceeding three years, as it thinks fit to fix.

Security for abstaining from commission of certain offences.

(2) The bond shall be in the form contained in Schedule I, and the provisions of the Code of Criminal Procedure, 1898, shall, in so far as they are applicable, apply to all matters connected with such bond as if it were a bond to keep the peace ordered to be executed under section 106 of that Code.

(3) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(4) An order under this section may also be made by an appellate Court, or by the High Court when exercising its powers of revision.

19. Whoever engages in or controls any trade whereby a dangerous drug is obtained outside British India and supplied to any person outside British India, otherwise than in accordance with the conditions of a licence granted under section 9, shall be punished with fine which may extend to one thousand rupees.

Penalty for contravention of S. 9.

20. Whoever attempts to commit an offence punishable under this Chapter, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall be punished with the punishment provided for the offence.

Attempts.

out such crimes. 19 Pat.L.T. 845=1939 Pat. 172. Selling of cocaine is the most objectionable form of disposing of dangerous drugs made punishable by sec. 14 (a) of the Dangerous Drugs Act. As persons who take cocaine very rapidly become drug addicts and their reclamation becomes impossible, the more rapidly such a practice is stamped out

the better it will prove for the people. The sentence of two months' rigorous imprisonment awarded by the trial Court was enhanced to two years' rigorous imprisonment in revision. 1941 A.M.L.J. 12.

SEC. 20.—See 38 Cr.L.J. 582=36 L.W. 127=1932 Mad. 507, noted under sec. 7, *supra*.

21. (1) Whoever abets an offence punishable under this Chapter shall, whether such offence be or be not committed, in consequence of such abetment, and notwithstanding anything contained in section 116 of the Indian Penal Code, be punished with the punishment provided for the offence.

(2) A person abets an offence within the meaning of this section who, in British India, abets the commission of any act in a place without and beyond British India which—

(a) would constitute an offence if committed within British India; or

(b) under the laws of such place, is an offence relating to dangerous drugs having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within British India.

CHAPTER IV.

PROCEDURE.

22. (1) The Collector, or other officer authorized by the Provincial Government in this behalf, or a Presidency Magistrate or a Magistrate of the first class, or a Magistrate of the second class specially empowered by the Provincial Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed an offence punishable under Chapter III, or for the search, whether by day or by night, of any building, vessel or place in which he has reason to believe any dangerous drug in respect of which an offence punishable under Chapter III has been committed is kept or concealed.

(2) The officer to whom a search warrant under sub-section (1) is addressed shall have all the powers of an officer acting under section 23.

23. (1) Any officer of the department of Excise, Police, Customs, Salt, Opium, or Revenue, superior in rank to a peon or constable, authorized in this behalf by the Provincial Government, who has reason to believe, from personal knowledge or from information given by any person and taken down in writing, that any dangerous drug in respect of which an offence punishable under Chapter III has been committed is kept or concealed in any building, vessel or enclosed place, may, between sunrise and sunset,—

(a) enter into any such building, vessel or place;

(b) in case of resistance, break open any door and remove any other obstacle to such entry;

(c) seize such drug and all materials used in the manufacture thereof and any other article which he has reason to believe to be liable to confiscation under section 33 and any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under Chapter III relating to such drug; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed an offence punishable under Chapter III relating to such drug:

Provided that if such officer has reason to believe that a search warrant cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, vessel or enclosed place at any time between sunset and sunrise, after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1), or records grounds for his belief under the proviso thereto, he shall forthwith send a copy thereof to his immediate official superior.

SECS. 22 AND 23.—Where the constables irregularity does not vitiate the trial. 155
are not authorised to take the steps which I.C. 267=36 Cr.L.J. 780.
they have taken under secs. 22 and 23, the

Power of seizure and arrest in public places.

24. Any officer of any of the departments mentioned in section 23 may—

(a) seize, in any public place or in transit, any dangerous drug in respect of which he has reason to believe an offence punishable under Chapter III has been committed, and, along with such drug, any other article liable to confiscation under section 33, and any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under Chapter III relating to such drug;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under Chapter III, and, if such person has any dangerous drug in his possession and such possession appears to him to be unlawful, arrest him and any other persons in his company.

25. The provisions of the Code of Criminal Procedure, 1898, shall apply in so far as they are not inconsistent with the provisions of sections 22, 23 and 24, to all warrants issued and arrests and searches made under those sections.

26. All officers of the several department mentioned in section 23 shall upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

Obligations on officers to assist each other.

27. Whenever any person makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

Report of arrests and seizures.

Punishment for vexatious entry, search, seizure or arrest.

28. Any person empowered under section 23 or section 24 who—

(a) without reasonable grounds of suspicion, enters or searches, or causes to be entered or searched, any building, vessel or place;

(b) vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any dangerous drug or other article liable to be confiscated under section 33, or of seizing any document or other article liable to seizure under section 23 or section 24; or

(c) vexatiously and unnecessarily detains, searches or arrests any person, shall be punished with fine which may extend to five hundred rupees.

29. (1) Every person arrested and article seized under a warrant issued under section 22 shall be forwarded without delay to the authority by whom the warrant was issued; and every person arrested and article seized under section 32 or section 24 shall be forwarded without delay to the officer in charge of the nearest police station or to the nearest officer of the Excise Department empowered under section 30.

Disposal of persons arrested and of articles seized.

(2) The authority or officer to whom any person or article is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article.

Power to invest Excise officers with powers of an officer in charge of a police station.

30. The Provincial Government may invest any officer of the Excise Department or any class of such officers, with the powers of an officer in charge of a police station for the investigation of offences under this Act.

31. No Magistrate shall try an offence under this Act unless he is a Presidency Magistrate or a Magistrate of the first class, or a Magistrate of the second class specially empowered by the ¹[appropriate] Government in this behalf.

Jurisdiction to try offences.

²[In this section 'the appropriate Government' means as respects any

LEG. REF.

² Inserted by *ibid.*

¹ Substituted for 'Local' by A.O., 1937.

contravention of any rules which under this Act fall to be made by the Provincial Government, that Government, and in other cases, the Central Government.]

32. In trials under this Act it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under Chapter III in respect of—

- (a) any dangerous drug;
 - (b) any poppy or coca plant growing on any land which he has cultivated;
 - (c) any apparatus specially designed or any group of utensils specially adapted for the manufacture of any dangerous drugs; or
 - (d) any materials which have undergone any process towards the manufacture of a dangerous drug, or any residue left of the materials from which a dangerous drug has been manufactured,
- for the possession of which he fails to account satisfactorily.

33. (1) Whenever any offence has been committed which is punishable under Chapter III, the dangerous drug, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any dangerous drug lawfully imported, transported, manufactured, possessed, or sold along with, or in addition to, any dangerous drug which is liable to confiscation under sub-section (1), and the receptacles, packages and coverings in which any dangerous drug, materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages, and the animals, vehicles, vessels and other conveyances used in carrying the same, shall likewise be liable to confiscation:

Provided that no animal, vehicle, vessel or other conveyance shall be liable to confiscation unless it is proved that the owner thereof knew that the offence was being, or was to be or was likely to be, committed.

34. (1) In the trial of offences under this Act, whether the accused is convicted or acquitted, the Court shall decide whether any article seized under this Chapter is liable to confiscation under section 33: and, if it decides that the article is so liable, it may order confiscation accordingly.

(2) Where any article seized under this Chapter appears to be liable to confiscation under section 33, but the person who committed the offence in connection therewith is not known or cannot be found, the Collector or other officer authorized by the Provincial Government in this behalf, may inquire into and decide such liability, and may order confiscation accordingly:

Provided that no order of confiscation of an article shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim:

Provided, further, that, if any such article other than a dangerous drug, is liable to speedy and natural decay, or if the Collector or other officer is of opinion that its sale would be for the benefit of its owner, he may at any time direct it to be sold; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale.

(3) Any person not convicted who claims any right to property which has been confiscated under this section may appeal to the Court of Session against the order of confiscation.

Sec. 32.—Scope and effect—Presumption under, not sufficient in absence of proof of import—Inference from mere possession not justified. See 21 Pat.L.T. 876, cited under sec. 13, *supra*.

Power to make rules regulating disposal of confiscated articles and rewards.

may make rules to regulate—

(a) the disposal of all articles confiscated under this Act; and

(b) the rewards to be paid to officers, informers and other persons out of the proceeds of fines and confiscations under this Act.

CHAPTER V.

MISCELLANEOUS.

Provisions regarding rules.

36. (1) All rules made under this Act shall be subject to the condition of previous publication.

²[(2) Rules made under this Act shall be published in the Official Gazette.]

37. (1) Any arrear of any licence fee chargeable by any rule made under this Act may be recovered from the person primarily liable to pay the same or from his surety (if any) as if it were an arrear of land-revenue.

(2) When any person, in compliance with any rule made under this Act, gives a bond (other than a bond under section 18) for the performance of any act, or for his abstention from any act, such performance or abstention shall be deemed to be a public duty, within the meaning of section 74 of the Indian Contract Act, 1872; and, upon breach of the conditions of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him or from his surety (if any) as if it were an arrear of land-revenue.

38. All prohibitions and restrictions imposed by* or under this Act on the import into British India, the export from British India, and the transshipment of dangerous drugs, shall be deemed to be prohibitions and restrictions imposed under section 19 or section 134 of the Sea Customs Act, 1878, and the provisions of that Act shall apply accordingly:

Application of the Sea Customs Act, 1878. Provided that, where the doing of any thing is an offence punishable under that Act and under this Act, nothing in that Act or in this section shall prevent the offender from being punished under this Act.

39. (1) Nothing in this Act or in the rules made thereunder shall affect the validity of any enactment of a local ³[or Provincial] Legislature for the time being in force, or of any rule made thereunder, which imposes, any restriction not imposed by or under this Act, or imposes a restriction greater in degree than a corresponding restriction imposed by or under this Act, on the consumption of or traffic in any dangerous drug within British India.

(2) Nothing in this Act or in the rules made thereunder shall affect the validity of the Opium Act, 1857:

Provided that, where the doing of any thing is an offence punishable under that Act and under this Act, nothing in that Act or in this sub-section shall prevent the offender from being punished under this Act.

Amendment of certain enactments.

40. [Rep. by Act I of 1938.]

41. When anything done under any enactment specified in the first three columns of Schedule II is in force immediately prior to the commencement of this Act, it shall be deemed, as from the commencement of this Act, to have been

LEG. REF.

* Substituted for the words "The Governor-General in Council" by A.O., 1937.

² This sub-sec. (2) substituted for old sub-secs. (2) and (3) by *ibid.*

³ Inserted by A.O., 1937.

done under this Act or under that enactment as hereby amended, as the case may require.

SCHEDULE I.

BOND TO ABSTAIN FROM THE COMMISSION OF OFFENCES UNDER THE DANGEROUS DRUGS ACT, 1930.

(See section 18.)

Whereas I (*name*), inhabitant of (*place*), have been called upon to enter into a bond to abstain from the commission of offences under section 10, section 12, section 13 and section 14 of the Dangerous Drugs Act, 1930, for the term of _____, I hereby bind myself not to commit any such offence during the said term and, in case of my making default therein, I hereby bind myself to forfeit to His Majesty the King, Emperor of India, the sum of rupees _____ dated this _____ day of _____ 19 _____.

(Signature.)

THE DEFENCE OF INDIA ACT (XXXV OF 1939).

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THE DEFENCE OF INDIA ACT (XXXV OF 1939).

[Amended by Act XIX of 1940; and Ordinances No. XXIII of 1942; XLVIII of 1942; XIV of 1943; XLIV of 1943; III of 1944; XXVI of 1944; XXXV of 1944; XXV of 1945.]

[29th September, 1939.

An Act to provide for special measures to ensure the public safety and interest and the defence of British India and the trial of certain offences.

WHEREAS an emergency has arisen which renders it necessary to provide for special measures to ensure the public safety and interest and the defence of British India and for the trial of certain offences:

AND WHEREAS the Governor-General in his discretion has declared by Proclamation under sub-section (1) of section 102 of the Government of India Act, 1935, that a grave emergency exists whereby the security of India is threatened by war;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent, commencement and duration.

1. (1) This Act may be called THE DEFENCE OF INDIA ACT, 1939.

SEC. 1: ACT, NOT *ultra vires*.—It is within the powers of the Indian Legislature to pass the Defence of India Act. 76 C.L.J. 292. See also (1944) F.L.J. 72=A.I.R. 1944 Lah. 33 (F.B.); A.I.R. 1941 All. 321=1941 A.L.J. 352. Entry No. 1 of List 1 of the Government of India Act gives the Central Legislature power to legislate with respect to preventive detention in British India for reasons of state connected with defence and certain other specified matters. The Defence of India Act is therefore within the competence of the Central Legislature. (1943) 2 M.L.J. 90=6 F.L.J. 28=A.I.R. 1943 F.C. 1; 47 P.L.R. 134; 79 C.L.J. 189; 1943

Cal. 377. The expressions "Reasons of State connected with defence" in Entry No. 1 of List 1 (Government of India Act) and "Reasons connected with the maintenance of public order" in entry No. 1 of List 2 are wide enough to include "public safety or interest". (1943) 2 M.L.J. 468=6 F.L.J. 151=A.I.R. 1943 F.C. 75.

ACT AND RULES.—The Defence of India Act is *intra vires* of the Government and the Defence of India Rules have valid statutory authority independent of the Ordinance under which they were made. A.I.R. 1943 Oudh 227.

- (2) It extends to the whole of British India, and it applies also—
 (a) to British subjects and servants of the Crown in any part of India;
 (b) to British subjects who are domiciled in any part of India wherever they may be;
 (c) in respect of the regulation and discipline of any naval, military or air force raised in British India, to members of, and persons attached to, employed with, or following, that force, wherever they may be; and
 (d) to, and to persons on, ships and aircraft registered in British India wherever they may be.
- (3) This section shall come into force at once, and the remaining provisions of this Act shall come into force in such areas and on such date or dates as the Central Government may, by notification in the Official Gazette, appoint.
- (4) It shall be in force during the continuance of the present war and for a period of six months thereafter.

AMENDING ACT—RETROSPECTIVE OPERATION.—Ordinance XIV of 1943 (amending Defence of India Act) has retrospective operation. This amending ordinance giving it retrospective operation is also not *ultra vires* of the powers of the Government. 56 L.W. 430.

PENDING PROCEEDINGS—LAW APPLICABLE TO.—"The law existing at the commencement of an action or proceeding must decide the rights of the parties and not the law that existed at the date of the judgment or order. Where the statute gives its provisions retrospective operation in express terms it would be a matter for consideration how far the retrospective operation extended and whether pending actions were intended to be affected by it. The question finally resolves itself into a matter of construction. In my judgment express words are not essential in order that a statute may apply to pending actions or proceedings. It is enough if that intention can be inferred, and for ascertaining the intention of the Legislature not only the meaning of words used in the enactment but also the object of the enactment must be kept in view. In fact the object of the enactment as gathered from its provisions would be a very important matter. A.I.R. 1943 Cal. 377 (390, 391), (S.B.).

DECISION OF FEDERAL COURT, BINDING ON HIGH COURTS.—By reason of S. 212, Government of India Act, the law declared by the Federal Court so far as applicable has to be followed by the High Court. The Federal Court may have the power, on a new point being taken before it, to revise its view but so far as the High Court is concerned it is bound by the Federal Court's decisions. (1944) F.L.J. 72=A.I.R. 1944 Lah. 33 (F.B.).

ACT BASED ON ENGLISH LAW.—"The Defence of India Act and the Defence of India Rules are not novel legislations but are analogous to the Emergency Powers Defence Act and the Defence (General) Regulations passed and made in England in 1939. The provisions in the Indian Act and Rules are not identical in every respect with the provisions contained in the English Act and Regulations, but the difference between the two is attributable to the varying condi-

tions in the two countries." A.I.R. 1943 All. 277.

ENGLISH DEFENCE OF REALM ACT, 1914—LEGISLATION DURING THE LAST GREAT WAR.—During the last great war of 1914 the Crown obtained by Act of Parliament, power to issue regulations for securing the public safety and the defence of the realm. These Acts and regulations have been almost entirely repealed, and when the present World War began were re-enacted in a more stringent form. See Halsbury, 2nd Ed., Vol. VI, p. 533.

NATURE AND SCOPE OF THE ACT.—This Act is designed to provide special powers to meet the existing war emergency and is drawn on the lines of the Defence of India (Crl. Law Am.) Act, 1915, with adaptations to meet the present conditions. It is also largely based on existing War Regulations in the United Kingdom and repeals the Defence of India Ordinance of 1939. (See Statement of Objects and Reasons.)

CONSTRUCTION OF ACT AND RULES.—"In times of war and in matters relating to war the Crown enjoys generally a somewhat wider latitude in the exercise of the prerogative than in times of peace, for, in such matters more stringent measures than are ordinarily allowed by the common or statute law are frequently rendered necessary for the public safety or for the restoration of peace and good order." Halsbury, 2nd Ed., Vol. VI, p. 527. "The canons of constructions are not the same in respect of war measures as those passed in times of peace; [see Lords Macmillan and Wright in (1941) 3 All. E. R. 338 and 6 Halsbury's Laws of England, Hailsham Edition, p. 527]. Far greater latitude is allowed to the executive, and presumptions in favour of the liberty of the subject are weakened; but those canons and those rights do not disappear altogether. In my opinion, some limit must be placed upon claims to the arbitrary exercise of absolute power in matters connected with the restraint of a man's liberty, and unless such powers are unmistakably conferred either expressly or by necessary implication—and by 'necessary' I mean when no other construction is reasonably possible—they must be taken, at the very least, to be subject to the right of a person detained

(2) Without prejudice to the generality of the powers conferred by subsection (1), the rules may provide for, or may empower any authority to make orders providing for, all or any of the following matters, namely:—

(i) ensuring the safety and welfare of His Majesty's forces, ships and aircraft, and preventing the prosecution of any purpose likely to prejudice the operations of His Majesty's forces or the forces of His Majesty's allies;

(ii) prohibiting anything likely to prejudice the training, discipline or health of His Majesty's forces;

(iii) preventing any attempt to tamper with the loyalty of persons in, or to dissuade (otherwise than with advice given in good faith to the person dissuaded for his benefit or that of any member of his family or any of his dependents) persons from entering, the service of His Majesty;

(iv) preventing anything likely to assist the enemy or to prejudice the successful conduct of war, including—

(a) communications with the enemy or agents of the enemy,

(b) acquisition, possession without lawful authority or excuse and publication of information likely to assist the enemy,

(c) contribution to, participation in, or assistance in, the floating of loans raised by or on behalf of the enemy, and

(d) advance of money to, or contracts or commercial dealings with, the enemy, enemy subjects or persons residing, carrying on business, or being, in enemy territory;

(v) preventing the spreading without lawful authority or excuse of false reports or the prosecution of any purpose likely to cause disaffection or alarm, or to prejudice His Majesty's relations with foreign powers [or with States in India, or to prejudice the maintenance of peaceful conditions in the tribal areas,] or to promote feelings of enmity and hatred between different classes of His Majesty's subjects;

Explanation.—To point out, without malicious intention and with an honest view to their removal, matters which are producing, or have a tendency to produce, feelings of enmity or hatred between different classes of His Majesty's subjects does not amount to promoting such feelings within the meaning of this clause.

(vi) requiring the publication of news and information;

(vii) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient, and the removal of persons from such areas;

(viii) requiring any person or class of persons to comply with a scheme of defence;

(ix) ensuring the safety of ports, dockyards, light-houses, lightships, aerodromes, railways, telegraphs, post offices, signalling apparatus and all other means of communication, sources of water-supply, works for the supply of water, gas or electricity and any other place or thing the protection of which is necessary for the defence of British India;

(b) Inserted by the Defence of India (Amendment) Act, 1940 (XIX of 1940), section 2.

(1943) 2 M.L.J. 468=6 F.L.J. 151=A. I.R. 1943 F.C. 75 (86).

GOVERNOR'S POWERS AND DELEGATION OF HIS AUTHORITY.—The Governor is required to exercise his individual judgment. The Ministers can tender their advice to him but he is not bound to accept their advice. Hence, the Governor must act himself, unless he has delegated his power and duty to

another by an order made under S. 2 (5), Defence of India Act. Standing Orders cannot authorise the Secretary, even in cases of urgency, to deal himself with a case of detention under R. 26. The matter being within the special responsibility of the Governor, the Governor alone (in the absence of an order made under S. 2 (5), Defence of India Act) has to make an order after he is satisfied about the necessity of the detention of that particular person. A.I.R. 1943 Cal. 377 (S.B.). See also A. I. R. 1944 Lah. 142 (F.B.).

c[(x) the apprehension and detention in custody of any person whom the authority empowered by the rules to apprehend or detain as the case may be suspects, on grounds appearing to such authority to be reasonable, of being of hostile origin, or of having acted, acting, being about to act, or being likely to act in a manner prejudicial to the public safety or interest, the defence of British India, the maintenance of public order, His Majesty's relations with foreign powers or Indian States, the maintenance of peaceful conditions in tribal areas or the efficient prosecution of the war, or with respect to whom such authority is satisfied that his apprehension and detention are necessary for the purpose of preventing him from acting in any such prejudicial manner, the prohibition of such person from entering or residing or remaining in any area, and the compelling of such person to reside and remain in any area or to do or abstain from doing anything;]

LEG. REF.

(c) Substituted by Ord. III of 1943.

SEC. 2 (2) (x).—See also Notes under R. 26.

SEC. 2 (2) (x): Not *ultra vires*.—Paragraph (x) of sub-S. (2) of S. 2 of the Defence of India Act, is *intra vires* the Central Legislature in as much as Entry No. 1 of List I of the Seventh Schedule of the Constitution Act, 1935, gives the Central Legislature power to legislate with respect to preventive detention in British India for reasons of state connected with defence and certain other specified matters. (1943) 2 M.L.J. 90=6 Fed.L.J. 28=A.I.R. 1943 F. C. 1. The expression "reasons of State connected with defence" and the expression "reasons connected with the maintenance of public order" in Entry No. 1 of List I and Entry No. 1 of List No. II of Sch. VII of the Constitution Act are wide enough to include "public safety or interest," and therefore S. 2 of the Defence of India Act is not *ultra vires* either in its original or amended form. (1943) 2 M.L.J. 468=6 F.L.J. 151=A.I.R. 1943 F.C. 75 (F.C.). Section 2 of Ordinance XIV of 1943 has been validly enacted. (1944) A.L.J. 59=A.I.R. 1944 A. 62 (F.B.).

Section 2 and S. 2 (2) (x) in particular are not *ultra vires* on the ground that the Governor-General had delegated his powers of legislation on matters of principle and policy and had left it to the executive to make rules on those matters which should have been the subject of legislation by him, and that no principles had been laid down to guide the rule-making authority or to limit the powers of such authority or the scope of the rules to be made. S. 2 (1) read with Section 2 (2) (x) definitely lays down the principle or policy of legislation and does not delegate to the Central Government uncontrolled and unfettered power to make rules regarding the apprehension and detention of persons in general. S. 2 (2) (x) states in considerable detail who can be apprehended and detained and in what circumstances. The subsection does not leave it to the rule-making authority to apprehend and detain any one at its discretion or for any reason which it thinks fit. The power to make rules on

this matter is circumscribed and strictly limited. The Legislature has laid down principles to guide and direct the rule-making authority and to limit its powers and the scope of the rules which it may make. (1944) F.L.J. 72=A.I.R. 1944 Lah. 33 (F.B.).

AMENDING ORDINANCE XIV OF 1943—SCOPE—NOT *ultra vires*—RETROSPECTIVE OPERATION.—Ordinance No. XIV of 1943, amending S. 2 (2) so as to bring into conformity with R. 26 of the Rules issued under it, is not *ultra vires* the powers of the Governor-General. The Ordinance has also retrospective effect. S. 2 of the Act alone would be sufficient to give retrospective effect to the Ordinance. In re, 56 L.W. 430=A.I.R. 1943 Mad. 714. The Governor-General is competent to make and promulgate ordinances giving the same retrospective effect. Hence the Governor-General has the power to make amendments in the Defence of India Act and give such amendments retrospective effect. The amendment made in the Defence of India Act by the Ordinance XIV of 1943 is therefore with retrospective effect. I.L.R. (1943) A. 778=A.I.R. 1943 All. 331=1943 A.L.J. 344.

Provincial Government cannot validate with retrospective effect the orders passed by the Additional District Magistrate. I.L.R. (1943) Nag. 154=1943 N.L.J. 1=A.I.R. 1943 Nag. 26 (per Pollock, J.).

AMENDING ORDINANCE XIV OF 1943 APPLICABLE TO PENDING PROCEEDINGS.—The Governor-General by his Ordinance XIV of 1943, says that no person, detained in the past under orders made under R. 26, Defence of India Rules, is to be released on the ground that the rule was bad. That being the plain intendment of the ordinance, its provisions, if otherwise valid, would apply to pending proceedings, as there is no saving of pending proceedings. A.I.R. 1943 Cal. 377 (S. B.); see also A.I.R. 1943 All. 331; A.I.R. 1944 Bom. 119 (120) (S. 3 of Ord. XIV of 1943 applies to pending proceedings).

MEANING OF WORDS.—There is no substantial difference in meaning between the two phrases "has reasonable cause to believe" and "is satisfied". I.L.R. 1943 Nag. 154=A.I.R. 1943 Nag. 26 (32). The one is used in the Indian Act and Rules and the other is used in the corresponding English rule.

(xi) the control of persons entering, departing from, or travelling in, British India, and of foreigners residing or being in British India;

(xii) prohibiting or regulating traffic, and the use of vessels, buoys, lights and signals, in ports and territorial, tidal and inland waters;

(xiii) restricting the charter of foreign vessels;

(xiv) regulating the structure and equipment of vessels d[* *] for the purpose of ensuring the safety thereof and of persons therein;

(xv) regulating work in dockyards and shipyards in respect of the construction and repairs of vessels;

(xvi) prohibiting or regulating the sailings of vessels from ports, traffic at aerodromes and the movement of aircraft, and traffic on railways, tramways and roads, and reserving, and requiring to be adapted, for the use of the Central Government, all or any accommodation in vessels, aircraft, railways, tramways or road vehicles for the carriage of persons, animals or goods;

(xvii) impressment of vessels, aircraft, vehicles and animals for transport;

(xviii) prohibiting or regulating the use of postal, telegraph or telephonic services, including the taking possession of such services and the delaying, seizing, intercepting or interrupting of postal articles or telegraphic or telephonic messages;

(xix) regulating the delivery otherwise than by postal or telegraphic service of postal articles and telegrams;

(xx) the control of e[agriculture, trade or industry] for the purpose of regulating or increasing the supply of, and the obtaining of information with regard to, articles or things of any description whatsoever which can be used in connection with the conduct of war or for maintaining supplies and services essential to the life of the community;

(xxi) ensuring the ownership and control of mines by British subjects;

(xxii) controlling the use or disposal of, or dealings in, coin, bullion, securities or foreign exchange;

(xxiii) the control of any road or pathway, waterway, ferry or bridge, river, canal or other source of water-supply;

(xxiv) the requisitioning of any property, movable or immovable, including the taking possession thereof and the issue of any orders in respect thereof;

(xxv) prohibiting or regulating the possession, use or disposal of—

(a) explosives, inflammable substances, arms and ammunitions of war,

(b) vessels,

LEG. REF.

(d) The words "used or likely to be used by the Central Government" omitted by the Defence of India (Amendment) Ordinance, 1942 (XXIII of 1942.)

(e) Substituted by the Defence of India (Second Amendment) Ordinance, 1942 (XLVIII of 1942) for the words "any trade or industry".

SEC. 2 (2) (xxiv): "MOVABLE PROPERTY"—MEANING.—The expression "movable property" in S. 2 (2) (xxiv) of the Defence of India Act includes a chose in action or a right to sue. 48 C.W.N. 163.

DEFENCE OF INDIA (AMENDMENT) ORDINANCE (XIV OF 1943), Ss. 2 AND 3—RELATIVE SCOPE—VALIDITY—If *ultra vires*.—Importance must be attached to the difference between the provision in S. 2 of the Defence of India (Amendment) Ordinance (XIV of 1943), which makes the substituted provi-

sion take effect from the date of the Defence of India Act itself and the provision in S. 3 which prevents any question being raised as to the validity of orders theretofore passed under R. 26 of the Defence of India Rules. Whether S. 2 of the Ordinance was valid or not, S. 3 is not invalid or *ultra vires*, as it cannot be said directly to amend or repeal any provision of the Defence of India Act, and is not so dependent on S. 2, or so connected with it as to be incapable of being given effect to by itself. S. 3 merely deals with the remedies of parties and the power of Court to give redress in respect of a breach of the pre-existing law and might well have been enacted by the legislature or by the ordinance making authority without any provision corresponding to S. 2 of the Ordinance. (1943) 2 M.L.J. 468=6 F. L.J. 151=A.I.R. 1943 F.C. 75 (F.C.); see also (1944) F.L.J. 72=A.I.R. 1944 Lah. 33 (36) (F.B.).

(c) wireless telegraphic apparatus,
 (d) aircraft, and
 (e) photographic and signalling apparatus and any means of recording information;

"(xxvi) prohibiting or regulating the bringing into, or taking out of, British India of goods or articles of any description (including coin, bullion, bank notes, currency notes, securities and foreign exchange), and applying the provisions of the Sea Customs Act, 1878 (VIII of 1878) and in particular section 19 thereof, to such prohibitions and restrictions."—(Ord. XXXV of 1944.)

(xxvii) prohibiting or regulating the bringing into, or taking out of, British India and the possession, use or transmission of ciphers and other secret means of communicating information;

(xxviii) prohibiting or regulating the publication of inventions and designs;

(xxix) preventing the disclosure of official secrets;

(xxx) prohibiting or regulating meetings, assemblies, fairs and processions;

(xxxi) preventing or controlling any use, calculated to prejudice the public safety, the maintenance of public order, the defence of British India or the prosecution of war, of uniforms, flags and insignia and of anything similar thereto;

(xxxii) ensuring the accuracy of any report or declaration legally required of any person;

(xxxiii) preventing the unauthorised change of names;

(xxxiv) preventing anything likely to cause misapprehension in respect of the identity of any official person, official document or official property or in respect of the identity of any person, document or property purporting to be, or resembling, an official person, official document or official property;

(xxxv) entry into, and search of, any place reasonably suspected of being used for any purpose prejudicial to the public safety or interest, to the defence of British India or to the efficient prosecution of war, and for the seizure and disposal of anything found there and reasonably suspected of being used for such purpose.

(3) the rules made under sub-section (1) may further—

(i) provide for the arrest and trial of persons contravening any of the rules * [or any order issued thereunder];

(ii) provide that any contravention of, or any attempt to contravene, and any abetment of, or attempt to abet, the contravention of any of the provisions of the rules, or any order issued under any such provision, shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both;

(iii) provide for the seizure, detention and forfeiture of any property in respect of which such contravention, attempt or abetment as is referred to in the preceding clause has been committed;

(iv) confer power and impose duties—

(a) upon the Central Government or officers and authorities of the Central Government as respects any matter, notwithstanding that that matter is one in respect of which the Provincial Legislature also has power to make laws, and

(b) upon any Provincial Government or officers and authorities of any Provincial Government as respects any matter notwithstanding that that matter is one in respect of which the Provincial Legislature has no power to make laws;

(v) prescribe the duties and powers of public servants and other persons

LEG. REF.

* Inserted by Ord. XXV of 1945.

SEC. 2 (3) (iv) (b): "AS RESPECTS ANY MATTER"—MEANING OF.—The accused was alleged to have sold on 8-7-1942 a ream of paper for a price in excess of that fixed

by the Provincial Government by an order issued R. 81 (2) of the Defence of India Rules. He was therefore convicted under R. 81 (4) of the Defence of India Act. R. 81 (4) as it originally stood only made penal any contravention of the provisions of the rule but not of any order passed

as regards preventing the contravention of, or securing the observance of, the rules * [or any order issued thereunder];

(vi) provide for preventing obstruction and deception of, and disobedience to any person acting, and interference with any notice issued, in pursuance of the rules * [or any order issued thereunder];

(vii) prohibit attempts by any person to screen from punishment any one other than the husband or wife of such person, contravening any of the rules * [or any order issued thereunder];

(viii) empower or direct any authority to take such action as may be specified in the rules or as may seem necessary to such authority for the purpose of ensuring the public safety or interest or the defence of British India;

(ix) provide for charging fees in respect of the grant or issue of any licence, permit, certificate or other document for the purposes of the rules.

(4) The Central Government may by order direct that any power or duty which by rule under sub-section (1) is conferred or imposed upon the Central Government shall in such circumstances and under such conditions, if any, as may be specified in the direction be exercised or discharged—

(a) by any officer or authority subordinate to the Central Government, or

(b) whether or not the power or duty relates to a matter with respect to which a Provincial Legislature has power to make laws, by any Provincial Government or by any officer or authority subordinate to such Government, or

(c) by any other authority.

LEG. REF.

¹ Inserted by Ordinance XXV of 1945.

under it. On 18-7-1942, the sub-rule was amended to include contraventions of the orders passed under the rule. *Held*, (1) that the offending act having been committed prior to the amendment of R. 81 (4), and that as the Provincial Government had no power to make penal provisions, no offence was committed by the accused though he contravened the order; (2) that the words "as respects any matter" in S. 2 (3) (iv) (b) of the Defence of India Act could not be construed as covering a provision for punishment for the contravention of any provisions of the rules or any order issued under such rules. (1943) 2 M.L.J. 287=A.I.R. 1943 Mad. 687; *see also* (1943) 1 M.L.J. 99.

SEC. 2, SUB-CL. (3) (ii): "SENTENCE OF SEVEN YEARS".—On this point the Hon. Sir Mhd. Zafrullah Khan said:—"Courts of justice in awarding sentence would have regard to the criminality of the act which had been proved. The Rules, as actually framed under the corresponding part of the Ordinance, do not in each case provide the maximum penalty of seven years. In some cases it is only as light as six months. In some cases it is two years, in some cases three, and in some cases, five. The mere fact that a maximum sentence of seven years is here provided for does not necessarily mean that for the contravention of every rule the maximum penalty of seven years will be imposed." (Assembly Debates—Hon'ble Sir Mhd. Zafrullah Khan, 19-9-39, p. 697.)

SEC. 2 (3) AND RR. 81 AND 122.—A salesman of a firm was convicted under R. 81 (4) of the Defence of India Rules and sentenced to pay a fine of Rs. 50 in respect

of a sale of sugar on 15-7-1942 at a price in excess of that fixed by the Collector of Madras under R. 81 (2) (b) of the Defence of India Rules. At the time of the offence R. 81 (4) in its amended form did not provide any punishment for the contravention of an order made under the rules but only made punishable a contravention of R. 81. No appeal or revision was preferred. But subsequently, the partners of the firm were charged under R. 122 of the Rules. *Held*, that the power to frame rules for the punishment of offenders vested exclusively in the Central Government under S. 2 (3) of the Defence of India Act and neither the Provincial Government nor its officers had any power to frame their own penal provisions. The sale of sugar by the salesman on 15-7-1942 was not punishable under S. 81 (4) of Rules and therefore there was no contravention in respect of which the partners could be punished under R. 122. Penal provisions or powers must be specifically conferred where they do not already exist and they cannot be deemed to exist merely by inference or analogy. (1943) 1 M.L.J. 99=1943 M. W.N. 46=56 L.W. 39.

SECS. 2 (4) AND (5) AND RR. 75-A.—The expression "duty" in sub-sections (4) and (5) of S. 2 of the Act refers to any substantive and independent duty that may, by the rules, be imposed on the Government concerned under sub-S. (3) (iv) (a) and (b) of that section. The duty or obligation of the authority concerned to form an opinion as to the necessity or expediency of making a requisition of property under R. 75-A of the Defence of India Rules, is an integral part of the power to make the requisition. This being so, the delegation of the power carries with it the delegation of the duty to form the requisite opinion.

(5) A Provincial Government may by order direct that any power or duty which by rule under sub-section (1) is conferred or imposed on the Provincial Government, or which, being by such rule conferred or imposed on the Central Government, has been directed under sub-section (4) to be exercised or discharged by the Provincial Government, shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by any officer or authority, not being f[(except in the case of a Chief Commissioner's Province)] an officer or authority subordinate to the Central Government.

LEG. REF.

(f) Inserted by the Defence of India (Amendment) Act, 1940 (XIX of 1940), S. 2.

Therefore, after the power is delegated the requisite opinion must be formed by the delegatee himself. 49 C.W.N. 322.

S. 2 (4)—“DUTY”—MEANING OF.—Per *Gentle, J.*—A duty of the Central Government which S. 2 (4) contemplates being delegated, is a substantial or an express duty, such as, a duty which, pursuant to S. 2 (3) (iv), can be imposed upon it, and its duty to appoint an arbitrator under S. 19 (1) (b). 49 C.W.N. 583.

SEC. 2, CLS. (4) AND (5).—The expression “duty” in sub-sections (4) and (5) of S. 2 refers to any substantive and independent duty that may, by the rules, be imposed on the Government concerned under sub-S. (3) (iv) (a) and (b) of that section. The duty or obligation of the authority concerned to form an opinion as to the necessity or expediency of making a requisition of property under R. 75-A of the Defence of India Rules, is an integral part of the power to make the requisition. This being so, the delegation of the power carries with it the delegation of the duty to form the requisite opinion. Therefore, after the power is delegated the requisite opinion must be formed by the delegatee himself. 49 C.W.N. 322.

SEC. 2 (5): SCOPE OF.—S. 2 (5) only requires a delegation where matters cannot be dealt with by the Provincial Government in the manner in which it normally deals with its executive business. (1943) 2 M.L.J. 468—6 F.L.J. 151—A.I.R. 1943 F.C. 75 (per *Spens, C.J.*). See also A.I.R. 1944 Lah. 142 (F.B.); 1943 Nag. 26. At the date when the Defence of India Act was passed, the Central Legislature had law-making power with regard to all matters in lists I, II and III by virtue of S. 102 of the Government of India Act, consequent upon the emergency proclamation of September 3rd, 1939. Consequently S. 2 (2) (xx) of the Defence of India Act giving authority to the Central Government to make rules relating to the distribution and sale of essential goods is within the competence of the Central Legislature and such matters being covered by Items 27 and 29 of the Provincial Legislative List. 49 C.W.N. 595. The provisions of the Defence of India Act relating to the requisitioning of movable property contained in S. 2 (2)

(xxiv) of that Act are within the powers of the Legislature under the heading “Public order” in Item 1 of List II. The words “public order” have a wide meaning and they authorise the Legislature to do such acts as are necessary for the public safety and defence of the country. 49 C.W.N. 607. See also 49 C.W.N. 505.

POWER OF COURT TO QUESTION ORDER OF DETENTION BY MAGISTRATE.—It is necessary that the Magistrates who have issued the orders of detention should be satisfied in respect of each person, detained, individually and separately, that it is necessary to detain him for the purposes specified in the section or some of them. If he is not satisfied and yet issues the order then he cannot be said to be acting upon or under a power conferred by the Act. I.L.R. (1943) Nag. 154—A.I.R. 1944 Nag. 26.

JURISDICTION OF ADDITIONAL DISTRICT MAGISTRATE.—An Additional District Magistrate has no jurisdiction to issue the order of detention. The Notification of 16—3—42 authorised him to exercise all the powers of a District Magistrate under the Cr.P. C. or under any other law “for the time being in force”. The expression “under any other law” cannot include R. 26 of the Defence of India Rules. The rule confers power on the Central and Provincial Governments only. The Provincial Government's Notification is not a statutory but an administrative or an executive order. The word “law” in “any other law” occurring in S. 10 (2) of the Cr.P. Code is not meant to include an executive order but only legislative enactments, and rules, regulations or orders which have the force of law, and consequently the District Magistrate, who acts for the Provincial Government under the powers conferred upon him by the Provincial Government by an executive order, cannot be regarded as acting under any “law” as such. 1944 N.L.J. 44—A.I.R. 1944 Nag. 84. S. 10 (2), Cr. P. Code and S. 2 (5), of the Defence of India Act are quite distinct in their scope and application. The former is concerned with the powers of the District Magistrate under the law and the latter with the powers of the Provincial Government. S. 10 (2) of the Cr. P. Code cannot be called in aid to confer the powers of the Provincial Government under R. 26 of the Defence of India Rules on any officer subordinate to it. 1944 N.L.J. 44—A.I.R. 1944 Nag. 84; (1887) 18 Q.B.D. 704, 708, Rel.

S. 2 (5)—DELEGATION OF POWERS UNDER

3. Any rule made under section 2, and any order made under any such rule, shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

Effect of rules, etc., inconsistent with other enactments.

4. The Central Government may, by notification in the Official Gazette, direct by general or special order that any persons who, not being members of His Majesty's forces, are attached to, or employed with, or following, those forces, shall be subject to naval, military or air force law, and thereupon such persons shall be subject to discipline, and liable to punishment for offences, under the Indian Navy (Discipline) Act, 1934, the Indian Army Act, 1911, or the Indian Air Force Act, 1932, as the case may require, as if they were included in such class of persons subject to any of those Acts as may be specified in the notification.

Special powers to control civilian personnel employed in connection with His Majesty's forces.

5. (1) If any person, with intent to wage war against His Majesty or to assist any State at war with His Majesty, contravenes any provision of the rules made under section 2 or any order issued under any such rule, he shall be punishable with death, or transportation for life, or imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Enhanced penalties.

(2) If any person—

(a) contravenes any such provision of, or any such rule or order made under, the Indian Aircraft Act, 1934, as may be notified in this behalf by the Central Government, or

(b) in any area notified in this behalf by a Provincial Government, contravenes any such provision of, or any such rule made under, the Indian Arms Act, 1878, the Indian Explosives Act, 1884, or the Explosive Substances Act, 1908, as may be notified in this behalf by the Provincial Government, he shall,

RULE.—When a Provincial Government acting under S. 2 (5), delegates its powers under a rule of the Defence of India Rules to District Magistrate within the province, such delegation covers only the powers conferred by the rule as it stands on the date of the delegation. It does not cover powers conferred by amendments made in the rule subsequent to the date of delegation. A fresh delegation in respect of the powers under the amendment is necessary, if the powers under the amendment are to be exercised. 46 Bom.L.R. 495. See also 1944 O.W.N. 434; 1944 O.W.N. 429.

SEC. 2 (5) AND R. 89.—A Provincial Government's order directing that the powers conferred on the Provincial Government by Cls. (a), (f) and (i) of R. 89 (2) (1) of the Defence of India Rules with respect to the use of transport vehicles as defined in the Motor Vehicles Act, shall be exercisable also by the Provincial or Regional Transport Authorities constituted under that Act, is a valid delegation under S. 2 (5) of the Defence of India Act. There is no provision in the Defence of India Act to indicate that such a delegation is prohibited. The fact that the power may be simultaneously exercised by both the Central and Provincial Governments does not make such a delegation illegal. (1943) 2 M.L.J. 429=A.I.R. 1944 Mad. 135.

SEC. 3: RULES NOT PROPERLY MADE UNDER S. 2.—EFFECT OF.—It is not correct to say that by reason of S. 3, Defence of India Act,

all rules purporting to be made under S. 2 have the effect of law whether properly made or not. S. 3 contemplates only rules properly made within the limits imposed by S. 2 and any rules made which are beyond the powers of the rule-making authority can never have the force of law by reason of S. 3 (1). (1944) F.L.J. 72=A.I.R. 1944 Lah. 33 (F.B.).

Section 3 states that any rule made under S. 2 and any order made under any such rule, shall have effect notwithstanding anything inconsistent therewith, contained in any enactment other than the Defence of India Act itself or any instrument having effect by virtue of any enactment other than the Act. (1944) 1 M.L.J. 263. Accordingly the Collector of Madras had authority to issue an order requisitioning a house belonging to a private person for the purpose of housing the incoming Collector of Madras. Where there was nothing to show that the requisition order was in any way *mala fide* the order cannot be questioned in Court. (1944) 1 M.L.J. 263.

A notification under S. 3 (1) ousts the jurisdiction of the regular Courts in respect of the offences and persons mentioned in it. 42 P.W.R. 1917=18 Cr.L.J. 927=42 I.C. 159=38 P.R. 1917 (Cr.) (Case under the old Defence of India Act, 1915).

SECS. 4 AND 5.—Proof of guilt under these rules—Common law rule is not applicable. 17 C.L.J. 189.

notwithstanding anything contained in any of the aforesaid Acts or rules made thereunder, be punishable with imprisonment for a term which may extend to five years, or, if his intention is to assist any State at war with His Majesty or to wage war against His Majesty, with death, transportation for life, or imprisonment for a term which may extend to ten years, and shall in either case also be liable to fine.

(3) For the purposes of this section, any person who attempts to contravene, or abets or attempts to abet, or does any act preparatory to, a contravention of, a provision of any law, rule or order, shall be deemed to have contravened that provision.

Temporary Amendments
of Acts.

6. During the continuance of this Act,—

(1) section 1 of the Geneva Convention Act, 1911, shall have effect in British India as if, in sub-section (1) thereof, for the words "shall be liable on summary conviction to a fine not exceeding ten pounds," the words "shall be punishable with imprisonment for a term which may extend to six months and shall also be liable to a fine" had been substituted;

(2) section 5 of the Indian Official Secrets Act, 1923, shall have effect as if—

(a) in sub-section (1) thereof, after the words "in his possession or control" the words "any information likely to assist the enemy, as defined in the rules made under the Defence of India Act, 1939, or" had been inserted and after the words "in such a place" the words "or which relates to, or is used in, a protected area, as defined in the rules made under the Defence of India Act, 1939, or relates to anything in such an area," had been inserted; and

(b) for sub-section (4) thereof, the following sub-section had been substituted, namely:—

"(4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to five years, or, if such offence is committed with intent to assist any State at war with His Majesty, or to wage war against His Majesty, with death, or transportation for life, or imprisonment for a term which may extend to ten years, and shall in either case also be liable to fine."

§(2-A) Section 12 of the Indian Official Secrets Act, 1923, shall have effect as if after clause (a) the following clause had been inserted, namely:—

"(aa) an offence under section 5 shall be a cognizable and non-bailable offence."

(3) the Indian Press (Emergency Powers) Act, 1931, shall have effect as if in sub-section (1) of section 4 thereof, after clause (b), the following word and clause had been inserted, namely:—

"or

(bb) directly or indirectly convey any 'confidential information,' any 'information likely to assist the enemy' or any 'prejudicial report', as defined in the rules made under the Defence of India Act, 1939, or are calculated to instigate the contravention of any of those rules";

(4) the Indian Aircraft Act, 1934, shall have effect as if—

(a) at the end of clause (r) of sub-section (2) of section 5 the following words had been inserted, namely:—

"including the taking of steps necessary to secure compliance with, or to prevent contravention of, the rules regulating such matters, or, where any such rule has been contravened, to rectify, or to enable proceedings to be taken in respect of, such contravention";

(b) in clause (b) of sub-section (1) of section 8, for the words, brackets, letters and figures "clause (h) or clause (i) of sub-section (2) of section 5", the

LEG. REF.

(g) Inserted by the Defence of India

Ca. C. M.-I-40

(Amendment) Ordinance, 1942 (XXIII of 1942).

words, brackets, letters and figures “clauses (d), (e), (h), (i), (k) or (l) of sub-section (2) of section 5, or the commission of an offence punishable under section 11,” had been substituted;

(c) in section 11, after the words “in the air” the words “or in such a manner as to interfere with any of His Majesty’s forces, ships or aircraft” had been inserted;

(d) in section 13, for the words, brackets, figures and letters “clause (i) or clause (l) of sub-section (2) of section 5” the words, brackets, figures and letters “clauses (c), (d), (e), (h), (i), (j), (k) or (l) of sub-section (2) of section 5, or punishable under section 11” had been substituted; and

(e) section 14 had been omitted; and

(5) h[the Indian Navy (Discipline) Act, 1934, shall have effect as if in the Naval Discipline Act as set forth in the First Schedule to that Act—

h-1(a) in section 53, for regulation (2) the following regulation had been substituted, namely:—

“(2) Judgment of death shall not be passed on any prisoner unless all the officers present at the court martial, where the number is less than five, and in other cases a majority of not less than two-thirds of the officers present, concur in the sentence.”

(b) in sub-section (2) of section 57-A, for the word “commander” the words “substantive or acting commander” had been substituted;

(c) in section 58—

(i) in regulations (1) and (16) for the word “five” the word “three” in regulation (7) for the words “the president is a captain” the words “the president is a substantive or acting commander”, in regulation (15) for the word “four” the word “two” had been substituted;

(ii) regulation (3) had been omitted];

(d) for section 90 the following section had been substituted, namely:—

“90. (1) If any person who would not otherwise be subject to this Act enters into an engagement with the Central Government to serve His Majesty—

(a) in a particular ship, or

(b) in such particular ship, or in such ships as the Officer Commanding the Indian Navy, or any officer empowered in this behalf by the Officer Commanding the Indian Navy, may from time to time determine, and agrees to become subject to this Act upon entering into the engagement, that person shall, so long as the engagement remains in force, and notwithstanding that for the time being he may not be serving in any ship, be subject to this Act, and the provisions of this Act shall apply in relation to that person, as if, while subject to this Act, he belonged to His Majesty’s navy and were borne on the books of one of His Majesty’s ships in commission.

(2) The Central Government may by order direct that, subject to such exceptions as may in particular cases be made by or on behalf of the Officer Commanding the Indian Navy, persons of any such class as may be specified in the order shall, while subject to this Act by virtue of this section, be deemed to be officers or petty officers, as the case may be, for the purposes of this Act or of such provisions of this Act as may be so specified; and any such order may be varied or revoked by a subsequent order.”

i[(6) the Motor Vehicles Act, 1939, shall have effect subject to the following modifications, namely:—

(a) Notwithstanding anything contained in section 62 of that Act a permit under that section may be granted, and shall be granted in any case in which the Provincial Government so directs, to be effective for a period exceeding four months;

(h). Substituted by the Defence of India (Amendment) Ordinance, 1942 (XXIII of 1942) for the original clause. (5).

(h-1) Substituted by Ordinance XLIV of

1943.

(i) Inserted by the Defence of India (Amendment) Ordinance, 1942 (XXIII of 1942).

(b) Notwithstanding anything contained in Chapter IV of that Act, but without prejudice to the provisions of section 60, the transport authority which granted a permit may at any time cancel the permit or may suspend it for such period as it thinks fit, if in the opinion of the transport authority it is no longer in the public interest that the service should continue and the vehicle or vehicles covered by the permit can be more usefully employed elsewhere; and the transport authority shall cancel or suspend a permit issued by it if so required by the Provincial Government;

(c) If in any particular case the Provincial Government thinks fit so to order, the authority empowered to grant a permit under Chapter IV of that Act shall not, in deciding to grant or refuse a permit, be bound to take into consideration representations made by any person, authority or association other than the applicant, or to follow the procedure laid down in section 57, and may accept an application for a stage carriage permit or a public carrier's permit though made less than six weeks before the date on which it is desired that the permit shall have effect;

(d) The Provincial Government may exempt from all or any of the provisions of Chapter IV of that Act, all or any transport vehicles used or required for use in connection with work considered by the Provincial Government to be work connected with the defence of British India or the prosecution of war.]

7. (1) Notwithstanding anything contained in the Indian Tea Control Act, 1938, the Central Government may appoint any person to be an additional member of, and to act as Chairman of, the Indian Tea Licensing Committee during the continuance of this Act, and on such appointment being made and until this Act ceases to be in force, the Chairman of the said Committee elected under section 5 of that Act shall cease to exercise the functions of Chairman.

(2) If in pursuance of any scheme for the control of import of Indian tea into the United Kingdom, the Central Government considers it necessary or expedient so to do, it may by order direct the Indian Tea Licensing Committee to apportion the requirement of the United Kingdom among the tea estates in accordance with such principles as may be laid down in the order, and the said Committee shall comply with such order.

(3) If at any time during the continuance of this Act, the agreement referred to in the preamble to the Indian Tea Control Act, 1938, is determined or otherwise ceases to be valid as between the parties thereto, the provisions of that Act shall, notwithstanding the said determination or invalidity of the agreement, continue in force:

Provided that nothing in this sub-section shall be construed as continuing the Indian Tea Control Act, 1938, in force after the 31st day of March, 1943.

CHAPTER III.

SPECIAL TRIBUNALS.

8. (1) The Provincial Government may for the whole or any part of the Province constitute Special Tribunals which shall consist of three members appointed by the Provincial Government.

Constitution of Special Tribunals.

SEC. 8: NOT MANDATORY, ONLY AN ENABLING PROVISION.—S. 8 is not mandatory, but merely enables the Provincial Government to constitute a Special Tribunal composed of persons possessing the qualifications set out in sub-cl. (2). The use of the word 'may' in this section as well as in S. 9 clearly shows that it is for the Provincial Govern-

ment to decide whether a Special Tribunal should be constituted and whether any general or special order should be passed directing it to try the offences mentioned in S. 9. That the word "may" cannot be read as meaning "must" is clear from S. 14. 22 Pat. 433=A, I.R. 1943 Pat. 245 (S.B.).

(2) No person shall be appointed as a member of a Special Tribunal unless he—

(a) is qualified under sub-section (3) of section 220 of the Government of India Act, 1935, for appointment as a Judge of a High Court; or

(b) has for a total period of not less than three years exercised, whether continuously or not, the powers under the Code of Criminal Procedure, 1898 (hereafter in this Chapter referred to as the Code) of any one or more of the following, namely:—

(i) Sessions Judge, Additional Sessions Judge, Chief Presidency Magistrate, Additional Chief Presidency Magistrate,

(ii) District Magistrate, Additional District Magistrate.

(3) At least one member of a Special Tribunal shall be qualified for appointment thereto under clause (a) of sub-section (2), and where only one member is so qualified under that clause, at least one other member shall be qualified for appointment under clause (b) of that sub-section by virtue of having exercised powers exclusive of those specified in sub-clause (ii) of the said clause (b).

9. The Provincial Government may, by general or special order, direct that a Special Tribunal shall try any offence—

(a) under any rule made under section 2, or

(b) punishable with death, transportation or imprisonment for a term which may extend to seven years,—

triable by any Court having jurisdiction within the local limits of the jurisdiction of the Special Tribunal, and may in any such order direct the transfer to the Special Tribunal of any particular case from any other Special Tribunal or any other Criminal Court not being a High Court.

10. (1) A Special Tribunal may take cognisance of offences without the accused being committed to it for trial.

(2) Save in cases of trials of offences punishable with death or transportation for life, it shall not be necessary in any trial for a Special Tribunal to take down the evidence at length in writing, but the Special Tribunal shall cause a memorandum of the substance of what each witness deposes to be taken down in the English language, and such memorandum shall be signed by a member of the Special Tribunal and shall form part of the record.

(3) A Special Tribunal shall not be bound to adjourn any trial for any purpose unless such adjournment is, in its opinion, necessary in the interests of justice.

(4) A Special Tribunal shall not, merely by reason of a change in its members, be bound to recall and rehear any witness who has given evidence, and it may act on the evidence already recorded by or produced before it.

(5) After an accused person has once appeared before it, a Special Tribunal may try him in his absence if, in its opinion, his absence has been brought about by the accused himself for the purpose of impeding the course of justice, or if the behaviour of the accused in Court has been such as, in the opinion of the Special Tribunal, to impede the course of justice.

(6) In the event of any difference of opinion among the members of a Special Tribunal, the opinion of the majority shall prevail.

(7) The Provincial Government may, by notification in the official Gazette, make rules providing for—

(i) the times and places at which Special Tribunals may sit; and

Sec. 9.—The use of the word "may" in S. 9 shows that it is for the Provincial Government to decide whether a Special Tribunal should be constituted and whether any

general or special order should be passed directing it to try the offences mentioned in S. 9. A.I.R. 1943 Pat. 245.

(ii) the procedure to be adopted in the event of any member of a Special Tribunal being prevented from attending throughout the trial of any accused person.

(8) A Special Tribunal shall, in all matters in respect to which no procedure has been prescribed by this Act or by rules made thereunder, follow the procedure prescribed by the Code for the trial of warrant cases by Magistrates.

11. In addition, and without prejudice, to any powers which a Special

Exclusion of public from proceedings of Special Tribunals.

Tribunal may possess by virtue of any law for the time being in force to order the exclusion of the public from any proceedings, if at any stage in the course of a trial of any person before a Special

Tribunal application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the trial would be prejudicial to the safety of the State, that all or any portion of the public shall be excluded during any part of the hearing, the Special Tribunal may make an order to that effect, but the passing of sentence shall in any case take place in public.

Power of Special Tribunals.

12. A Special Tribunal shall have all the powers conferred by the Code on a Court of Session exercising original jurisdiction.

Sentence of Special Tribunals.

13. (1) A Special Tribunal may pass any sentence authorised by law.

(2) A person sentenced by a Special Tribunal

(a) to death or transportation for life, or

(b) to imprisonment for a term extending to ten years under section 5 of this Act or under sub-section (4) of section 5 of the Indian Official Secrets Act, 1923, as amended by section 6 of this Act—

shall have a right of appeal to the High Court within whose jurisdiction the sentence has been passed, but save as aforesaid and notwithstanding the provisions of the Code, or of any other law for the time being in force, or of any thing having the force of law by whatsoever authority made or done, there shall be no appeal from any order or sentence of a Special Tribunal, and no Court shall have authority to revise such order or sentence, or to transfer any case from a Special Tribunal, or to make any order under section 491 of the Code, or have any jurisdiction of any kind in respect of any proceedings of a Special Tribunal.

(3) The powers conferred upon the Provincial Government and the Governor-General by Chapter XXIX of the Code shall apply in respect of a person sentenced by a Special Tribunal.

CHAPTER IV.

SUPPLEMENTAL.

Jurisdiction of Ordinary Courts.

14. Save as otherwise expressly provided by or under this Act, the ordinary criminal and civil Courts shall continue to exercise jurisdiction.

LEG. REF.

(j) Chapter IV came into force in the whole of British India on the 14th November, 1939, *vide* D.C. Dept. Notification No. 253-OR/39, dated the 14th November, 1939.

Sec. 14: SCOPE.—NO BAR TO SETTING UP SPECIAL COURTS.—Section 14 merely preserves the jurisdiction of the ordinary Courts in

certain circumstances, so far as the Defence of India Act itself is concerned, not so far subsequent Acts are concerned. It indicates that the Defence of India Act (and that Act only) does not take away the ordinary Court's jurisdiction, except in the manner specifically indicated. It is no bar to the Legislature setting up other Courts like Special Courts under Ordinance II of 1942.

15. Any authority or person acting in pursuance of this Act shall interfere with the ordinary avocations of life and the enjoyment of property as little as may be consonant with the purpose of ensuring the public safety and interest and the defence of British India.

Ordinary avocations of life to be interfered with as little as possible.

Savings as to orders.

16. (1) No order made in exercise of any power conferred by or under this Act shall be called in question in any Court.

(2) Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act, a Court shall, within the meaning of the Indian Evidence Act, 1872, presume that such order was so made by that authority.

17. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder * [or any orders issued under any such rule].

Protection of action taken under the Act.

Further, if the provisions of the ordinance are in any way inconsistent with those of the Defence of India Act, those of the ordinance, which is equivalent to a subsequent Act, must prevail. 22 Pat. 433=A.I.R. 1943 Pat. 245 (S.B.).

The section preserves the jurisdiction of ordinary Courts under S. 491, Cr. P. Code, see A.I.R. 1943 Nag. 26 at p. 30. See now Ordinance III of 1944, S. 10.

SEC. 14.—Decree for ejectment of tenant by Civil Court—Order by District Magistrate requiring landlord not to interfere with possession of tenant—not *ultra vires*. See 47 Bom.L.R. 357.

SECS. 14 AND 15: POWERS CONFERRED ARE TO BE USED SPARINGLY.—Under the Defence of India Act nothing is to be altered, no rights or liberties to be interfered with, no privileges withdrawn or curtailed, except as expressly provided by or under the Act. The ordinary laws are to continue to function except and in so far as they are expressly altered by or under the Act. Even when they are altered the special powers conferred are to be used sparingly, and the ordinary lives and avocations of those proceeded against under the Act and its rules are to be interfered with as little as possible, and only to the extent consonant with the public safety and interest and the defence of British India. These conditions are express and restrictive. They are fundamental. The Act and the rules must be construed in the light of them. A.I.R. 1945 Nag. 8.

SEC. 15: SCOPE OF.—Section 15 of the Defence of India Act (1939) stating that an authority or person acting in pursuance of the Act shall interfere with the ordinary avocations of life and the enjoyment of property as little as may be consonant with the purpose of ensuring the public safety and interest and the defence of British India, is directory and must be read in conjunction

with S. 16 which says that no order made in exercise of any power conferred by or under the Act shall be called in question in any Court. Of course this does not preclude the Court from deciding whether a power has been conferred or whether a power which has been conferred has been abused. (1944) 1 M.L.J. 263.

SEC. 16: BASIS OF ORDERS.—Section 16 requires that the order is passed in the exercise of the power conferred by the Act and not merely in colourable exercise of such power. It is not enough that the orders should be passed under colour of the power conferred. They must be done in actual exercise of it and no power is conferred to make such order in bad faith, or in abuse of the Act or for the purpose of effecting a fraud on the Act and consequently these issues must be investigated if they are raised. I.L.R. (1943) Nag. 154=1943 N.L.J. 1=A.I.R. 1943 Nag. 26.

ORDER MADE UNDER INVALID RULE.—An order made under or by virtue of a rule which is invalid has no force or effect and is a nullity. S. 16 (1) has no application to such an order. (1943) 2 M.L.J. 90=6 Fed. L. J. 28=A. I. R. 1943 F.C. 1.

An application in Court calling in question an order made under R. 75-A is barred by S. 16. I.L.R. (1941) 1 Cal. 181.

An order detaining a person in order to enable the Police to investigate into the alleged offence is a misuse of the powers and can be questioned in a Court. S. 16 is no bar. 1944 Lah. 373.

Section 16 is no bar to an inquiry whether the order passed under the Defence of India Act or the rules is a valid order made in good faith, and the question of good faith, when raised, has to be decided by the Court. A.I.R. 1945 Nag. 8. See also 48 C.W.N. 966.

(2) Save as otherwise expressly provided under this Act, no suit or other legal proceeding shall lie against the Crown for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any rules made thereunder * [or any orders issued under any such rule].

Powers and functions and legal protection of Indian State Military and police forces and of Crown Representative's police force when employed on military or police duties in British India.

k[18. When any members of the military or police forces of an Indian State or any members of a police force constituted under the authority of the Crown Representative are, with the authority of the Central or a Provincial Government, employed in British India on military or police duties, then—

(a) sections 128, 130 and 131 of the Code of Criminal Procedure, 1898, shall apply to officers, non-commissioned officers and men of an Indian State military force when so employed as if they were officers, non-commissioned officers and soldiers respectively of His Majesty's Army;

(b) any provision of law for the time being in force which invests a police officer in British India with any status, power or function shall operate to invest a police officer of equivalent rank in an Indian State police force or in a police force constituted under the authority of the Crown Representative when so employed with the like status power or function; and for the purposes of the Code of Criminal Procedure, 1898, an officer in any such force not below the rank equivalent to that of a sub-inspector of police in British India shall be deemed to be an officer-in-charge of a police station;

(c) any provision of law for the time being in force which gives protection, whether specifically or otherwise, to members of His Majesty's military forces or of the police forces in British India from or in respect of any prosecution or other legal proceedings or from or in respect of any other liability shall apply also to members of an Indian State military force and to members of an

LEG. REF.

* Inserted by Ord. XXV of 1945.

(k) Substituted by the Defence of India (Amendment) Ordinance, 1942 (XXIII of 1942), for the original section 18 as amended by the Defence of India (Amendment) Act, 1940 (XIX of 1940).

JURISDICTION OF COURTS TO SCRUTINIZE CONDITIONS OF DETENTION.—The rules drawn up under sub-rules 5 and 5-A of R. 26 of the Defence of India Rules are not the "orders" contemplated by Ss. 2 and 16 of the Defence of India Act and authorised by R. 26. The Court consequently has power to scrutinise the conditions of detention "determined" under sub-rules 5 and 5-A and to see that they do not contravene any law, and in particular the law laid down by S. 15 of the Act. 1944 N.L.J. 38.

SCS. 16 AND 17. ORDER PASSED IN BAD FAITH.—The immunity from judicial interference laid down in S. 16 (1) of the Act is not limited to orders made in exercise of the powers conferred by the Act but extends also to orders made in exercise of powers conferred by the Rules made under S. 2 of the Act. The presumption raised by S. 16 (2) covers both the fact of the making of the order by the particular authority by whom it purports to have

been made, and the making of it in exercise of the powers conferred by or under the Act. But the presumption regarding both these matters is rebuttable. To reconcile sub-S. (1) of S. 16 with sub-S. (2) of that section and S. 17 of the Act which protects only acts done or intended to be done "in good faith," it has to be held that the immunity provided for in sub-S. (1) of S. 16 of the Act cannot be claimed for an order made in bad faith. What is protected by S. 16 (1) is an order made in exercise of the power and not one made in abuse of the power. If the power is exercised in bad faith or for a collateral purpose, it is an abuse of the powers and a fraud upon the statute and is not really an exercise of the power at all and the Court can interfere with such colourable exercise of the power. This construction of S. 16 (1) of the Act is consonant with the general principles of law of which it is a statutory recognition and embodiment. When, therefore, an issue is raised that an order superseding a Municipality under R. 51-F of the Defence of India Rules has been made in bad faith or for a collateral purpose, the Court is bound to enquire into the facts. The onus is, of course, on the party raising the issue to prove his allegation. 48 C.W.N. 766. See also 1945 Nag. 8.

Indian State police force or a police force constituted under the authority of the Crown Representative when so employed.]

Compensation to be paid in accordance with certain principles for compulsory acquisition of immovable property, etc.

19. (1) Where by or under any rule made under this Act any action is taken of the nature described in sub-section (2) of section 299 of the Government of India Act, 1935, there shall be paid compensation, the amount of which shall be determined in the manner, and in accordance with the principles hereinafter set out, that is to say:—

(a) Where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement.

(b) Where no such agreement can be reached, the Central Government shall appoint as arbitrator a person qualified under sub-section (3) of section 220 of the abovementioned Act for appointment as a Judge of a High Court.

(c) The Central Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property acquired, to assist the arbitrator, and where such nomination is made, the person to be compensated may also nominate an assessor for the said purpose.

(d) At the commencement of the proceedings before the arbitrator, the Central Government and the person to be compensated shall state what in their respective opinions is a fair amount of compensation.

(e) The arbitrator in making his award shall have regard to—

(i) the provisions of sub-section (1) of section 23 of the Land Acquisition Act, 1894, so far as the same can be made applicable; and

(ii) whether the acquisition is of a permanent or temporary character.

(f) An appeal shall lie to the High Court against an award of an arbitrator except in cases where the amount thereof does not exceed an amount prescribed in this behalf by rule made by the Central Government.

(g) Save as provided in this section and in any rules made thereunder, nothing in any law for the time being in force shall apply to arbitrations under this section.

(2) The Central Government may make rules for the purpose of carrying into effect the provisions of this section.

(3) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

(a) the procedure to be followed in arbitrations under this section;

(b) the principles to be followed in apportioning the costs of proceedings before the arbitrator and on appeal;

(c) the maximum amount of an award against which no appeal shall lie.

20. In this Act, unless there is anything repugnant in the subject or context, the expression "Provincial Government" means, in relation to a Chief Commissioner's Province, the Chief

Definitions.

Commissioner.

21. The Defence of India Ordinance, 1939, is hereby repealed; and any rules made, anything done and any action taken in

Repeal and saving.

Ordinance shall be deemed to have been made, done or taken in exercise of powers conferred by or under this Act as if this Act had commenced on the 3rd day of September, 1939.

SEC. 19.—An arbitrator appointed under S. 19 cannot adjudge a claim for compensation for loss sustained in respect of movable property by acts done under Defence of India Rules, R. 49. 49 C.W.N. 218.

SEC. 21.—[See Notes under Rd. 26.] *Defence of India Rules*.—The Defence of India Act is *intra vires* of the Government and the Defence of India Rules now have valid statutory authority independent of the ordi-

THE DEFENCE OF INDIA RULES.

PART I.

PRELIMINARY.

Short title.

1. [Eng. Def. R. 105.] These Rules may be called THE DEFENCE OF INDIA RULES.

LEG. REF.

(a) Published in the Gazette of India, Extraordinary, dated the 3rd September 1938, *vide* D.C. Dept. Notification No. 221/1-OR of the same date.

nance under which they made. 1943 O.A. (C.C.) 16=1943 O.W.N. 37=1943 Oudh 227. S. 21 does not merely continue the rules made in pursuance of the powers given by Defence of India Ordinance but continues them by re-enactment. A.I.R. 1943 Cal. 377 (S.B.). S. 21 only requires the rule to have been 'made'—not validly made—under the earlier Ordinance. The object of S. 21 was only to avoid a break in the operation of the rules and to obviate the necessity of promulgating them afresh under the new enactment. It had no reference to the validity or validation of the rules. Hence R. 26 of Defence of India Rules should be held to have been continued by S. 21 even though it was declared to be *ultra vires*. 6 F.L.J. 151=A.I.R. 1943 F.C. 75=(1943) 2 M.L.J. 468.

RULES AND REGULATIONS.—Regulations made by the King in Council under the Defence of Realm Act have all the force of a Statute and may take away a Statutory privilege or impose a Statutory duty. (1919) 89 L.J.K.B. 42=121 L.T. 222=83 J.P. 182=35 T.L.R. 512=26 Cox.C.C. 458; *see also* (1944) F.L.J. 72=A.I.R. 1944 Lah. 33 (F.B.). The Act and Rules are not *ultra vires* of the Governor-General-in-Council and the High Court has not power to call in question orders passed thereunder. 20 C.W.N. 1327 (case under the old Defence of India Act, 1915). *See also* 1943 Oudh 227. Orders in Council applying Defence Regulations in accordance with statutory requirements are valid, and are not questionable in a Court of law. (1918) 1 S.L.T. 123 (Scot.). Rules framed under S. 2 must be read as part of that section and are effective from date of publication and are not dependent on the remainder of the Act being brought into operation. I.L.R. 42 Mad. 69 (case under the old Act).

ORDER UNDER THAT NO TENANT SHOULD BE EJECTED.—SCOPE, NATURE AND TIME OF APPLICATION OF SUCH ORDER.—PROCEDURE.—An order of a District Magistrate under the Defence of India Rules that no tenant should be ejected is one which should be applied at the time of actual ejection in the course of execution rather than at the time when the decree is to be passed. The obligation not to eject corresponds not with a right in the individual to resist execution in his own interests but with a right in some public officer, not a party to the decree, to resist

ejection in the interests of the state. An order of this nature is irrelevant to a private dispute between the parties. Hence decrees for ejection should not be refused on their basis but courts executing such decrees should take judicial notice of such orders when brought to their notice and should either dismiss application for execution or stay proceedings. In cases of doubt the matter must be brought to the notice of the authority issuing the order to give him an opportunity of being heard in the interests of the state. 1944 O.W.N. (H.C.) 272=1944 A.L.W. 591.

The regulations authorised under the Defence of Realm Act not limited to regulations for the protection of the country against foreign enemies, but include regulations, designed for the prevention of internal disorder and rebellion. The operation of the proclamation is not limited to the duration of the military emergency, but remains in force till the end of the war unless revoked sooner. (1920) 2 K.B. 305=89 L.J.K.B. 759=84 J.P. 94=36 T.L.R. 432.

PROCEDURE.—HEARING OF PROCEEDINGS IN CAMERA.—A regulation providing for the hearing of proceedings under the Defence of Realm Act in *camera* is *intra vires* and in view of the object of the Act, and the Regulations made thereunder is valid and reasonable. (1915) 85 L.J.K.B. 203=114 L.T. 232=80 J.P. 156=60 Sol. Jo. 90.

REVOCATION OF ORDERS.—WHEN TAKES EFFECT.—The revocation of an order under the Defence of Realm Regulations does not affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the revoked order where no contrary intention appears in the revoking order. (1918) 88 L.J.K.B. 313=118 L.T. 788=34 T.L.R. 591. The guilt and liability to punishment of a person has to be determined in accordance with the state of the law at the time when he commits the acts or makes the omissions for which he is prosecuted under the rules. 22 Pat. 602=22 Pat.L.T. 211=1944 Pat. 1.

Possession *simpliciter* of seditious literature or manuscripts is liable to draw a heavy sentence under the Defence of India Rules. Where the manuscript found in the possession of the accused is found to be of a particular type, and indicates that it is intended to be disseminated, the fact that the accused did not own the literature is no ground for reducing the sentence. (1942) 2 M.L.J. 354=A.I.R. 1942 Mad. 664 (2). The changed attitude of the communist party towards the Government and the Government's attitude towards the communist

Definitions.

2. [Eng. Def. R. 100.] In these Rules, unless there is anything repugnant in the subject or context,—

- (1) "enemy" means any person or State at war with His Majesty;
b[(2) "enemy territory" means—

(a) any area which is under the sovereignty of, or administered by, or for the time being in the occupation of, a State at war with His Majesty, not being an area in the occupation of His Majesty or of a State allied with His Majesty, and

(b) any area which may be notified by the Central Government to be enemy territory] [for the purpose of these Rules or such of them as may be specified in the notification]. (*Gazette of India*, Pt. I, Sec. 1, dated 31-3-1945, p. 380.)

(3) "notified" and "notification" mean notified and notification respectively in the Official Gazette;

(4) "Ordinance" means the Defence of India Ordinance, 1939;

(5) "prescribed" means prescribed by any order, direction or regulation made or given in pursuance of any of these Rules;

(6) "prohibited place" means a prohibited place as defined in sub-section (8) of section 2 of the Indian Official Secrets Act, 1923;

(7) "protected place" means a place declared under rule 7 to be a protected place;

(8) "protected area" means an area declared under rule 8 to be a protected area;

(9) "Provincial Government" means in relation to a Chief Commissioner's

LEG. REF.

(b) Substituted by D.C. Dept. Notification No. 529-OR/40, dated the 23rd July 1940, for the original clause (2).

party are matters of consideration for the executive rather than the Court. Per *Horwill, J.*, in (1942) 2 M.L.J. 354.

SEIZURE AND DESTRUCTION OF PROHIBITED DOCUMENTS.—Regulation dealing with the spreading of prejudicial reports and with the seizure and destruction of prohibited documents are not *ultra vires*. (1916) 85 L.J.K.B. 857=114 L.T. 1043=32 T.L.R. 303, on appeal 32 T.L.R. 369, C.A.

FORFEITURE.—Under the Regulations, where a person was convicted of an offence against the regulations by a Court of summary jurisdiction the Court might, in addition to any other sentence which might be imposed, order that any goods in respect of which the offence had been committed be forfeited. (1920) 3 K.B. 552=90 L.J.K.B. 140=123 L.T. 716=85 J.P. 24=36 T.L.R. 860=26 Cox C.C. 636=18 L.G.R. 657. (Money is "godps" and can be forfeited.)

LIABILITY OF MASTER FOR ACTS OF SERVANTS.—Ordinarily a person should not be held liable for a criminal act of another. No person can be charged with the commission of an offence unless a particular intent or knowledge or *mens rea*—is found to be present; but in cases where a particular intent or state of mind is not of the essence of an offence, the person can be held liable for the act or omission of another. But the Defence of Burma Act is a piece of emergency legislation and is designed and intended, among others, to prevent profiteering so as to ensure the proper working of the normal economic life of the people. The

act will entirely fail in its object if a master is not held liable for the act of his servant or a partner for the act of his copartner. Because of this, the Control of Prices Order, has been enacted. 1941 Rang.L.R. 536=A.I.R. 1941 Rang. 349 (case under Defence of Burma Rules).

R. 2 (2) (a): GREEK SHIP CHARTERED BY FRENCH GOVERNMENT FOR VOYAGE—BRITISH NAVAL AUTHORITIES THEN SEIZING HER—CARGO CONTRABAND UNLOADED—SHIPOWNERS' CLAIM TO COMPENSATION.—1943 Sind 117=I.L.R. (1943) Kar. 35.

ALIEN ENEMY—SINGAPORE—NOT FOREIGN STATE AT WAR WITH GREAT BRITAIN.—(1944) 1 M.L.J. 58=1944 Mad. 239.

R. 2 (9): PROVINCIAL GOVERNMENT—MEANING OF.—The definition of a Provincial Government in S. 3, General Clauses Act, must be read subject to the special definition of the Provincial Government in R. 2 (9); of the Defence of India Rules which defines Provincial Government in relation to a Chief Commissioner's Province as the Chief Commissioner. No doubt by R. 3, the General Clauses Act applies to the interpretation of the Rules as it applies to the interpretation of a Central Act, but that must mean that the Act applies whenever it can legitimately be applied. The provisions of the General Clauses Act cannot be applied to override the express provisions in the rules themselves. They can only be applied when there is nothing repugnant to their provisions in the rules. The meaning to be given to the phrase "Provincial Government," when used with respect to a Chief Commissioner's province, must be the meaning given in the rules themselves; namely in R. 2 (9), that is, the Chief Commissioner. (1944) F.L.J. 72=A.I.R. 1944 Lah. 33 (F.B.).

Province the Chief Commissioner;

(10) "public servant" includes any public servant as defined in the Indian Penal Code and any servant of any local authority or railway administration;

(11) "requisition" means in relation to any property to take possession of the property or to require the property to be placed at the disposal of the requisitioning authority;

(12) "war" means any war in which His Majesty may for the time being be engaged.

3. [Eng. Def. R. 100.] (1) The General Clauses Act, 1897, shall apply to the interpretation of these Rules as it applies to the interpretation of a Central Act.

(2) Any reference in these Rules to the forces, vessels, aircraft, servants, subjects or prisoners of war of His Majesty shall, unless there is anything repugnant in the subject or context, be deemed to include the forces, vessels, aircraft, servants, subjects, or prisoners of war, as the case may be, of any part of His Majesty's dominions, of any territories under the protection or suzerainty of His Majesty and of any State in alliance with His Majesty.

(3) Any reference in these Rules to the master of a vessel or the pilot of an aircraft shall be construed as including a reference to the person for the time being in charge of the vessel or aircraft, as the case may be.

4. No prohibition, restriction or disability imposed [by these rules, or by any order made or direction given thereunder not being an order or direction of the Central Government or of an officer specially authorised by the Central Government in this behalf expressly providing the contrary]. (D.D. 5 D.C. (64) 44, dated 29-4-44, *Gazette of India*, Pt. I, S. 1, p. 562.) shall apply to anything done by or under the direction of any member of His Majesty's forces or any public servant acting in the course of his duty as such member or public servant.

5. If any person to whom any provision of these Rules relates, or to whom any order made in pursuance of these Rules is addressed or relates, or who is in occupation, possession or control of any land, building, vehicle, vessel or other thing to which such provision relates, or in respect of which such order is made—

(a) fails without lawful authority or excuse, himself, or in respect of any land, building, vehicle, vessel or other thing of which he is in occupation, pos-

RR. 2 AND 9: "ENEMY SUBJECT".—A Mahomedan debtor executed in April, 1939, a will in favour of the plaintiff, who was a Chinese merchant, resident in Penang, by which he bequeathed the whole of his movable and immovable properties in order to discharge the debts subsisting between them. In 1939, the plaintiff, through his powers-of-attorney holder in India sued to recover the amount due under a usufructuary mortgage forming one of the assets included in the will but he was non-suited on the ground that the will was not true and valid. The plaintiff appealed, but at the time of hearing of the appeal in October, 1939 after Penang had become enemy territory, it was pleaded that the plaintiff was an "enemy subject" under R. 97 of the Rules read with R. 2, and was debarred from suing in the Courts in India. *Held*, that the appeal was not maintainable either by the plaintiff because he had, since the dismissal of his suit, become an "enemy subject" within

the meaning of the Defence of India Rules, or by his power of attorney agent, because the authority became automatically revoked consequent on the occupation of Penang by the enemy. 57 L.W. 554=(1944) 2 M.L.J. 293.

R. 2 (10): "PUBLIC SERVANT".—A head clerk of a Government office is a person who occupies a position to which certain duties of a public character are attached or a person who occupies a place in the administration of Government. He is accordingly a "public servant" within the terms of the definition in S. 21, I.P. Code. Hence the head clerk of the office of the controller of prices whose duties are immediately auxiliary to those of the controller, to whom the Government has delegated part of its functions is a public servant competent to lay a complaint in respect of an offence under Defence of Burma Rules. 1941 Rang. L. R. 536=A.I.R. 1941 Rang. 349 (case under Defence of Burma Rules).

session or control, to comply, or to secure compliance, with such provision or order, or

(b) evades, or attempts to evade, by any means such provision, or order,— he shall be deemed to have contravened c[such provision or order] ; and in these Rules the expression “contravention” with its grammatical variations includes any such failure, evasion or attempt to evade.

PART II.

ACCESS TO CERTAIN PREMISES AND AREAS.

6. (1) No person shall, without the permission of d[the Central Government or the Provincial Government,] enter, or be on or in, or pass over, or loiter in the vicinity of, any

Prohibited places.
prohibited place.

(2) Where in pursuance of sub-rule (1) any person is granted permission to enter, or to be on, or in, or to pass over, a prohibited place, that person shall, while acting under such permission, comply with such orders for regulating his conduct as may be given by d[the Central Government or the Provincial Government].

(3) Any police officer, or any other person authorised in this behalf by d[the Central Government or the Provincial Government] may search any person entering or seeking to enter, or being on or in e[or leaving] a prohibited place, f[and any vehicle] e[vessel] aircraft or article brought in by such person, and may, for the purpose of the search, detain such person, vehicle, e[vessel] aircraft and article:

Provided that no female shall be searched in pursuance of this sub-rule except by a female.

(4) If any person is in a prohibited place in contravention of this rule, then, without prejudice to any other proceedings which may be taken against him, he may be removed therefrom by any police officer or by any other person authorised in this behalf by g[the Central Government or the Provincial Government].

(5) If any person is in a prohibited place in contravention of any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to three years h[or with fine or with both].

LEG. REF.

(c) Substituted by D. C. Dept. Notification No. 1020-OR/41, dated the 10th January 1942, for the words “such provision of these Rules or, as the case may be, such provision of these rules as authorise the making of such order.”

(d) Substituted by D. C. Dept. Notification No. 936-OR/41, dated the 19th July 1941, for the words “the Central Government.”

(e) Inserted by D.C. Dept. Notification No. 4 D.C. (10)/43, dated 3rd April, 1943.

(f) Substituted by No. 5 D.C. (10)/43 dated 13th February, 1943.

(g) *Vide* Footnote (d) *supra*.

(h) Substituted by D.C. Dept. Notifica-

R. 495=1944 Bom. 259.

RR. 5 AND 81 (2) AND (4) : FAILURE TO SELL WHEAT ON TENDER OF PRICE FIXED.—Where an Ajmere-Merwara Notification set out that no one holding stock of certain articles the price of which has been controlled under cl. (b) of sub-R. (2) of R. 81 of the Defence of India Rules shall withhold them from sale and that such person shall sell them on tender of the price fixed, if a person holding stock of such articles (in this case wheat) refuses to sell on tender of price fixed, he must be “deemed to have contravened such provision” of the Defence of India Rules “as authorise the making of such order” within the meaning of R. 5 and would therefore be liable to the penal effect of R. 81 (4) which provides for punishment in such cases. 1943 A.M.L.J. 33.

RR. 5 AND 81 (4) : ORDER UNDER R. 81 (2) —CONTRAVENTION PRIOR TO AMENDMENT OF R. 5 IN JANUARY, 1942.—R. 5, as it originally stood before it was amended by the notification, dated 10—1—1942, provided that breach of an order under any rule should constitute breach of the rule itself. In other words it expressly provided that any one failing to comply with an order made

R. 3 cannot be deemed to provide for the interpretation of orders passed under the rules as distinct from the interpretation of the rules themselves. R. 3 neither compels nor permits the Court to adopt the artificial provisions of the General Clauses Act for the purposes of the interpretation of an order of delegation of powers passed under the rules. The Court cannot ignore the obvious distinction between the rules and the orders passed under the rules. 46 Bom. L.

7. [Eng. Def. R. 12.] i[If as respects any place or class of places, the Central Government], or the Provincial Government considers it necessary or expedient that special precautions should be taken to prevent the entry of unauthorised persons, j* *, that Government may by k* * order l[declare that place, or, as the case may be, every place of that class], to be a protected place; and thereupon the provisions m* *, of the Indian Official Secrets Act, 1923, shall have effect n[in relation to such place] o[or places] as if references therein to a prohibited place and the Central Government were construed as references to a protected place and the Government making the declaration p[and the provisions of rule 6 shall have effect in relation to such place or places as if references therein to a prohibited place were construed as references to a protected place].

8. [Eng. Def. Rr. 12 and 13.] (1) If the Central Government or the Provincial Government considers it necessary or expedient to regulate the entry of persons into any area, that Government may, without prejudice to the provisions of any other rule, by k* * order declare the area to be a protected area; and thereupon, for so long as the order is in force, such area shall be a protected area for the purposes of these Rules.

(2) On and after such day as may be specified in, and subject to any exemptions for which provision may be made by, an order made under sub-rule (1), no person who was not at the beginning of the said day resident in the area declared to be a protected area by the said order shall be therein except in accordance with the terms of a permit in writing granted to him by an authority or person specified in the said order.

LEG. REF.

tion No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine."

(i) Substituted by D.C. Dept. Notification No. 839-OR/41, dated the 27th June 1942, for the words "If the Central Government"

(j) The words "into any place" omitted by D. C. Dept. Notification No. 839-OR/41, dated the 27th June, 1942.

(k) The word "notified" omitted by D. C. Dept. Notification No. 715-M/41, dated the 3rd October, 1942.

(l) Substituted by D.C. Dept. Notification No. 839-OR/41, dated the 27th June, 1942, for the words "declare the place".

(m) The words and figure "of rule 6 and" omitted by D. D. Notification No. 1595-OR/42, dated the 10th October, 1942.

(n) Substituted by D.C. Dept. Notification No. 256-OR/39, dated the 23rd October 1939 for the words "in such place".

(o) Inserted by D.C. Dept. Notification No. 839-OR/41, dated the 27th June, 1942.

(p) Inserted by D.D. Notification No. 1595-OR/42 dated the 10th October, 1942.

under a rule should be deemed to have committed the provision of the Rule authorising the making of the order. Therefore up to 10-1-1942, the penalty clause in R. 81, which is sub-rule (4) of R. 81 was quite in order in a case of contravention of an order made under R. 81 (2) of the Rules committed before that date. A person who was guilty of such a contravention can therefore be legally convicted under R. 81

(4). It is only after 10-1-1942, when R. 5 was amended that it can be said that any one failing to comply with an order under R. 81 (2) can be said to contravene only the order in question but not the provisions of the rule itself. The guilt and liability to punishment of a person has to be determined in accordance with the state of the law at the time when he commits the acts or makes the omissions for which he is prosecuted. 22 Pat. 602=1944 Pat. 1.

R. 6 (5): SENTENCE—RULE AS TO—GRAVITY OF OFFENCE.—Offences under R. 6 (5) of the Defence of India Rules, 1939, may obviously differ very much in their gravity, and they cannot be dealt with by any rule-of-thumb sentence. If there is any reason for supposing that a man has entered a prohibited area with a view to obtaining information which might be useful to the enemy, he would deserve a severe sentence. Again, if a man has entered a prohibited area knowing full well that it is prohibited having climbed over a fence or eluded a sentry or done something of that sort, he would deserve a more severe sentence than a man who has entered a prohibited area without appreciating that it is a prohibited area; but a man who enters a prohibited area inadvertently should be dealt with more leniently. Sentencing first offenders for offences of this type to a term of imprisonment would only be a very good way of manufacturing criminals for the future, though it cannot be laid down as a general rule that sentences of imprisonment shall not be imposed in the case of these offences. 43 Bom.L.R. 839=1941 Bom. 355.

q[(2-a) Any police officer, or any other person authorized in this behalf by the Central Government or the Provincial Government, may search any person entering or seeking to enter, or being on or in, or leaving, a protected area, and any vehicle, vessel, aircraft or article brought in by such person, and may, for the purpose of the search, detain such person, vehicle, vessel, aircraft and article:

Provided that no female shall be searched in pursuance of this sub-rule except by a female.]

(3) If any person is in a protected area in contravention of the provisions of this rule, then, without prejudice to any other proceedings which may be taken against him, he may be removed therefrom by or under the direction of any police officer or any member of His Majesty's forces on duty in the protected area.

(4) If any person is in a protected area in contravention of any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to three years ^{rs}[or with fine or with both].

t[8-A. Any person who effects or attempts to Forcing or evading a effect entry into a prohibited place, protected place or guard. protected area

(a) by using, or threatening to use, criminal force to any person posted for the purpose of protecting, or of preventing or controlling access to, such place or area, or

(b) after taking precautions to conceal his entry or attempted entry from any such person, shall be punishable with imprisonment for a term which may extend to seven years.]

9. [Eng. Def. R. 14.] u[(1) Without prejudice Orders for certain places to the provisions of any other rule, the Central Govern- and areas. ment or the Provincial Government, as respects—

(a) any prohibited place,

(b) any place or area declared by it to be a protected place or protected area, or

(c) any other place or area in relation to which it appears to it to be necessary to take special precautions in the interests of the defence of British India, the public safety, the maintenance of public order, the efficient prosecution of war, or the maintenance of supplies and services essential to the life of the community, may make orders for controlling or regulating the admission of persons to, and the conduct of persons in, and in the vicinity of, such place or area.]

(2) Without prejudice to the generality of the foregoing provisions, orders made under sub-rule (1) in relation to any place or area may make provision—

(a) for restricting the admission of persons to such place or area and for removing therefrom any person who is therein in contravention of the orders or who has been convicted of—

(i) any contravention of the provisions of these Rules, or

(ii) any offence against public order or decency;

(b) for requiring the presence of any person or class of persons in such place or area to be notified to a prescribed authority and for requiring any

LEG. REF.

(q) Inserted by D. D. Notification No. 1626-OR/42, dated the 3rd April, 1943.

(r-s) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February, 1941, for the words "and shall also be to fine".

Inserted by D.C. Dept. Notification

No. 836-OR/41, dated the 19th July 1941.

(u) Substituted by D.C. Dept. Notification No. 936-OR/41, dated the 19th July 1941, for sub-rule (1) of rule 9, which was previously substituted by D.C. Dept. Notification No. 305-OR/39, dated the 15th February 1941, for the original sub-rule.

person who has been convicted of any such offence as is mentioned in clause (a) of this sub-rule to report his movements while in such place or area and to observe any other condition imposed upon him by a prescribed authority;

(c) for requiring any person or class of persons in such place or area to carry such documentary evidence of identity as may be prescribed; and

(d) for prohibiting any person or class of persons from being in possession or control of any prescribed article.

v[(2-a) An order made under this rule in respect of a prohibited place, protected place or protected area may exempt such place or area from all or any of the provisions of these rules which are expressed to apply to or in relation to a prohibited place, protected place or protected area as the case may be or may direct that all or any of the said provisions shall apply subject to such modifications as may be specified in the order.

(2-b) An order made under this rule in respect of a place or area which is not a prohibited place, protected place or protected area may direct that all or any of the provisions of these rules which are expressed to apply to or in relation to a prohibited place, protected place or protected area as the case may be shall apply to or in relation to the place or area in respect of which the order is made either without modification or subject to such modifications as may be specified in the order.]

(3) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to three years w[or with fine or with both.]

Trespassing on certain premises.

10. [Eng. Def. R. 15.] (1) No person shall—

(a) unlawfully enter or board any vehicle, vessel or aircraft used or appropriated for any of the purposes of His Majesty's service, or trespass on premises in the vicinity of any such vehicle, vessel or aircraft, or

(b) trespass on, or on premises in the vicinity of, any premises used or appropriated for any of the purposes of His Majesty's service or for defence against, or protection from, an enemy.

(2) If any person is found trespassing on any premises in contravention of the provisions of sub-rule (1), or is found on any vehicle, vessel or aircraft which he has entered or boarded without lawful authority, he may, without prejudice to any other proceedings which may be taken against him, be removed from such premises, vehicle, vessel or aircraft, as the case may be, by any police officer or any other person acting on behalf of Government, or by the person occupying the premises or being in charge of the vehicle, vessel or aircraft, or any person authorised by him.

(3) No person shall, for any purpose prejudicial to the public safety or to the defence of British India, be in, or in the vicinity of, any such premises or any such vehicle, vessel or aircraft as are referred to in sub-rule (1); and where, in any proceedings taken against a person by virtue of this sub-rule, it is proved that at that material time he was present in, or in the vicinity of, the premises, vehicle, vessel or aircraft concerned, the prosecution may thereupon adduce such evidence of the character of that person (including evidence of his having been previously convicted of any offence) as tends to show that he was so present for a purpose prejudicial to the public safety or to the defence of British India.

(4) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend in the case

LEG. REF.

(v) Inserted by D.C. Dept. Notification No. 305-OR/39, dated the 15th February 1941.

(w) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th Febru-

ary 1941, for the words "and shall also be liable to fine."

(x) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

of a contravention of sub-rule (3) to seven years and in any other case to three years, x[or with fine or with both].

11. [Eng. Def. R. 15.] (1) No person loitering in the vicinity of any prohibited place or protected place or of any such premises, vehicle, vessel or aircraft as are referred to in sub-rule (1) of rule 10 shall continue to loiter in that vicinity after being ordered to leave it by any police officer or any other person acting on behalf of Government or by the person in occupation of the said premises or being in charge of the said vehicle, vessel or aircraft, or any person authorised by him.

(2) If any person contravenes the provisions of sub-rule (1), he shall be punishable with imprisonment for a term which may extend to three years y[or with fine or with both].

12. [Eng. Def. R. 16.] (1) The Central Government or the Provincial Government may, by order, prohibit or restrict for such period as may be specified in the order,—

(a) the use of any road, pathway or waterway;

(b) the passage of any person, animal or vehicle over any land.

(2) If any person contravenes any order made under sub-rule (1), he shall be punishable with imprisonment for a term which may extend to six months z[or with fine or with both].

PART III.

CONTROL OF SIGNALLING, TELEGRAPHY, POSTAL COMMUNICATIONS, ETC.

z[13. [Eng. Def. R. 7.] (1) Save as hereinafter provided, no person shall make any signal, either visually or otherwise, in such circumstances as show that the signal—

(a) is intended to be received by a person on board a vessel at sea or an aircraft in flight, or

(b) being made from a vessel at sea or an aircraft in flight, is intended to be received by a person not on board such vessel or aircraft, or

(c) being made in an area notified by the Central Government in this behalf, is intended to be received by a person outside the external land frontiers of British India:

Provided that the preceding prohibitions shall not apply to the making of any signal with permission granted by or on behalf of the Central Government, or of any signal for the purpose only of saving life, or of regulating or aiding the navigation, on the water or in the air, of any vessel or aircraft other than a vessel or aircraft being used in the service of a State at war with His Majesty.

(2) No person shall make any signal, either visually or otherwise, intending or knowing it to be likely that the signal may mislead any member of His Majesty's forces or any other public servant, acting in the course of his duty as such member or public servant.

(3) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to five years a[or with fine or with both].

14. [Cf. Eng. Def. R. 7.] (1) Subject to the provisions of sub-rule (3) and to any exemptions for which provision may be made by general or special order of the Central Government, no person shall, except with permission granted by the Central Government, use or have in his possession or under his

LEG. REF.

(a) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(z) Substituted by D.C. Dept. Notifi-

cation No. 16-QR/39, dated the 10th August 1940, for the original rule 13.

(a) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

control any apparatus or contrivance for signalling (whether visually or otherwise) which is of such a nature that it could be used for a purpose prejudicial to the efficient prosecution of war and to the defence of British India.

(2) Nothing in sub-rule (1) shall apply in relation to—

(a) any wireless telegraphy apparatus as defined in the Indian Wireless Telegraphy Act, 1933, or

(b) any apparatus forming part of the equipment of any vessel or aircraft, being an apparatus which is required by law to be carried therein b[or which is required for the making of any such signal as is mentioned in the proviso to sub-rule (1) of rule 13.]

(3) In any proceedings arising out of an alleged contravention of any of the provisions of this rule, it shall be a defence for the accused to prove that at the date of the alleged contravention, application had been made by him for the first time for the necessary permission in relation to the apparatus or contrivance in respect of which the proceedings are taken, and that the application was still pending at that date.

(4) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to three years b-1[or with fine or with both].

15. (1) In any area notified in this behalf by the Central Government, c[or the Provincial Government, that Government may, if in its opinion], it is necessary, or expedient for the efficient prosecution of the war or the defence of British India,—

(a) by general or special order prohibit the use, display or possession of any article which is intended to serve or to be used, or, in the opinion of d[that Government], is capable of serving or of being used, as a landmark or as a means of transmitting or conveying in any way any message or information to the enemy;

(b) by order direct the person having control of any such article as aforesaid to remove it, or to take such other action in relation to it as may be specified in the order;

(c) seize and remove any such article as aforesaid or take such other action in relation to it as may seem expedient to d[that Government].

(2) If any person contravenes any order made under any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to three years e[or with fine or with both].

f[16. [Eng. Def. R. 8.] (1) In this rule, "telegraph" has the same meaning as in the Indian Telegraph Act, 1885, and "wireless telegraphy apparatus" has the same meaning as in the Indian Wireless Telegraphy Act, 1933.

(2) Notwithstanding anything contained in the Indian Telegraph Act, 1885, or the Indian Wireless Telegraphy Act, 1933, or in the rules made under either of those Acts, the Central Government may, by general or special order, prohibit or regulate the establishing, maintaining or working of any wireless telegraph or the possession of any wireless telegraphy apparatus.

(3) If any wireless telegraph is established, maintained or worked, or any wireless telegraphy apparatus is possessed, in contravention of an order made

LEG. REF.

(b) Inserted by D.C. Dept. Notification No. 368-OR/40, dated the 10th August 1940.

(b-1) Vide footnote (a), p. 328.

(c) Substituted by D.C. Dept. Notification No. 891-SM/41, dated the 16th August 1941, for the words "the Central Government may, if in the opinion of the Central Government".

(d) Substituted by D.C. Dept. Notifi-

Ca. C. M.-I-42

cation No. 891-SM/41, dated the 16th August 1941, for the words "the Central Government".

(e) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(f) Substituted by D.C. Dept. Notification No. 509-OR/41, dated the 26th July 1941, for the original rule 16.

under sub-rule (2), the person so establishing, maintaining or working the telegraph or possessing the apparatus, and the occupier of the premises on which the telegraph or apparatus is situated, or where the telegraph or apparatus is on board any vessel or aircraft, the master of the vessel or the pilot of the aircraft, as the case may be, shall each be deemed to have contravened the order:

Provided that, in any proceedings which, by virtue of the provisions of this sub-rule, are taken against any person in respect of the establishing, maintaining or working of a wireless telegraph or the possession of wireless telegraphy apparatus by some other person in contravention of an order made under sub-rule (2), it shall be a defence for the accused to prove that the telegraph was so established, maintained or worked or the apparatus was so possessed, without his permission, and that he exercised all due diligence to prevent any contravention of the order.

(4) Any member of His Majesty's forces or any other person authorised in this behalf by the Central Government may, in relation to any vessel or aircraft, take such steps and use such force as may appear to that member or person to be necessary for securing compliance with any order made under sub-rule (2), or where a contravention of such an order has occurred, for enabling proceedings in respect of the contravention to be taken.

(5) If any person has in his possession any wireless telegraphy apparatus in contravention of any of the provisions of the Indian Wireless Telegraphy Act, 1933, or of the rules made thereunder, he shall be deemed to have contravened the provisions of this rule.

(6) An officer authorised by the Central or a Provincial Government in this behalf may seize any wireless telegraphy apparatus which is possessed or used by any person in contravention of this rule g[or of any order made thereunder] or of any of the provisions of the Indian Wireless Telegraphy Act, 1933, and keep it in safe custody subject to the orders of any Court under this rule or of the Government.

(7) If any person contravenes h[any of the provisions of this rule or of any order made thereunder], he shall be punishable with imprisonment for a term which may extend to five years or with fine or with both.

(8) For the purposes of this rule a court may presume that a person possesses wireless telegraphy apparatus if such apparatus is under his ostensible charge or is located in any premises or place over which he has effective control.

(9) If in the trial of an offence under this rule the accused is convicted, the court shall decide whether any wireless telegraph or wireless telegraphy apparatus in respect of which an offence has been committed should be confiscated, and, if it so desires, may order confiscation accordingly.]

i[16-A. (1) The Central Government or the Provincial Government may by order require the person in possession or having the control of any wireless receiving apparatus in respect of which a commercial broadcast receiver license is in force to use the same for the dissemination to the public at such time and in such manner as may be specified in the order of such matter as may be so specified.

(2) If any person contravenes the provisions of any order made under this rule, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.]

The Director-General, Posts and Telegraphs or any person authorised by him in this behalf, may

tion No. 5-D.C. (13)/43, dated 13th March 1943.

(i) Inserted by D.C. Dept. Notification 1290-SM/42, dated the 8th May 1942.

(a) direct—

(i) that any public telephone call office shall be closed to the public for such period as may be specified;

(ii) that any subscriber's telephone connexion to any exchange shall be cut off for such period as may be specified;

j[(ii-a) where a direction has been given under sub-clause (ii); that the subscriber shall surrender all telephone apparatus and fittings on the premises to such person as may be specified];

(iii) that any person employed by him in this behalf by order in writing may listen in to all conversations or any specified conversation over any telephonic system;

(b) make provision for suspending or regulating the use otherwise than for Government purposes, of any telegraph or telephone service in any area specified in the order;

(c) assume the control or direction, or direct any person to assume the control or direction, of any private telephone exchange or any connexion with any such exchange.

(2) If any person contravenes any order made under the provisions of sub-rule (1), he shall be punishable with imprisonment for a term which may extend to six months k[or with fine or with both].

18. Notwithstanding anything contained in sub-section (1) of section 5 of the Indian Telegraph Act, 1885, any person appointed by the Central Government to be a censor may—

(a) order that any telegraphic message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by, or transmitted or received by, any telegraph, shall not be transmitted or shall be intercepted or detained or shall be disclosed to the censor or to any other officer of Government mentioned in the order;

(b) paraphrase the wording of any telegraphic message suspected of conveying a secret meaning and order the transmission of the message as so paraphrased:

l[(c) delete any part of a telegraphic message which he considers to be prejudicial to the public safety or interest or to the defence of British India or to the efficient prosecution of war;]

["(d) order the transmission of any telegraphic messages by a route different from that prescribed by the sender."] (D.D. No. 5 D.C. (52)|44, dated 8th April, 1944, *Gazette of India*, 8th April, 1944, Pt. I, S. 1, p. 498.)

19. [Eng. Def. R. 10.] (1) Subject to m[the provisions of this rule], no person shall, except with permission granted by the Central Government, send or convey by post or otherwise from any place in British India to any destination outside India, or to any destination in British India from any place outside India,—

(a) any instructions for utilising any means of secretly conveying, receiving or recording information, including any cipher or code; or

n[(aa) any message in cipher or code; or]

(b) any substance or article manufactured or designed for the purpose of secretly conveying, receiving or recording information; or

(c) any document or other article secretly conveying or recording any information.

LEG. REF.

(j) Inserted by D.C. Dept. Notification No. 728-OR|41, dated the 22nd November 1941.

(k) Substituted by D.C. Dept. Notification No. 701-OR|41, dated the 15th February 1941, for the words "and shall also be

liable to fine".

(l) Inserted by D.C. Dept. Notification No. 1129-OR|41, dated the 29th November 1941.

(m) Substituted by No. 5-D.C. (20)|43, dated 10th April 1943.

(n) Inserted by *ibid*.

o[(1-A) The provisions of sub-rule (1) shall not apply to—

(a) the sending of instructions for utilizing any cipher or code the use of which is approved by notified order of the Central Government; or

(b) the sending, in accordance with conditions imposed by the Central Government, of any telegraphic message in such cipher or code; or

(c) the sending of any document conveying or recording information by means of such cipher or code, being a document which specifies in clear the cipher or code used].

(2) The Central Government may, in respect of any area, by notified order declare that it is expedient to control the use of means of secret communication therein, and thereupon the provisions of sub-rule (1) shall apply in relation to that area as they apply in relation to a destination or place outside India.

(3) Any person who has in his possession or under his control any such instructions, substance, document or other article as is mentioned in sub-rule (1) shall, if required by the Central Government by a written order so to do, deliver up those instructions or that substance, document or other article to such authority or person as may be specified in the order.

(4) Nothing in sub-rule (3) shall be taken to prevent the prosecution of any person in respect of a contravention of the provisions of sub-rule (1).

(5) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to three years p[or with fine or with both].

Racing and homing
pigeon.

q[19-A. [Eng. Def. R. 9.] (1) No person shall—

(a) have under his control, or liberate, any racing pigeon or homing pigeon, or send by means of any such pigeon any document, pictorial representation or photograph, except under the authority of a written permit granted by the District Magistrate r[or, in a Presidency Town the Commissioner of Police, or by any person authorised in this behalf by the District Magistrate or the Commissioner of Police, as the case may be];

(b) s[* * *] kill, wound or take any such pigeon;

(c) remove or tamper with any article attached to any such pigeon, being an article which he has reasonable cause to believe to be a means of identifying the pigeon or of communicating information:

Provided that nothing in clauses (b) and (c) shall apply to anything done in relation to a pigeon by the person entitled to possession thereof or by any person acting on his behalf:

t[Provided further that in any proceedings which, by virtue of clause (b) are taken against any person in respect of the killing or wounding of any such pigeon, it shall be a defence for the defendant to prove that he acted under the

LEG. REF.

(a) Inserted by *ibid.*

(b) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(c) Inserted by D.C. Dept. Notification No. 1302-OR/42, dated the 21st March 1942.

(r) Substituted by D.C. Dept. Notification No. 1302-OR/42, dated the 2nd May 1942, for the words "or an officer authorised by him in this behalf".

(s) The words "knowingly" omitted by No. 1302-OR/42, dated 13th March, 1943.

(t) Inserted by *ibid.*

R. 19 (1) (a) AND (5): APPLICABILITY
—"SEND"—ARTICLE SENT BY POST AND INTERCEPTED BY CENSOR.—The accused was con-

victed of an offence under R. 19 (1) (a) and (5) of the Defence of India Rules for sending by post to a destination outside British India (the United States of America) a secret "Code" for being used as a means of secretly conveying information. The letter was intercepted by the censor. *Held*, that it was correct to say that an article was sent if it started on its way to its destination, and the fact that it did not arrive at its destination could not alter the fact that it was sent, *held, further*, that a Code did not cease to be a secret Code because a number of other persons were using it, if it was not generally known or used by persons engaged in the business for which the Code in question was employed. (1942) 2 M.L.J. 357=1942 Mad. 723=I.L.R. (1943) Mad. 230.

reasonable belief that the pigeon was not a racing or homing pigeon, and that (in a case where he subsequently took possession of the pigeon) he forthwith caused the pigeon, together with any article attached thereto which he had reasonable cause to believe to be a means of identifying the pigeon or communicating information, to be delivered to a police officer].

(2) With a view to securing compliance with sub-rule (1), any police officer not below the rank of Head Constable may enter any premises and liberate or take possession of any racing or homing pigeon found by him therein or thereon.

^u[(3) If any person finds dead or unable to fly a racing pigeon or homing pigeon to which there is attached any article which he has reason to believe to be a means of identifying the pigeon or of communicating information, he shall forthwith cause the pigeon to be delivered to a police officer:

Provided that nothing in this sub-rule shall impose any obligation in respect of a pigeon upon any person, or the servant or agent of any person, who is entitled to have that pigeon under his control by virtue of a permit granted under clause (a) of sub-rule (1).

(4) Any pigeon seized by or delivered to a police officer under the provisions of this rule shall be disposed of in such manner as the Central Government may by general or special order direct.]

^v[(5) If any person contravenes the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

20. [Eng. Def. R. 11.] (1) For the purpose of this rule and of rule 21, card, newspaper, book, pattern or sample packet, the expression "postal article" includes a letter, post-
Control of postal communications. parcel and every article or thing transmissible by post, and a money order.

(2) The Central Government may, by general or special order, either generally or with reference to any particular place within or without British India, prohibit, regulate, restrict or impose conditions upon the receipt or transmission in, or despatch from, British India of any postal article or of any class or description of postal articles.

(3) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to three years ^w[or with fine or with both].

21. (1) Notwithstanding anything contained in section 26 of the Indian Post Office Act, 1898, any person appointed by the Central Government to be a censor may—
Power to intercept and censor postal articles.

(a) order that any postal article or class or description of postal articles in course of transmission by post shall be intercepted or detained or shall be disposed of in such manner as the censor may direct;

(b) open and examine the contents of any postal article, and delete, destroy or remove any part thereof which the censor considers to be prejudicial to the public safety or interest or to the defence of British India or the efficient prosecution of war.

(2) Any person who delivers any postal article for transmission, either by an indirect route or otherwise, in such a manner as is calculated to evade examination by a censor, shall be punishable with imprisonment which may extend to five years ^x[or with fine or with both].

LEG. REF.

(^u) Inserted by D.C. Dept. Notification No. 1302-OR/42, dated the 2nd May, 1942.

(^v) Re-numbered for sub-rule (3) by *Ibid.*

(^w) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th Febru-

ary 1941, for the words "and shall also be liable to fine".

(^x) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

22. (1) In this rule,—

y* * *

Power to prohibit, and to search, etc., travellers conveying non-postal correspondence.

“photograph” includes any photographic plate, photographic film or other sensitised article which has been exposed in a camera whether such plate, film or other article has been developed or not.

(2) The Central Government may, by order, make provision for securing that, subject to any exemptions for which provision may be made by the order, and except in accordance with such conditions as may be contained therein [no article whatsoever recording information and no document, pictorial representation, photograph or gramophone record], shall be sent or conveyed otherwise than by post, into or from British India.

(3) No person shall have any article in his possession for the purpose of sending or conveying it in contravention of an order made under sub-rule (2).

a[(4) Any prohibition or restriction imposed by an order made under sub-rule (2) on the sending into, or conveying from, British India of articles, shall be deemed to have been imposed under section 19 of the Sea Customs Act, 1878, and all the provisions of that Act shall have effect accordingly:

Provided that where in respect of any contravention of this rule the Customs-Collector is of opinion that the penalties provided by the said Act are inadequate, he may make a complaint to a Magistrate having jurisdiction; and the accused person shall, upon conviction, be punishable with imprisonment for a term which may extend to five years or with fine or with both.

(5) Any officer of customs may, for the purpose of carrying into effect the provisions of this rule, take such steps (including the subsection of the article to any process) as may be reasonably necessary for ascertaining whether an article does or does not record any information.

(6) The Central Government or the Provincial Government may by order authorise any person for the purposes of this rule to exercise the powers, and perform the duties, conferred or imposed on a Customs-Collector or any subordinate officer of customs by the Sea Customs Act, 1878.]

PART IV.

RESTRICTION OF MOVEMENTS AND ACTIVITIES OF PERSONS.

— 23. [Eng. Def. R. 17.] (1) No person shall, without the permission of the Central Government, voluntarily enter any enemy territory or voluntarily go on board any vessel or aircraft being used in the service of a State at war with His Majesty.

(2) If any person contravenes this rule, he shall be punishable with imprisonment for a term which may extend to five years b[or with fine or with both].

24. [Eng. Def. R. 18.] (1) The Central Government may by order make provision for securing that, subject to such exemptions as may be provided for in the order, any person or class of persons shall not, on coming from a place outside India, enter British India elsewhere than at such place as may be specified in the order.

(2) If any person enters British India in contravention of any order made under sub-rule (1), or of the provisions of, or of any rule or order made under, the Indian Passport Act, 1920, he shall, without prejudice to any other

LEG. REF.

(y) Clause (a) and the brackets and letter (b) of sub-rule (1) omitted by D.C. Dept. Notification No. 1196-OR/42, dated the 6th June 1942.

(z) Substituted by D.C. Dept. Notification No. 375-OR/40, dated the 5th April 1941, for the words “no document, pictorial representation, photograph or other article

whatsoever recording information”.

(a) Substituted by D.C. Dept. Notification No. 1196-OR/42, dated the 6th June 1942, for sub-rules (4), (5), (6), (7), (8) and (9).

(b) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words “and shall also be liable to fine”.

proceedings which may be taken against him, be punishable with imprisonment for a term which may extend to five years c[or with fine or with both].

(3) The master of any vessel or the pilot of any aircraft by means of which any person enters British India in contravention of any order made under sub-rule (1) or of the provisions of, or of any rule or order made under, the Indian Passport Act, 1920, shall, unless he proves that he exercised all due diligence to prevent the said contravention, be deemed to have abetted the contravention.

d[24-A. (1) The Central Government may, by order, require any person of such class as may be specified in the order e[who has entered f* * India since the 8th December, 1941], to furnish to such authority and in such manner as may be so specified such particulars regarding g[himself, his dependent] his past and prospective movements and any travel documents in his possession as may be specified in the order.

(2) If any person contravenes any order made under sub-rule (1), he shall be punishable with fine up to one hundred rupees.]

25. [Eng. Def. R. 18.] (1) The Central Government may, by order, make provision for securing that, subject to such exemptions as may be provided for in the order h[any person for the time being in British India or any class of such persons] shall not—

(a) proceed i[from British India] to a destination outside India except under the authority of a written permit granted in such form and manner and by such authority or person as may be specified in the order;

(b) for the purpose of proceeding to a destination outside India, leave British India elsewhere than at such place as may be specified in the order.

(2) Where any police officer not below the rank of Inspector, or any other public servant authorised in this behalf by the Central Government, has reason to suspect that any person who is about to depart from British India is attempting so to depart for purposes prejudicial to the public safety or to the defence of British India, he may, notwithstanding the fact that such departure does not contravene any order made under sub-rule (1), prevent the departure of that person.

(3) Any police officer or other public servant who prevents the departure of any person under sub-rule (2) shall forthwith report the fact of such prevention to the Central Government, and the Central Government may, if it thinks fit, by order, prohibit such person at any time subsequently from leaving British India so long as the order is in force.

(4) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to five years j[or with fine or with both.]

(5) The master of any vessel or the pilot of any aircraft by means of which any person leaves British India in contravention of any order made under

LEG. REF.

(c) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(d) Inserted by D.C. Dept. Notification No. 3260/41, dated the 3rd January 1942.

(e) Substituted by D.C. Dept. Notification No. 1488-OR/42, dated the 4th July 1942, for the words "entering British India".

(f) The word "British" omitted by D.C. Dept. Notification No. 1488-OR/42, dated the 11th July, 1942.

(g) Inserted by D.C. Dept. Notification

No. 1488-OR/42, dated the 4th July, 1942.

(h) Substituted by D. Dept. Notification No. 1534-OR/42, dated the 8th August 1942, for the words "any person or class of persons".

(i) The words "from British India" was first omitted by D.C. Dept. Notification No. 13-M.P., dated the 14th October 1939 and then inserted again by D. C. Dept. Notification No. 13-2 M.P., dated the 4th November, 1939.

(j) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February, 1941, for the words "and shall also be liable to fine".

this rule shall, unless he proves that he exercised all due diligence to prevent the said contravention, be deemed to have abetted the contravention.

26. [Eng. Def. Rr. 18-A and 18-B]. (1) ^k[The Central Government or the Provincial Government, if it is satisfied with respect to any particular person that with a view to preventing him from acting in any manner prejudicial to the defence of British India, the public safety, the maintenance of public order, ^l[His Majesty's rela-

Restriction of movements of suspected persons, restriction orders and detention orders.

tions with foreign powers or Indian States, the maintenance of peaceful conditions in tribal areas] or the efficient prosecution of the war it is necessary so to do, may make an order;]

(a) directing such person to remove himself from British India in such manner, by such time and by such route as may be specified in the order, and prohibiting his return to British India;

(b) directing that he be detained;

(c) directing that, except in so far as he may be permitted by the provisions of the order, or by such authority or person as may be specified therein, he shall not be in any such area or place in British India as may be specified in the order;

(d) requiring him to reside or remain in such place or within such area in British India as may be specified in the order ^m[and if he is not already there to proceed to that place or area within such time as may be specified in the order];

(e) requiring him to notify his movements ⁿ[or to report himself or both to notify his movements and report himself] in such manner at such times and to such authority or person as may be specified in the order;

(f) imposing upon him such restrictions as may be specified in the order in respect of his employment or business, in respect of his association or communication with other persons, and in respect of his activities in relation to the dissemination of news or propagation of opinions;

(g) prohibiting or restricting the possession or use by him of any such article or articles as may be specified in the order;

^o[(h) otherwise regulating his conduct in any such particular as may be specified in the order:]

Provided that no order shall be made under clause (a) of this sub-rule in respect of any British Indian subject of His Majesty.

^p[Provided further that no order shall be made by the Provincial Government under clause (c) of this sub-rule directing that any person ordinarily resident in the Province shall not be in the Province.]

q* * * *

(3) An order made under sub-rule (1) ^{r*} * * * may require the person in respect of whom it is made to enter into a bond, with or without sureties, for the due performance of, or as an alternative to the enforcement of, such restrictions or conditions made in the order as may be specified in the order.

(4) If any person is in any area or place in contravention of an order made under the provisions of this rule, or fails to leave any area or place in accordance with the requirements of such an order, then, without prejudice to

LEG. REF.

(k) Substituted by D.C. Dept. Notification No. 356-OR/40, dated the 28th March 1940, for the original sub-rule (1).

(l) Inserted by D.C. Dept. Notification No. 534-OR/40, dated the 3rd August, 1940.

(m) Inserted by D.C. Dept. Notification No. 744-OR/41, dated the 22nd March, 1941.

(n) Inserted by D.C. Dept. Notification No. 1397-O.R./42, dated the 6th June,

1942.

(o) Inserted by D.C. Dept. Notification No. 356-OR/40, dated the 22nd June, 1940.

(p) Inserted by D.C. Dept. Notification No. 356-OR/40, dated the 28th March, 1940.

(q) Sub-rule (2) omitted by D.C. Dept. Notification No. 356-OR/40, dated the 28th March, 1940.

(r) The words, brackets and figures "or sub-rule (2)" omitted by *ibid*.

the provisions of sub-rule (6), he may be removed from such area or place by any police officer or by any person acting on behalf of Government.

(5) So long as there is in force in respect of any person such an order as aforesaid directing that he be detained, he shall be liable to be detained in such place and under such conditions ^s[as to maintenance, discipline and the punishment of offences and breaches of discipline], as the Central Government or the Provincial Government, as the case may be, may from time to time determine.

^s[(5-A) Where the power to determine the place of detention is exercisable by the Provincial Government the power of the Provincial Government shall include power to determine a place of detention outside the Province:

Provided that—

(a) no such place shall be determined save with the previous consent of the Provincial Government of the Province in which the place is situate, or, where the place is situate in a Chief Commissioner's Province, of the Central Government;

(b) the power to determine the conditions of detention shall be exercised by the Provincial Government of the Province in which the place is situate, or, where the place is situate in a Chief Commissioner's Province, by the Central Government.]

^t[(5-B) If the Central Government or the Provincial Government, as the case may be, has reason to believe that a person in respect of whom that Government has made an order under clause (b) of sub-rule (1) directing that he be detained has absconded or is concealing himself so that such order cannot be executed, that Government may—

(a) make a report in writing of the fact to a Presidency Magistrate or a Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of sections 87, 88 and 89 of the Code of Criminal Procedure, 1898, shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate;

(b) by notified order direct the said person to appear before such officer, at such place and within such period as may be specified in the order; and if the said person fails to comply with such direction he shall, unless he proves that it was not possible for him to comply therewith and that he had within the period specified in the order informed the officer of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to seven years or with fine or with both.]

^u[5-C) The Central Government or the Provincial Government may, by general or special order made with the consent of the Crown Representative, provide for the removal of any person detained by it under sub-rule (1) to, and for the detention of such person in, any area administered by the Crown Representative.]

(6) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to five years ^v[or with fine or with both], and if such person has entered into a bond in pursuance of the provisions of sub-rule (3), his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting Court why such penalty should not be paid.

LEG. REF.

(s) Inserted by D.C. Dept. Notification No. 527 OR/40, dated 31st August 1940.

(t) Substituted by D. Dept. notification No. 1020-OR/41, dated the 15th August 1942, for the original sub-rule (5-B) which was inserted by D.C. Dept. notification No. 580-OR/40, dated the 26th October, 1940.

(u) Inserted by D.C. Dept. notification No. 1354-OR/42, dated the 25th April, 1942.

(v) Substituted by D. C. Dept. notification No. 701-OR/41, dated the 15th February, 1941; for the words "and shall also be liable to fine".

RULE 26.—SCOPE—VALIDITY—ORDER OF DETENTION—CONDITION PRECEDENT TO.—The validity of R. 26 has been put beyond question by S. 3 of the Ordinance XIV of 1943. But before an

order under R. 26 for the detention of a person can be made, the "Provincial Government" must be satisfied that such detention was necessary for preventing the person proceeded against from acting in a prejudicial manner. Orders of detention made in pursuance of a general order, that if the police recommended detention of any person under R. 26, such person may be detained, are bad. (1943) 2 M.L.J. 468=6 F.L.J. 151=1943 F.C. 75 (F.C.).

"PROVINCIAL GOVERNMENT".—The expression "Provincial Government" in R. 26 does not mean anything other than what it would mean under the definition of the General Clauses Act. (1943) 2 M.L.J. 468=6 F.L.J. 151=1943 F.C. 75 (86); *see also* S. 20 of the Act.

"PROVINCIAL GOVERNMENT"—AUTHORITY TO BE SATISFIED BEFORE ORDER OF DETENTION CAN BE PASSED—DELEGATION.—"Provincial Government" in R. 26 of the Defence of India Rules means the Governor acting with or without the advice of his ministers, and delegation of powers and duties imposed on the Provincial Government by the Defence of India Rules can be made only under the provisions of S. 2 (5) of the Defence of India Act. In the absence of a delegation under S. 2 (5) of that Act, the authority to be satisfied under R. 26 must be the Governor. (1943) 2 M.L.J. 468=6 F.L.J. 151=1943 F.C. 75.

DETENUE, A PARTY TO PROCEEDING—POWER OF HIGH COURT TO DIRECT HIS ATTENDANCE.—The High Court has power to direct the attendance of a security prisoner detained under R. 26 of the Defence of India Rules when he is a party to a proceeding in Court. But as a matter of discretion it will not make such an order if the detenue can be adequately represented by counsel or otherwise, or if his interests are not likely to suffer by reason of his non-attendance, and never unless it is essential in the interests of justice that he should be produced. If the Government refuses to obey the order of the High Court, the High Court may conclude that such conduct indicates bad faith. Bad faith would attract the provisions of S. 491, Cr. P. Code, and the High Court would be entitled to hold that detention "according to law" means such detention as is consistent with S. 15 of the Defence of India Act, that is to say, a detention which enables the detenue to safeguard his rights to property in a reasonable manner, rights which are not confiscated or taken away or destroyed by the detention but which might in certain cases be seriously imperilled by Government's refusal to permit personal attendance in Court. The Court would have power to see that this was put right and to order that the detention be "according to law". If Government were still to be obdurate not only would the Court be entitled to release the detenue altogether on the ground of bad faith but also to bring into play its coercive processes contempt. 1944 N.L.J. 38.

DETENUE—RIGHT TO INTERVIEW LEGAL ADVISER—POWER OF HIGH COURT TO MAKE ORDER ALLOWING INTERVIEW.—There is no authority which would enable the High Court to direct the authorities responsible for the detention of a person under R. 26 to allow some third party, *viz.*, his legal adviser to have access to him. That is a matter which is entirely within the discretion of Government, and it is not open to the High Court to make any order in the matter. *In re* 45 Bom.L.R. 316=1943 Bom. 194=1.L.R. (1943) 433.

POWERS OF ADDITIONAL DISTRICT MAGISTRATE.—No power under R. 26 can be exercised by the Additional District Magistrate simply by virtue of the Notification under S. 10 (2) of the Criminal Procedure Code. (1944) N.L.J. 44 (51)=1944 Nag. 84. The mere fact that an Additional District Magistrate can exercise the powers of the District Magistrate for a great many purposes does not necessarily invest him with authority to exercise all the District Magistrate's powers.

GROUND OF GOVERNOR'S BELIEF NOT TO BE QUESTIONED BY COURT.—The Court cannot investigate the sufficiency of the material or the reasonableness of the grounds upon which the Governor had been satisfied. But whenever powers of this kind or indeed other special statutory powers are conferred, they must, to the extent to which specific provision has been made in the statute conferring the powers, be exercised by the authority and in the manner specified in the statute and in strict conformity with the provisions thereof and the Court can see whether this is done. (1943) 2 M.L.J. 468=6 F.L.J. 151=1943 F.C. 75 (84-85).

Where persons who are detained under R. 129 are ordered to be detained under R. 26 as a matter of routine on a mere recommendation of the Police, the orders are bad in law as it does not appear that the matter was considered by the Governor at any stage, much less that at the time the order was made he was satisfied with regard to any of the matters set out in the order of detention. (1943) 2 M.L.J. 468=6 F.L.J. 151=1943 F.C. 75.

If on a perusal of an order under R. 26, it becomes clear that the authority or officer making the order did not apply its or his mind as required by R. 26, the order must be held to be invalid. The obligation to consider reasons or grounds for making the order and to be satisfied upon material laid before the authority or officer making it or within his or its cognizance is a condition precedent to the making of an order. If that condition is not satisfied, the order is a nullity, and is, in fact no order at all. In each case the Court has to consider the order of detention in the light of the actual language used and the circumstances surrounding the making of it. If the circumstances do not show that the authority or officer did exercise any executive discretion, or did make a *quasi judicial* consideration of the facts pertinent to the case of the

person ordered to be detained, the order is no order at all and is of no force or effect. 47 Bom.L.R. 42 (F.B.).

GROUND OF DETENTION, NOT COMPETENT FOR COURTS TO ENQUIRE.—The Courts cannot enquire into the grounds of satisfaction or the sufficiency thereof but have certainly the jurisdiction to enquire as to whether that authority or person was satisfied as a matter of fact before he made the order of detention. 47 C.W.N. 802=1943 Cal. 377 (S.B.).

Ordinarily the *ipsi dixit* of the Governor would be quite enough and it would be extremely difficult for any one to prove that the Governor was not in fact satisfied when he stated that he was.

If a detaining authority give four reasons for detaining a man without distinguishing between them, and any two or three of the reasons are held to be bad, it can never be certain to what extent the bad reasons operated on the mind of the authority or whether the detention order would have been made at all if only one or two good reasons had been before them. (1943) 2 M.L.J. 90 = 6 F.L.J. 28=1943 F.C. 1 (8).

R. 26 (1) (b) *not ultra vires*.—It is well settled that R. 26 (1) (b) is *intra vires*, and that it is not open to a Court of law, on an application made by a person detained under that rule for a writ of *habeas corpus*, or in a suit to recover damages for false imprisonment to inquire into and pronounce on the validity of the reasons which led to the making of the order. It is, however, equally well settled that the High Court may examine the correctness of the recital contained in any such order, and if it comes to the conclusion that the recital is incorrect, may declare the order to be invalid and the detention of the individual concerned illegal. 23 Pat. 252=1944 P.W.N. 245=A. I. R. 1944 Pat. 354. See also 23 Pat. 475.

“Satisfied” meaning—Governor ordering detention with ulterior object to regularise illegal detention or to punish for past acts.—The word “satisfied” in R. 26 (1) (b) of the Defence of India Rules means “reasonably satisfied”. It cannot import an arbitrary or irrational state of being satisfied. If it can be shown that the Governor acted under a mis-apprehension as to the extent of the powers entrusted to him and did not in fact order the detention of a particular individual with a view to prevent him from acting in a manner prejudicial to the public order but with some ulterior object, such as to regularise illegal detention or to punish him for acts already done rather than to prevent him from doing or instigating the doing of similar acts again, he would be entitled to be released. In such a case it cannot be said that the Governor had in law acted in good faith and the order of detention would be practically a sham order. 23 Pat. 252=1944 P.W.N. 245=A.I.R. 1944 Pat. 354.

DUTY OF CROWN TO SUPPLY COPY OF ORDER

TO PERSON DETAINED.—It is essential that, when a person is detained under R. 26 (1) (b), a copy of the order made against him should be supplied to him immediately. If that is not done and if he makes an application to the High Court under S. 491, Cr. P. Code, the High Court will have no option but to issue a Rule forthwith. It is also incumbent on the Crown, whenever a rule is issued, to exhibit in the High Court the original order. 23 Pat. 252=(1944) P. W.N. 245=A.I.R. 1944 Pat. 354.

ORDER OF DETENTION—REASONS FOR ORDER.—IF TO BE DISCLOSED OR SET OUT IN ORDER.—In making an order of detention under R. 26 (1) (b) the Governor is not required to communicate to the person detained the grounds on which he makes the order, and the High Court is not entitled to compel their disclosure and examine into them. The Governor is not required to give any indication of the reasons which led to the making of the order still less to set them out in the order itself. 23 Pat. 252=(1944) P.W. N. 245=A.I.R. 1944 Pat. 354.

PERSON ARRESTED AND BROUGHT UP FOR TRIAL ON CHARGE—ORDER OF DETENTION AGAINST—PROPRIETY.—When a man is arrested and brought up before a Court on some definite and specific charge, it is very undesirable and quite wrong for an order of detention to be made against him before he has been tried on the charge and his guilt or innocence finally determined. If he is convicted and sentenced the necessity for any order of detention ceases to exist, at least until he has served out the sentence. If, on the other hand, he is acquitted and an order of detention is sought against him, the official, on whom the responsibility of making an order rests, should obtain and study a copy of the judgment of acquittal; and if he neglects to send for and study a copy of the judgment, it may very well be said that he has failed to act with due care and attention in the discharge of that duty. 23 Pat. 252=1944 P.W.N. 245=A. I. R. 1944 Pat. 354.

ORDER OF DETENTION BY GOVERNOR—PRESUMPTION THAT MATERIALS WERE PLACED BEFORE GOVERNOR AND THAT ORDER WAS MADE BY GOVERNOR.—Where an order of detention under R. 26 (1) (b) is made by the Governor, a presumption arises that in exercising his power the Governor had acted regularly and that before making the order he had satisfied himself on the materials placed before him that it was necessary to detain the individual named with a view to prevent him from acting in a manner prejudicial to the public order. The presumption, however, is a rebuttable one. There is of course an obligation on the Chief Secretary to Government to submit cases of this kind to the Governor and to obtain his orders. In the absence of anything to the contrary in the affidavits or proof adduced by the person detained, the High Court is bound to presume that the Chief Secretary did in fact

place the materials before the Governor and that the order of detention was in fact made by the Governor. If in a particular case this has not been done and the order of detention was in fact that of some other subordinate official the detention would be illegal. But ordinarily, there is a presumption that the papers were laid before the Governor. Further, it is not open to Court to require proof that an order which purports to have been made by the Governor which is properly authenticated as such order, was in fact made by him. 23 Pat. 252=1944 P.W.N. 245= 1944 Pat. 354.

CRITICISM OF GOVERNMENT—SEDITION AS GROUND FOR DETENTION ORDER.—Where the criticism of the Government passes beyond all fair comment, the question is not whether some of these criticisms have a certain amount of justification or not, but whether they have been over-emphasised in such a way, and such inferences have been drawn from them, that the intention of the speaker to bring the Government into hatred or contempt is manifest. 1943 Oudh 227; 1942 Fed. cases 22.

EMERGENCY, WHAT CONSTITUTES.—No hard and fast rule can be laid down as to what constitutes an emergency, justifying the promulgation of an Ordinance. Thus the decision of the Federal Court that R. 26 was *ultra vires* was held to constitute an emergency that led to Ordinance XIV of 1943. (1943) 2 M.L.J. 468=6 F.L.J. 151=1943 F.C. 75.

RIGHT OF DETENUE TO PREFER HABEAS CORPUS APPLICATION UNDER S. 491, Cr. P. CODE—ORD. III OF 1944.—S. 10 of Ord. III of 1944 enacts that "no order made under this Ordinance and no order having effect by virtue of S. 6 (i.e., validation of orders made under R. 26 of the Defence of India Rules) shall be called in question in any Court, and no Court shall have power to make any order under S. 491, Cr. P. Code in respect of any order made or having effect under this ordinance, or in respect of any person, the subject of such an order." See 23 Pat. 968=1945 Pat. 44.

RIGHT OF DETENUE TO PREFER HABEAS CORPUS APPLICATION—LAW BEFORE ORDINANCE III OF 1944. See 1943 Nag. 26.

EVIDENCE—PRESUMPTION AND BURDEN OF PROOF.—The production by the Secretary of State of an order of detention by him *ex facie* regular and duly authenticated, constitutes a peremptory defence to any action of false imprisonment and places upon the plaintiff the burden of establishing that the order is unwarranted, defective or otherwise invalid. Per Lord Macmillan in (1941) 3 All.E.R. 338 (370). *Orders of detention passed under R. 26 (1) (b) are not public records* and therefore S. 35, Evidence Act, has no application. (1944) F. L.J. 72=A.I.R. 1944 Lah. 33 (F.B.).

The presumption set out in illustration (c) to S. 114, Evidence Act, *vis.*, that official acts have been regularly performed attaches to these orders. Before any such

presumption can arise it must be shown that the orders are on the face of them regular and conform to the provisions of the rule under which they purport to have been made. (1943) 2 M.L.J. 468=6 F.L.J. 151=1943 F.C. 75 (88).

The words "may presume" in S. 114, leave it to the Court to make or not to make the presumption, according to the circumstances of the case; and the presumption when made is rebuttable. (1943) 2 M.L.J. 468=6 F.L.J. 151=1943 F.C. 75 (84).

ANSWERS BY MINISTER IN THE LEGISLATIVE ASSEMBLY ADMISSIBLE.—Answers given by a Minister in the Legislative Assembly in his capacity and in the discharge of his duties as such Minister, to whom the duty of answering questions on the subject had been allocated by the Governor under the Rules of Business are admissible under Ss. 17, 18 and 20, Evidence Act, as admissions on behalf of the Government. (1943) 2 M.L.J. 468=6 F.L.J. 151=1943 F.C. 75.

EXERCISE OF POWERS UNDER THIS RULE—PROCEDURE.—"Whenever powers of this kind or indeed other special statutory powers are conferred, they must to the extent to which specific provision has been made in the statute conferring the powers be exercised by the authority and in the manner specified in the statute and in strict conformity with the provisions thereof." (1943) 2 M. L.J. 468=6 F.L.J. 151=1943 F.C. 75 (85).

REFERENCE BY HIGH COURT TO FEDERAL COURT.—Where an appellate order passed by the Federal Court is not clear and the High Court makes a reference to the Federal Court with a desire to be more fully informed as to the meaning and effect of the appellate order, the Federal Court can entertain the reference and clarify its previous appellate order. See 6 F.L.J. 73 =1943 F.C. 72.

RR. 26 AND 129—INVESTIGATION INTO OFFENCE—PROCEDURE.—If either the police or the Provincial Government desire an investigation into any offence, whether under the Penal Code or under the Defence of India Rules, then they are bound to conduct their enquiry in accordance with the provisions of the Criminal Procedure Code. They cannot call in aid their powers of detention and under the guise of exercising these powers conduct a secret investigation into a crime. If they have information that these detenus have committed crimes or offences, they are not bound to investigate into them. They can rest content with detaining them under R. 26 or 129. But if they want an investigation they must proceed in accordance with the provisions of the Criminal Procedure Code. If they do otherwise it is a fraud upon the Act and their action is not taken in good faith. The expression "good faith" as used here is akin to "malice in law." A.I.R. 1945 Nag. 8.

27. (1) The Central Government or, as the case may be, the Provincial Government may, by order, direct that any person in respect of whom an order has been made by that Government under the provisions of rule 26, shall—

Power of photographing, etc., suspected persons.

- (a) allow himself to be photographed;
- (b) allow his finger and thumb impressions to be taken;
- (c) furnish specimens of his handwriting and signature; and
- (d) attend at such time and place before such authority or person as may be specified in the order for all or any of the purposes mentioned in this sub-rule.

(2) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to six months [or with fine or with both].

Control and winding up of certain organisations. * [27-A. (1) If the Central Government or the Provincial Government is satisfied with respect to any organisation either—

- (a) that it is subject to foreign influence or control; or
- (b) that the persons in control thereof have, or have had, association with persons concerned in the Government of, or sympathies with the system of government of, any State at war with His Majesty, or have been conspiring to assist any such State,

and in either case that there is danger of the utilisation of the organisation for purposes prejudicial to the defence of British India, the public safety, the maintenance of public order, the efficient prosecution of war, or the maintenance of supplies and services essential to the life of the community, that Government may by notified order direct that this rule shall apply to that organisation.

(2) If the Central Government or the Provincial Government is satisfied that any organisation is engaged, in succession to any organisation to which this rule applies, in activities substantially similar to those formerly carried on thereby, that Government may by notified order direct that this rule shall apply to that organisation.

(3) No person shall—

(a) manage or assist in managing any organisation to which this rule applies;

(b) promote or assist in promoting a meeting of any members of such an organisation, or attend any such meeting in any capacity;

(c) publish any notice or advertisement relating to any such meeting;

(d) invite persons to support such an organisation; or

(e) otherwise in any way assist the operations of such an organisation.

(4) The provisions of sections 17-A to 17-E of the Indian Criminal Law Amendment Act, 1908 (XIV of 1908), shall apply in relation to an organisation to which this rule applies, as they apply in relation to an unlawful association:

Provided that all powers and functions exercisable by the Provincial Government under the said sections as so applied shall be exercisable also by the Central Government.

(5) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.]

LEG. REF.

(w) Substituted by D.C. Dept. notification No. 701-OR/41, dated the 15th February, 1941, for the words "and shall

also be liable to fine".

(x) Inserted by D.C. Dept. notification No. 1448-OR/42, dated the 22nd June, 1942.

Prisoners of war, etc.

28. [Eng. Def. R. 18-C.] (1) The Central Government may, by order, make provision—

(a) for regulating access to, and the conduct of persons in, places in British India where prisoners of war are detained, and for prohibiting or regulating the despatch or conveyance, from outside such places to or for prisoners of war therein, of any such articles as may be specified in the order;

(b) for regulating the conditions to be observed in connexion with the employment and maintenance of prisoners of war in British India while elsewhere than in places for the detention of prisoners of war.

y[(c) for prohibiting or regulating communication with, or the supply of articles to, prisoners of war in British India.]

(2) The provisions of sub-rule (1) and of sections 128, 129 and 130 of the Indian Penal Code shall apply in relation to a person detained or confined by order made under clause (b) of sub-rule (1) of rule 26 or clause (g) of sub-rule (2) of rule 31 ^z[or made or deemed to be made under clause (g) of sub-section (2) of section 3 of the Foreigners Act, 1940] as they apply in relation to a prisoner of war.

(3) No proceedings shall be taken, by virtue of this rule, against a person in respect of any act done by him when he is himself a prisoner of war.

(4) If any person contravenes any order made under the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to five years ^a[or with fine or with both].

Change of name by British subjects.

29. [Eng. Def. R. 20.] (1) For the purposes of this rule,—

(a) the expression "name" shall be construed as including a surname, and

(b) a name shall be deemed to be changed if the spelling thereof is altered.

(2) No British subject who is in British India on the day on which the ^a[Ordinance came into force shall, while in British India at any time after that day, assume or use or purport to assume or use for any purpose any name other than that by which he was ordinarily known immediately before the said day, unless, at least one month before the day on which he first assumes or uses or purports to assume or use that other name, he has given to the Provincial Government a notice specifying—

(a) his existing name in full and the change which he proposes to make in it, and

(b) the address of his place of residence or place of abode, if any, in British India,

and has complied with such orders in respect of such notice, including orders for giving public intimation of his intention to change his name, as the Provincial Government may give.

(3) In relation to any British subject who, not having been in British India on the day on which the Ordinance came into force, thereafter enters British India, sub-rule (2) shall have effect as if for any reference in that sub-

LEG. REF.

(y) Inserted by D. Dept. Notification No. 1590-OR/42, dated 26th September 1942.

(z) Inserted by D. Dept. Notification No. 1590-OR/42, dated the 19th December, 1942.

(a) Substituted by D.C. Dept. notification No. 701-OR/41, dated the 15th February 1941.

RULE 28.—The Crown is entitled in the exercise of its prerogative to impri-

son an alien enemy, and the Court has no jurisdiction to interfere with the exercise of the prerogative. An alien enemy resident in the Kingdom, who, in the opinion of the Executive Government is a person hostile to the welfare of the country and is on that account interned may properly be described as a prisoner of war although not a combatant or a spy, and an application by him for a writ of *habeas corpus* will be refused. (1916) 1 K.B. 268=85 L.J.K.B. 210=113 L.T. 971=80 J.P. 49=32 T.L.R. 3.

rule to the said day there were substituted a reference to the day on which he first enters British India after the day on which the Ordinance came into force.

(4) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to two years b[or with fine or with both].

(5) Nothing in this rule shall apply to the assumption of use—

(a) by any married woman of her husband's name;

(b), of any name in pursuance of a Royal licence, or in consequence of the grant of, or succession to, any rank or title;

(c) of any name in such circumstances as may be specified by order of c[the Central Government or the Provincial Government].

PART V.

RESTRICTIONS ON FOREIGNERS.

30. For the purposes of this Part the expression "foreigner" means a
Definition. foreigner as defined in the Foreigners Act, 1864, but does not include—

(i) any ruler or subject of an Indian State;

(ii) any native of the tribal areas.

31. (1) If in the opinion of the Central Government it is necessary for the
defence of British India, the efficient prosecution of
the war or the public safety or interest so to do, the
Central Government may, by order, make provision,
either generally with respect to all foreigners or with respect to such foreigner
or class of foreigners as may be specified in the order, for all or any of the
following purposes, that is to say,—

(a) for prohibiting, regulating or restricting the entry of foreigners into
British India or their departure therefrom or their continuance therein;

(b) for regulating or restricting the liberty of foreigners residing or
being in British India.

(2) In particular and without prejudice to the generality of the forego-
ing power, an order made under the provisions of sub-rule (1) may provide that
a foreigner, or class of foreigners, or all foreigners generally,—

(a) shall not enter British India, or shall enter British India only with-
in such period and by such route or by such port or place and subject to the
observance of such conditions on landing or arriving at any place in British India
as may be specified in the order;

(b) shall not depart from British India, or shall depart only within such
period and by such route or from such port or place and subject to the obser-
vance of such conditions on departing as may be specified in the order;

(c) shall not remain in British India or in such area therein as may be
specified in the order;

(d) shall remove themselves to and remain in any such area in British
India as may be specified in the order;

(e) entering into or residing or being in British India, or any specified
area in British India, shall comply with any conditions specified in the order—

(i) requiring them to reside in a particular place;

(ii) imposing any restrictions on their movements;

(iii) requiring them to furnish proof of their identity and such other
particulars, including photographs, specimens of handwriting and signature, and
finger and thumb impressions, as may be specified in the order;

(iv) prohibiting them from association with persons of such description
as may be specified in the order;

(b) Substituted by D.C. Dept. Notifica-
tion No. 701-OR/41, dated the 15th Febru-
ary 1941, for the words "and shall also be
liable to fine".

(c) Substituted by D.C. Dept. Notifica-
tion No. 890-OR/41, dated the 28th June
1941, for the words "the Provincial Gov-
ernment".

(v) prohibiting them from engaging in activities of such description as may be specified in the order;

(vi) prohibiting them from using or possessing such articles as may be specified in the order;

(vii) otherwise regulating their conduct in any particular;

(f) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all of the restrictions or conditions specified in the order;

(g) shall be arrested and detained or confined.

(3) So long as there is in force in respect of any foreigner such an order as aforesaid directing that he be detained or confined, he shall be liable to be detained or confined in such place, and under such conditions, as the Central Government may from time to time determine.

(4) The Central Government may, by order, exempt any class or description of foreigners or any individual foreigner either absolutely or conditionally from all or any of the provisions of any order made under this rule.

(5) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to five years ^d[or with fine or with both]; and if such person has entered into a bond in pursuance of an order made under clause (f) of sub-rule (2), his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting Court why such penalty should not be paid.

(6) If any question arises in any proceedings under this rule or with reference to anything done or proposed to be done in pursuance of any order made under this rule whether any person is or is not a foreigner, or is or is not a foreigner of a particular class or description, the onus of proving that that person is not a foreigner or, as the case may be, is not a foreigner of that class or description shall lie upon that person.

^e[(7) The provisions of this rule shall be in addition to, and not in derogation of, the provisions of the Foreigners Ordinance, 1939.]

31-A. [Trial of internees.]^f Inserted by D. C. Department Notification

Ordinance No. I of 1939.

No. 292-OR|39, dated the 5th December 1939, which was omitted by that Department Notification No.

365-OR|40, dated the 6th July, 1940.

32. (1) A District Magistrate, or any other Magistrate authorised by the

Obligations of masters of vessels, etc.

District Magistrate in this behalf, a Commissioner, Superintendent or District Superintendent of Police or any other police officer not below the rank of a Sub-Inspector authorised by the Commissioner, Superintendent or District Superintendent of Police in this behalf, may, for any purpose connected with the enforcement of the provisions of rule 31, enter with such assistance as he may think fit any vessel or aircraft at any port or place in British India and may—

(a) order the master of the vessel or the pilot of the aircraft, as the case may be,—

(i) before allowing any passenger to disembark, to furnish a list in writing of the passengers who are on board or who have been carried on board at any time since the vessel or aircraft commenced its journey, specifying the ports or

LEG. REF.

(d) Substituted by D.C. Dept. Notification No. 701-OR|41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(e) Inserted by D.C. Dept. Notification No. 292-OR|39, dated the 5th December 1939.

RULE 31-A.—An order may be made under Reg. 14 of English Defence of

the Realm (Consolidation) Regulations prohibiting a person from residing in a particular locality where the competent military authority honestly suspects him of being about to act in a manner prejudicial to the public safety, and where a person impugns such an order the burden is on him to prove that the military authority did not honestly suspect him. (1918) 35 T.L.R., 46—82 J.P.Jo. 480, C.A.

places at which they embarked, the ports or places of their disembarkation or intended disembarkation, and such other particulars as may be required by order of the Central Government made in pursuance of this rule;

(ii) to answer to the best of his ability any question relating to the passengers who are on board or who have disembarked in any part of British India;

(b) if any foreigner on board such vessel or aircraft does not state his reasons for coming to British India or if his account thereof is not satisfactory, either—

(i) refuse to allow such foreigner to disembark from such vessel or aircraft, or

(ii) place him under such restraint as may be specified by the Central Government in this behalf.

(2) If the master of any vessel or the pilot of any aircraft wilfully makes any false report or gives any false answer in respect of any matter as to which he is ordered under this rule to make a report or furnish an answer, or wilfully neglects or refuses to comply with the provisions of this rule or of any order given in pursuance thereof, he shall be punishable with imprisonment for a term which may extend to one year f[or with fine or with both].

Change of name by foreigners. 33. [Eng. Def. R. 20.] (1) For the purposes of this rule,—

(a) the expression "name" shall be construed as including a surname, and

(b) a name shall be deemed to be changed if the spelling thereof is altered.

(2) No foreigner who is in British India on the day on which the Ordinance came into force shall, while in British India at any time after that day, assume or use or purport to assume or use for any purpose any name other than that by which he was ordinarily known immediately before the said day.

(3) Where, after the day on which the Ordinance came into force, any foreigner carries on or purports to carry on (whether alone or in association with any other person) any trade or business under any name or style other than that under which that trade or business was being carried on immediately before the said day, he shall, for the purposes of sub-rule (2), be deemed to be using a name other than that by which he was ordinarily known immediately before the said day.

(4) In relation to any foreigner who, not having been in British India on the day on which the Ordinance came into force, thereafter enters British India, sub-rules (2) and (3) shall have effect as if for any reference in those sub-rules to the said day there were substituted a reference to the day on which he first enters British India after the day on which the Ordinance came into force.

(5) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment which may extend to five years g[or with fine or with both].

(6) Nothing in this rule shall apply to the assumption or use—

(a) by any married woman of her husband's name; or

(b) of any name in pursuance of a Royal licence.

PART VI.

PREVENTION OF PREJUDICIAL ACTS AND CONTROL OF INFORMATION.

Definitions.

34. In this Part, unless there is anything repugnant in the subject or context,—

LEG. REF.

(f) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(g) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be

liable to fine".

R. 34, NOT ULTRA VIRES.—R. 34 is within the competence of the central government in accordance with the provisions of S. 2 of the Act. 1941 A.L.J. 352=A.I.R. 1941 All. 321.

- (1) "cinematograph film" includes a sound track, and any other article on which sounds have been recorded for the purpose of their being reproduced in connexion with the exhibition of a film;
 "Cinematograph film."
- (2) "confidential information" includes any information, whether true or false, or any document or other record whatsoever containing or purporting to contain, or calculated directly or indirectly to convey, any information, whether true or false, with respect to any of the following matters, that is to say,—
 "Confidential information."
- (a) the proceedings of any meeting of the Executive Council of the Governor-General or of any secret meeting of either Chamber of the Indian Legislature];
- (b) the proceedings of any committee, commission, conference, convention or delegation appointed by His Majesty or appointed or convened by, or at the invitation of, the Central Government or either Chamber of the Indian Legislature to deal with matters concerning the prosecution of war, the making of peace or the proposed constitution for the government of any territory affected by the war or by the conditions of peace;
- (c) the contents of any secret or confidential document belonging to, or the contents of any document which has in confidence been communicated by, or any confidential information obtained from, Government or any person in the service of His Majesty and relating to any of the aforesaid matters;
- (3) "essential commodity" means food, water, fuel, light, power or any other thing essential for the existence of the community which is notified in this behalf by Government;
 "Essential commodity."
- (4) "exhibit" and "exhibition" and their grammatical variations include, in relation to a cinematograph film, the mechanical or electrical reproduction of any sounds in connexion with the showing of the film;
 "Exhibit" and "Exhibition."
- (5) "information likely to assist the enemy" means any information, whether true or false, or any document or other record whatsoever containing or purporting to contain, or calculated, directly or indirectly, to convey, any information, whether true or false, with respect to any of the following matters, that is to say,—
 "Information likely to assist the enemy."
- (a) the number, description, armament, equipment, disposition, movement, sympathies or condition of any of His Majesty's forces, vessels or aircraft;
- (b) any operations or projected operations of any of His Majesty's forces, vessels or aircraft;
- (c) any measures, works, appliances or arrangements for, or connected with, or intended for, the defence or fortification of any place by or on behalf of His Majesty's forces;
- (d) the number, description or location of any prisoners of war;
- (e) any enemy agents, that is to say, persons engaged in or believed to be engaged in assisting the enemy;
- (f) the condition of His Majesty's subjects or of any class thereof or the sympathies of such subjects or class as regards matters relating to the war;
- (g) the invention, manufacture, quantity, supply, description, condition, disposition, movement, storage, repair, testing, trial or use of any munitions of war or other thing which can be used in connection with the prosecution of the war;
- (h) any measures, works, appliances or arrangements for or connected with, or intended for, the protection of any munitions of war or other thing which

can be used in connection with the prosecution of the war;

(i) any arrangements relating to the collection of means of transport or for the protection of—

(i) transport or communications, or

(ii) the supply or distribution of any essential commodity;

(j) any prohibited place, protected place or protected area, or any person or thing in, or relating to, any such place or area or anything used in, or done or proposed to be done in, or in relation to, any such place or area;

(k) the passage of any vessel or aircraft near or over any part of India;

(l) any losses or casualties incurred by persons in the service of His Majesty, or the number or description of any such persons returning to the active service of His Majesty after casualty, or any injury or damage caused, whether by hostile operations or otherwise, to any of His Majesty's vessels or aircraft, or to any prohibited place, protected place or protected area, or to any person or thing in any such place or area, or to any munitions of war, or any injury or damage caused by hostile operations to any other person or thing whatsoever;

(m) any cipher, code or secret or official codeword or password;

(n) any orders, instructions or regulations regarding, or connected with, any of the aforesaid matters;

(o) any other matter whatsoever information as to which would or might be, directly or indirectly, useful to the enemy;

“Prejudicial act.” (6) “prejudicial act” means any act which is intended or is likely—

i[(a) to prejudice His Majesty's relations with any Indian State or with any foreign power, or the maintenance of peaceful conditions in any tribal area;]

(b) to cause disaffection among, or to prejudice, prevent or interfere with the discipline, health or training of, or the performance of their duties by, members of His Majesty's forces or public servants;

(c) to render any member of His Majesty's forces or any public servant incapable of efficiently performing his duties as such, or to induce any member of His Majesty's forces or any public servant to fail in the performance of his duties as such;

(d) to prejudice the recruiting of, or the attendance of persons for service in, any of His Majesty's forces or any police force or fire brigade or any other body of persons entered, enrolled or engaged as public servants;

LEG. REF.

(i) Substituted by D.C. Dept. Notification No. 424-OR/40, dated the 18th May 1940, for the original clause (a).

R. 34 (5) (k): “INFORMATION LIKELY TO ASSIST THE ENEMY”—WHAT CONSTITUTES.—R. 34 (5) (k) only requires that the “information likely to assist the enemy,” whether true or false, must be with respect to the passage of any vessel near any part of India. The passage may be from any place to any other place whether disclosed or not. All that is necessary is that the information must be with respect to the passage of a vessel near any part of India. It is not necessary that there must be evidence of the passage from one specified place to another. The passage may be at any time whether at the time when the information or message is sent, or before or even after. 47 Bom.L.R. 78.

R. 34 (6): “SPEECH, IF AMOUNTS TO ‘PREJUDICIAL ACT’.”—Where the question to be

decided is whether a particular speech amounted to a ‘prejudicial act’, the intention of the accused has to be gathered from the speech as a whole and not from words and isolated sentences here and there. 41 Cr.L.J. 927=190 I.C. 197=A.I.R. 1940 Oudh 417.

In a prosecution under R. 34 (6) in respect of a speech delivered by the accused, it cannot be held that the speech of the accused must be considered as a whole and that he cannot be convicted unless the whole speech be found to be “a prejudicial act”. Even a particular portion of a speech can constitute a prejudicial act. 1941 M.W.N. 1035=1942 Mad. 199.

SHOUTING ANTI-WAR SLOGANS.—The shouting anti-war slogans is a “prejudicial act” within the meaning of R. 34. 1941 Lah. 301=I.L.R. (1941) Lah. 796.

ABUSIVE LANGUAGE.—Abusive language even when used about a Government is not necessarily seditious. Sedition is a grave offence, a prosecution for which is a formidable weapon in the hands of Govern-

other dues or amount payable to Government or any local authority or payable under any law or custom having the force of law for any services rendered to the community m[or any rent of agricultural land or anything recoverable as arrears of or along with such rent];]

(k) to influence the conduct or attitude of the public or of any section of the public in a manner likely to be prejudicial to the defence of British India or to the efficient prosecution of war;

(l) to instigate directly or indirectly the use of criminal force against public servants generally or any class of public servants or any individual public servant;

(m) to instigate or incite directly or indirectly the commission or abetment of an offence punishable under section 121, section 121-A, section 122, section 131, or section 436 of the Indian Penal Code, or of the offence of robbery or dacoity;

(n) to instigate or incite directly or indirectly the commission or abetment of an offence against, or against any rule made under, the Indian Arms Act, 1878, the Indian Explosives Act, 1884, or the Explosive Substances Act, 1908;

(o) to instigate or incite directly or indirectly the commission or abetment of an offence against section 27 of the Indian Army Act, 1911, section 35 of the Indian Air Force Act, 1932, or sections 10 to 16 (both inclusive) of n[the Naval Discipline Act as set forth in the first Schedule to] the Indian Navy (Discipline) Act, 1934;

(p) otherwise to prejudice the efficient prosecution of the war and the defence of British India, or the public safety or interest;

(7) "prejudicial report" means any report, statement or visible representation, whether true or false, which, or the publishing of which is, or is an incitement to the commission of, a prejudicial act as defined in this rule;

"Prejudicial report."

(8) "unauthorised cinematograph film" means a cinematograph film which has not been certified under, or in respect of which a certificate has been suspended under, or in respect of which the Provincial Government has decided that it shall be deemed to be uncertified under section 7 of the Cinematograph Act, 1918.

"Unauthorised cinematograph film."

LEG. REF.

(m) Inserted by Defence Department Notification No. 1621-SM/42, dated the 31st October 1942.

(n) Inserted by D.C. Dept. Notification No. 361-OR/40, dated the 14th March 1940.

R. 34 (6) (κ): SUGGESTION TO WITHHOLD SUPPORT IN WAR EFFORT IN CASE INDIA IS NOT MADE FREE.—Where the speech complained against exhorted people not to give the Government support in this war unless India was made free, it was held that the underlying suggestion was clearly an active withholding of support in war effort and such withholding might well be highly prejudicial to the defence of British India or to the efficient prosecution of the war and that hence it offended against R. 34 (6) (k). 1943 A.L.W. 113.

SPEECH.—A person making a speech at a public meeting exhorting the audience to desist from enlisting in the army or assisting the prosecution of the war in any manner is guilty of "prejudicial acts" as defined by R. 34 (6) (d) and (k) of the Defence of India Rules, and is liable to conviction under R. 38 (5). 53 L.W. 711=1941 Mad. 687.

RR. 34 (6) (κ) AND (p), 38 (5) AND 121: STAGES IN THE COMMISSION OF OFFENCE GENERALLY.—COMMUNICATION TO MAGISTRATE OF INTENTION TO SHOUT ANTI-WAR SLOGAN.—There are four stages ordinarily in the commission of an offence, namely, intention, preparation, attempt and the final act constituting the offence. Intention *per se* is not ordinarily punishable at all. Preparation is punishable in rare cases as for example, S. 399 of I. P. Code. Attempt is punishable in a large majority of cases while the final act constituting the offence is always punishable. Preparation consists in devising or arranging the means or measure for the commission of an offence. The mere communication of a letter to the District Magistrate containing an intention on the part of the writer to shout anti-war slogans at a particular place on a particular day is not an offence under R. 121 read with Rr. 38 (5) and 34 (6) (k) and (p). Intention is not to be confused with preparation. The communication of the letter does not come under preparation because it does not in any way devise or arrange any means or measure for the commission of the offence, that is, the shouting of the slogan. The

35. [Eng. Def. R. 2-B.] (1) No person shall do any act with intent to impair the efficiency or impede the working of, or to cause damage to,—

Sabotage.

(a) any building, vehicle, machinery, apparatus or other property used, or intended to be used, for the purposes of Government or any local authority];

(b) any railway (as defined in the Indian Railways Act, 1890), tramway, road, canal, bridge, culvert, causeway, port, dockyard, light-house, aerodrome, or any telegraph, telegraph line or post] (as defined in the Indian Telegraph Act, 1885);

(c) any rolling-stock of a railway or tramway, any vessel or aircraft;

(d) any building or other property used in connection with the production, distribution or supply of any essential commodity, any sewage works, mine or factory;

(e) any prohibited place or protected place.

(2) The provisions of sub-rule (1) shall apply in relation to any omission on the part of a person to do anything which he is under a duty, either to Government or to any public authority or to any person, to do, as they apply to the doing of any act by a person.

(3) If any person approaches, or is in the neighbourhood of, any such building, place or property as is mentioned in sub-rule (1), in circumstances which afford reason to believe that he intends to contravene that sub-rule, he shall be deemed to have attempted a contravention thereof.

(4) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both].

*[35-A. (1) In this rule "sabotaged property" means property the possession of which has been transferred by, or in consequence of, any such act as is referred to in sub-rule (1) of rule 35.

Interference with postal property.

(2) If any person dishonestly receives or retains, or voluntarily assists in concealing or disposing of or making away with, any sabotaged property, knowing, or having reason to believe, the same to be sabotaged property, he shall be

LEG. REF.

(o) Added by D.D. Notification No. 1555-SM/42, dated the 6th August, 1942.

(p) Substituted by D. Dept. notification No. 880-SM/41, dated the 14th August 1942.

(q) The word "this" was omitted by D. C. Dept. notification No. 361-OR/40, dated the 4th March, 1940.

(r) Substituted by D.C. Dept. notification No. 701-OR/41, dated the 15th February, 1941, for the words "and shall also be liable to fine".

(s) Inserted by D.C. Dept. notification No. 1187-OR/42, dated the 2nd March, 1942.

intention to shout the slogan might be given up at any time before the offence is actually committed. Hence mere expression of an intention is not an offence. 1941 A. L. J. 687=1942 All. 121=I. L. R. (1942) All. 141; see also 1941 Lah. 301=43 P.L.R. 396=I.L.R. (1941) Lah. 796.

R. 35 (1) (b).—Damage to telephone posts or to its line falls within R. 35 (1) (b), as the word "telegraph" in that clause includes telephone line and posts by virtue of its definition in S. 3 of the Telegraph Act. The amendment of cl. (b) by the addition

of the words "telegraph line or post" made by a notification issued on the 14th August, 1942, is only intended *ex abundanti cautela* to make the meaning of the original word "telegraph" clear. 1945 N.L.J. 191. See also (1945) A.W.R. (H.C.) 178 (Building used for postal services and for storing grains is used for Government purposes).

R. 35 (4) AND 38 (5): APPLICABILITY.—BRINGING ABOUT STRIKE OF MILL-WORKERS.—A person who brings about a strike by mill-workers engaged in a war industry with the object of impeding the war effort would be guilty of an offence under R. 35 (4) read with R. 38 (5). But where the notice for calling the strike is to remedy the real or supposed grievances of the workers resulting from an arbitrary exercise of the employer's power of dismissal without a fair inquiry or reasonable warning there is a lawful excuse for the strike and the person calling the strike would not be guilty, even though he knows that as a result of the strike essential war work would be impeded. (1942) 2 M.L.J. 718=1942 Mad. 735.

R. 35 (4).—Conviction under R. 35 (4) read with S. 149, I. P. Code, is legal. 1944 P.W.N. 120=23 Pat. 139=1944 Pat. 211=1944 P.W.N. 120.

punishable with imprisonment for a term which may extend to seven years, or with fine or with both].

Interference with postal and telegraphic communications.

36. [Eng. Def. R. 2.] (1) No person shall knowingly—

(a) cause interference with the sending or receiving of communications by post, telegraphy (including wireless telegraphy), telephony (including wireless telephony) or television; or

(b) intercept any postal, telegraphic or telephonic communication.

(2) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to five years t[or with fine or with both].

Communications with persons engaged in assisting the enemy.

37. [Eng. Def. R. 4.] (1) No person having reasonable cause to believe that such other person is engaged in assisting the enemy, shall communicate or associate with any other person.

(2) In any proceedings taken by virtue of sub-rule (1), it shall be a defence for the accused to prove that the purpose of the communication or association in question was not prejudicial to the defence of British India, to the efficient prosecution of war or to the public safety.

(3) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to five years t[or with fine or with both].

u[37-A. (1) The Central Government or the Provincial Government, if it

Articles likely to afford information or other assistance to the enemy.

is satisfied that any articles or articles of any class or description are likely to assist the enemy to obtain information of military value or otherwise to facilitate the preparation or carrying out of hostile operations,

may by order make provision—

(a) for requiring any person who has any such article in his possession or under his control to report the fact to such authority as may be specified in the order;

(b) for prohibiting or restricting the acquisition, sale, distribution, possession or disposal of such articles;

(c) for requiring such articles to be placed in the custody of such authority as may be specified in the order;

(d) for authorising or requiring the destruction of such articles;

(e) for such incidental and supplementary matters as appear to the Central Government or the Provincial Government, as the case may be to be necessary or expedient for the purposes of the order.

(2) If any person fails to comply with any order made in pursuance of this rule, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.]

Prohibition of prejudicial acts, publications and communications.

38. (1) No person shall, without lawful authority or excuse,—

LEG. REF.

(t) Substituted by D. C. Dept. notification No. 701-OR/41, dated the 15th February, 1941, for the words "and shall also be liable to fine".

(u) Inserted by D. C. Dept. Notification No. 1036-OR/41, dated the 10th September, 1941.

R. 38 (1) (A): OFFENCE PUNISHABLE UNDER—FACTS TO BE PROVED BY THE PROSECUTION.—In order to make a case punishable under R. 38 (a), the prosecution is bound to prove that the act committed which is the basis

of the charge was committed without lawful authority or excuse. 1943 All. 15=I. L.R. (1942) All. 919.

R. 38 (1) only prohibits the doing of a prejudicial act *without lawful authority or excuse*; it does not require that the excuse should be *reasonable or just*. So long as a strike is not prohibited by law, any excuse which is not unlawful would be sufficient to take it out of the category of the mischiefs contemplated by R. 38 (1) (a), though it may be a prejudicial act as defined in R. 34 (h). 46 Bom.L.R. 444=A.I.R. 1944 Bom. 248.

- (a) do any prejudicial act; or
- (b) obtain, collect, record, elicit, make, print or publish, or distribute or communicate by any means whatsoever to any other person, any information likely to assist the enemy; or
- (c) make, print, publish or distribute any document containing, or spread by any other means whatsoever, any prejudicial report; or
- (d) make, print, produce, publish or distribute any publication containing, or communicate to any person by any means whatsoever, any confidential information.

(2) The author, editor, printer and publisher of, and any person who otherwise makes or produces, any information likely to assist the enemy; any confidential information or any prejudicial report, and any person who distributes or sells any information or report of that nature, knowing it to be of such nature, shall be deemed to have contravened this rule.

(3) Any person who exhibits, or causes or allows to be exhibited, to the public or to any section of the public any unauthorised cinematograph film containing any information likely to assist the enemy, any confidential information or any prejudicial report or any reference to or representation of any such information or report and the licensee of any building or other premises licensed under the Cinematograph Act, 1918, for giving exhibitions by means of a cinematograph, and the occupier, or, if there is no occupier, the owner, of any other building, or other premises, in or on which any unauthorised cinematograph film as aforesaid is exhibited shall be deemed to have contravened this rule.

(4) The proprietor, manager or any other person in control of any place in which, and every person who takes part in any public performance of any play, pantomime, drama or recitation in the course of which any confidential information, any information likely to assist the enemy or any prejudicial report is published shall each be deemed to have contravened this rule.

(5) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to five years or with fine or with both]:

Provided that in any proceedings arising out of a contravention of this rule,—

LEG. REF.

(v) Substituted by D.C. Dept. notification No. 701-OR/41, dated the 15th February, 1941, for the words "and shall also be liable to fine".

CHARGE OF OFFENCE AMOUNTING TO SEDITION—COGNISANCE ON REPORT OF PUBLIC SERVANT.—Where a person is charged under R. 38 (1) (a) for doing a prejudicial act within the meaning of R. 34 (6) (e) and (h), which might amount to sedition, the Court is competent to take cognizance of the offence on the report in writing of a public servant as required by R. 130 (1). It is not necessary that a complaint should be made by order of or under the authority of the Provincial Government. (1940) 2 M. L.J. 830=1941 Mad. 363=I.L.R. (1941) Mad. 169.

R. 38 (1) (A) (5): SEDITION—WHAT CONSTITUTES—DISCUSSION OF CURRENT POLITICS IN THE LANGUAGE USUALLY USED FOR SUCH PURPOSE.—The essence of the offence of sedition as defined in the I.P. Code—in this respect there is no difference between offences under the Code and under the Defence of India Rules—consists in the intention with which the language is used. Such

intention has to be judged primarily by the language used. To arrive at a conclusion as to the intention, the Court must have regard to the class of audience to which and the circumstance in which the speech was made. It must then decide as to the probable effect of the speech. The speech must be read as a whole in a fair, free and liberal spirit. Ordinarily it should be difficult to found a charge of sedition upon ideas, sentiments and expressions which have become a part and parcel of the normal political life of the country and which do not excite people to disorder. Where the main and accepted object of a speech was to support Pakistan and not to create any anti-British feeling, the act that certain reflections are cast upon the British Government by certain arguments used would not render the speech seditious even though the argument might be unfounded in fact and its logic open to doubt and challenge. 1943 A.L.J. 168=1943 A. 244=I.L.R. (1943) A. 429.

R. 38: BURDEN OF PROOF.—In a charge under R. 38, the prosecution is bound to prove that the act committed by the accused which is the basis of the charge against the accused was committed with

(a) in relation to the making or printing of any document or information, it shall be a defence for the accused to prove that the said document or information was made or printed, as the case may be,—

- (i) before the Ordinance came into force, or
- (ii) with the permission or under the authority of Government, or
- (iii) as a proof intended for submission to Government or to a person or authority designated by Government in this behalf with a view to obtaining permission for its publication:

(b) in relation to the publication of any document or information it shall be a defence for the accused to prove that the said document or information was published—

- (i) before the Ordinance came into force, or
- (ii) with the permission or under the authority of Government.

Prohibition of publishing matter derived from enemy sources. w[38-A. (1) No person shall, without lawful authority, make, print, publish or distribute any document containing, or spread by any other means whatsoever, any matter derived from an enemy source.

(2) In any proceedings arising out of a contravention of sub-rule (1), where it appears to the court that the substance of any matter—

- (i) broadcast from any wireless broadcasting station operated or controlled by the enemy, or
- (ii) published in any leaflet dropped from the air or otherwise distributed by the enemy,

is at any subsequent time reproduced, whether in the same or a different form and whether with or without any comment, in any document, the Court may presume that the matter contained in the document is derived from any enemy source.

(3) If any person contravenes the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.]

*[38-B. (1) If in the opinion of the Provincial Government any local authority has used or is likely to use its local fund, or has employed or permitted or is likely to employ or permit, any of its officers, members or servants to act, in furtherance of any activity prejudicial to the defence of British India, the public safety, the maintenance of public order, the efficient prosecution of war, or the maintenance of supplies and services essential to the life of the community, or has passed any resolution approving of or supporting any such activity, or has failed to carry out any orders or direction lawfully made or given to it, the Provincial Government may by order supersede the local authority for such period as may be specified in the order.

(2) When an order of supersession has been made under sub-rule (1)—

- (a) all the members of the local authority shall, as from the date of supersession, vacate their offices as such members;
- (b) all the powers and duties which may, by or under any law for the

LEG. REF.

(w) Inserted by D.C. Dept. notification No. 1367-OR/42, dated the 8th May 1942.

(*) Inserted by D. Dept. Notification No. 1536-SM/42, dated the 8th August 1942.

out lawful authority or excuse. In the absence of proof that the excuse put forward by the accused (strikers) was not lawful, their conviction cannot be sustained. 45 Bom.L.R. 444=A.I.R. 1944 Bom. 248.

R. 38 (5).—(See Notes under Rr. 34, 35,

supra.

Bringing about a strike by mill-workers engaged in war industry may amount to an offence under R. 35 (4) read with this sub-rule (5). (1942) 2 M.L.J. 718=1942 Mad. 735.

R. 38-B.—A complaint of an offence under this rule must be made by a person properly authorized. A complaint by an officer whose authority is conferred subsequent to the complaint cannot be held to have been validly filed. 45 Bom.L.R. 572=1943 Bom. 314.

time being in force, be exercised or performed by or on behalf of the local authority shall, until the local authority is reconstituted in pursuance of an order under clause (b) or clause (c) of sub-rule (3), be exercised and performed by such person or persons as the Provincial Government may direct:

"Provided that any such person may direct—

(i) that any such power or duty which immediately before making the order of supersession was by or under any such law exercised or performed on behalf of the local authority by any other person or authority shall be exercised or performed on his behalf by that other person or authority;

(ii) that any such power or duty, whether or not it was so exercised or performed, shall be exercised or performed on his behalf by such person or authority as he may specify in this behalf." (D.D. No. 5-DC (63/44), dated 29-4-1944, Gazette of India, Pt. I, S. 1, p. 562.)

(c) all property vested in the local authority shall, until the local authority is reconstituted in pursuance of an order under clause (b) or clause (c) of sub-rule (3), vest in the Provincial Government.

(3) On the expiration of the period of supersession specified in the order under sub-rule (1), the Provincial Government may—

(a) extend the period for such further term as it may consider necessary;

(b) by order direct that the local authority shall be reconstituted in the manner provided for the constitution of the authority by or under the law relating thereto, and in such case any persons who vacated their offices under clause (a) of sub-rule (2) shall not be deemed disqualified for election, appointment or nomination, unless in any particular case the Provincial Government in the order so directs; or

(c) by order direct that the local authority shall subject to any exception which may be specified in the order (any vacancy occasioned by such exception being regarded as a casual vacancy) be reconstituted by the persons who vacated their offices under clause (a) of sub-rule (2), and shall recommence functioning as if it had not been superseded:

Provided that the Provincial Government may at any time before the expiration of the period of supersession, whether as originally specified under sub-rule (1) or as extended under this sub-rule, make an order under clause (b) or clause (c) of this sub-rule.]

Illegal possession of certain information and publications.

39. (1) No person shall, without lawful authority or excuse, have in his possession—

R. 39 is not *ultra vires*. 47 Bom.L.R. 339; 47 Bom.L.R. 79.

R. 39: "PREJUDICIAL"—DUTY OF COURT TO DECIDE PREJUDICIAL CHARACTER.—Under R. 39, it is for the Court and not for the Provincial Government to determine whether or not a document is prejudicial. The fact that the document has been proscribed by a Provincial Government is not a relevant fact in the case of a prosecution under R. 39. 22 Pat. 549=1943 Pat. 389.

R. 39 (1): "POSSESSION"—MEANING OF.—There is no authority or warrant for holding that "possession" in R. 39 (1) is to be looked at very much more stringently than under the ordinary law. The word must be given its ordinary meaning; if there are words with a technical legal meaning they must be given their ordinary legal meaning, unless the context or an express definition necessitates their being given some other meaning. The accused was prosecuted under R. 39 for being in possession of a

book containing a prejudicial report on the ground that the book in question was found in a trunk which was common to him and to his elder brother in a room occupied by both of them. There was nothing in the book to identify it as the property of one brother rather than the other. *Held*, that in the circumstances, it must be held that the prosecution had failed to prove that the book was in the possession of the accused; and he could not therefore be convicted. 22 Pat. 549=1943 Pat. 389. Where a husband and wife are living together, *prima facie*, a box containing documents would be in possession of the husband, and the mere fact that when he is absent he has left the keys with his wife or that there were letters in the box addressed to the wife does not mean that she was in joint possession of all the contents of the box. The fact that the wife is literate is irrelevant. 1944 Bom. 125.

- (a) any information likely to assist the enemy or any confidential information; or
- (b) any document containing any prejudicial report; or
- (c) any unauthorised cinematograph film of the nature described in sub-rule (3) of rule 38.

¶(2) Any person who, without lawful authority or excuse, has on any premises in his occupation or under his control any document containing any information likely to assist the enemy, any confidential information or any prejudicial report shall, unless he proves that he did not know, and had no reason to suspect, that the said document contained any such information or report as aforesaid, or that the said document was on such premises without his knowledge or against his consent, be deemed to have contravened this rule.]

z[(3) * * * * *]

(4) The licensee of any building or other premises licensed under the Cinematograph Act, 1918, and the occupier, or, if there is no occupier, the owner, of any other building or other premises, in or on which any unauthorised film as aforesaid is found, shall, unless he proves that the said unauthorised film was in or on such building or other premises without his knowledge or against his consent, be deemed to have contravened this rule.

(5) In any proceedings arising out of a contravention of this rule in respect of the possession of any document or information, it shall be a defence for the accused to prove that the said document or information—

(a) was in his possession with the permission or under the authority of Government; or

(b) was a proof prepared by or for him for submission to Government or to a person or authority designated by Government in this behalf with a view to the obtaining of permission for its publication; or

(c) was published before the Ordinance came into force.

LEG. REF.

(y) Substituted by D.C. Dept. notification No. 520-OR/40, dated the 16th November 1940, for the original sub-rule (2).

(z) Sub-rule (3). omitted by D.C. Dept. notification No. 520-OR/40, dated the 16th November 1940.

R. 39 (2): "IN HIS OCCUPATION OR UNDER HIS CONTROL"—MEANING OF.—The expression "control" in R. 39 (2) is used to represent something different from occupation and is intended to cover the case of a person who is not in physical occupation of premises, but, by virtue of his title or other circumstances, is in a position to exercise effective control over the premises. "Occupation" must be taken to mean effective occupation, that is to say, such an occupation as gives the alleged occupant effective control over the premises in question. Where more than one person are together using premises which cannot be sub-divided into separate parts each in the exclusive occupation of one person, no one can be said to be in occupation of the premises within the meaning of R. 39 (2). 22 Pat. 549=1943 Pat. 389. See also 1944 Bom. 125. No doubt, a wife, in a loose sense occupies the house in which she lives with her husband. But when R. 39 speaks of a person in occupation it means legal occupation. The natural presumption would be that the husband is the occupier unless it is shown

that the wife is the occupier and he is a mere appendix to her. If he is the occupier, the house is under his control. 1944 Bom. 125.

"Occupation" in R. 39 (2) contemplates physical occupation rather than occupation in the sense of being the legal tenant or other person who may be looked to for payment of taxes, etc. Where on a search of a room shared by the accused, a Hindu co-parcener, and his elder brother who was the manager of the joint family a large quantity of highly prejudicial literature is found and the accused is charged with unlawful possession of prejudicial literature, the burden is on the accused to prove his innocence and it is not necessary for the prosecution to prove that the accused was in sole occupation of the premises where the literature was found. Joint occupation with another is sufficient "occupation" for purposes of R. 39 (2). 57 L.W. 466= (1944) 2 M.L.J. 150.

When a document containing any prejudicial report is found in a house or premises jointly occupied by several persons, every such occupant will be deemed to have contravened R. 39 (1) (b) of the Defence of Rules, unless he proves that he did not know and had no reason to suspect that the said document contained any prejudicial report, or that it was in such house or such premises without his knowledge or against his consent. The burden is on the accused. 47 Bom.L.R. 79.

(6) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to three years a[or with fine or with both].

b[40. (1) Where in the opinion of the Central Government or the Provincial Government any document made, printed or published, whether before or after the Ordinance came into force, contains any confidential information, any information likely to assist the enemy or any prejudicial report, that Government may by order,—

c[(a) require the editor, printer, publisher or person in possession of such document to inform the authority specified in the order of the name and address of any person concerned in the supply or communication of such information or in the making of such report;

(b) provide for the safe keeping by persons in possession of such document and copies thereof;

(c) require the delivery of such document and any copy thereof to an authority specified in the order;

d[(d)] prohibit the further publication, sale or distribution of such document e[of any extract therefrom or of any translation thereof], including, in the case of a newspaper or other periodical, the publication, sale or distribution of any subsequent issue thereof;

e-1[(e)] declare such document and f[every copy or translation thereof or extract therefrom], to be forfeited to His Majesty.

“Explanation.—In this rule, ‘document’ includes gramophone records, sound tracks and any other articles on which sounds have been recorded with a view to their subsequent reproduction.”]

(2) Where in pursuance of sub-rule (1) any document is required to be delivered to a specified authority, that authority may enter upon and search any premises whereon or wherein such document or any copy thereof is or is reasonably suspected to be.

(3) Where in pursuance of sub-rule (1) any document has been declared to be forfeited to His Majesty, any police officer may seize any copy thereof, wherever found in British India and any Magistrate may by warrant authorise any police officer not below the rank of Sub-Inspector to enter upon and search any premises whereon or wherein such document or any copy thereof is or is reasonably suspected to be.

(4) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to three years g[or with fine or with both].

41. h[(1) The Central Government or the Provincial Government may,

LEG. REF.

(a) Substituted by D.C. Dept. notification No. 701-OR/41, dated the 15th February 1941, for the words “and shall also be liable to fine”.

(b) Substituted by D.C. Dept. notification No. 347-OR/40, dated the 14th June 1940, for the original rule 40.

(c) Substituted by D.C. Dept. notification No. 1134-OR/41, dated the 28th February 1942, for original clause (a) of sub-rule (1) of rule 40.

(d) Re-lettered for clauses (b) and (c) by D.C. Dept. notification No. 1134-OR/41, dated the 28th February, 1942.

(e) Inserted by D. Dept. notification

No. 1574-OR/42, dated the 19th September 1942.

(e-1) Re-lettered for clauses (b) and (c) by D.C. Dept. Notification No. 1134-OR/41, dated the 28th February 1942.

(f) Substituted by D. Dept. notification No. 1574-OR/42, dated the 19th September 1942 for the words “every copy thereof”.

(g) Substituted by D.C. Dept. notification No. 701-OR/41, dated the 15th February 1941, for the words “and shall also be liable to fine”.

(h) Substituted by D. C. Dept. notification No. 583-OR/40, dated the 21st October, 1940, for the original sub-rule (1).

Power to impose censorship. India, the public safety, the maintenance of public order or the efficient prosecution of war, by order addressed to a printer, publisher or editor, or to printers, publishers and editors generally,—

(a) require that all matter, or any matter relating to a particular subject or class of subjects, shall, before being published in any document or class of documents, be submitted for scrutiny to an authority specified in the order;

(b) prohibit or regulate i[the making] or publishing of any document or class of documents, or of any matter relating to a particular subject or class of subjects, or the use of any j[press, as defined in the Indian Press (Emergency Powers) Act, 1931].]

(2) If any person contravenes any order made under sub-rule (1), then, without prejudice to any other proceedings which may be taken against such person, the k[Government making the order] may declare to be forfeited to His Majesty every copy of any document published or made in contravention of such order and any l[press, as defined in the Indian Press (Emergency Powers) Act, 1931, used in the making] of such document.

(3) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to five years m[or with fine or with both].

42. (1). For the purposes of this rule, the expression "Controller" means Publication of inventions the Controller of Patents and Designs appointed and designs. under the Indian Patents and Designs Act, 1911.

(2) Where, either before or after the coming into force of the Ordinance, an application has been made to the Controller for the grant of a patent or the registration of a design, the Controller, if he is satisfied that it is expedient for the defence of British India or the efficient prosecution of the war so to do, may, notwithstanding anything contained in the Indian Patents and Designs Act, 1911, omit to do or delay the doing of anything which he would otherwise be required to do in relation to the application, and by order, prohibit or restrict the publication of information with respect to the subject matter of the application, or the communication of such information to particular persons or classes of persons.

(3) No person shall, except under the authority of a written permit granted by the Controller, make an application for the grant of a patent, or the registration of a design, n[in any country or place not included in His Majesty's Dominions and not being an Indian State.]

(4) If, in the opinion of the Central Government, it is necessary or expedient for the defence of British India or the efficient prosecution of the war so to do, the Central Government may by order require any person to furnish to such authority or person as may be specified in the order, any such information in his possession relating to any invention, design or process as may be specified in the order or demanded of him by the said authority or person.

(5) The right of a person to apply for, or to obtain, a patent in respect of an invention, or registration in respect of a design, shall not be prejudiced by reason only of the fact that the invention or design has previously been com-

LEG. REF.

(i) Substituted by D. Dept. notification No. 1567-OR/42, dated the 12th September 1942, for the word "printing".

(j) Substituted by *ibid.*, for the words "printing press".

(k) Substituted by D.C. Dept. notification No. 583-OR/40, dated the 21st October, 1940, for the words "Provincial Government".

(l) Substituted by D. Dept. notification No. 1567-OR/42, dated the 12th September

1942, for the words "printing press or other apparatus used in the making or publication".

(m) Substituted by D. C. Dept. notification No. 701-OR/41, dated the 15th February, 1941, for the words "and shall also be liable to fine".

(n) Substituted by D.C. Dept. notification No. 370-OR/40, dated the 14th March, 1940, for the words "in any foreign country".

municated to an authority or person in compliance with any order given under sub-rule (4), or used by an authority or person in consequence of such communication, and a patent in respect of an invention, or the registration of a design, shall not be held to be invalid by reason only of the fact that the invention or design has been communicated or used as aforesaid.

(6) In connection with the making, use or exercise of any invention or design on behalf of, or for the services of the Crown (whether by virtue of the Indian Patents and Designs Act, 1911, or otherwise), the Central Government may by order authorise the use of any drawing, model, plan, specification, or other document or information in such manner as appears to the Central Government to be expedient for the defence of British India or the efficient prosecution of the war, notwithstanding anything to the contrary contained in any licence or agreement; and any licence or agreement, if and in so far as it confers on any person, otherwise than for the benefit of the Crown, the right to receive any payment in respect of the use of any document or information in pursuance of such an authorisation, shall be inoperative.

(7) If any person contravenes any of the provisions of this rule, ^o[or any order made thereunder] he shall be punishable with imprisonment for a term which may extend to five years ^p[or with fine or with both].

43. Whenever the Provincial Government is of opinion that any play, pantomime or other drama performed, or about to be performed, in a public place contains any prejudicial report, or is calculated to instigate the commission of a prejudicial act, it may, by order, prohibit the performance; and thereupon the provisions of sections 4 to 9 of the Dramatic Performances Act, 1876, shall apply in relation to any such performance as they apply in relation to any performance prohibited by the Provincial Government under section 3 of that Act:

Provided that any person who commits in relation to any order made in pursuance of this rule any of the offences specified in sections 4 and 6 of the Dramatic Performances Act, 1876, shall be punishable with imprisonment for a term which may extend to three years ^{p-1}[or with fine or with both].

44. (1) The Central Government or the Provincial Government may by order declare any unauthorised cinematograph film or any cinematograph film which is imported into British India in contravention of any order made under these Rules to be forfeited to His Majesty.

(2) Where in pursuance of sub-rule (1) any cinematograph film has been declared to be forfeited to His Majesty, any police officer may seize such film wherever found ^q[in British India] and any Magistrate may by warrant authorise any police officer not below the rank of sub-inspector to enter upon and search any premises whereon or wherein any such film is or is reasonably suspected to be.

Control of cinematograph exhibitions.

^r[44-A. (1) In this rule—

(a) 'approved film' means a cinematograph film approved for the purposes of this rule by the Central Government;

^l[(b) "Cinema theatre" means a place licensed under the Cinematograph Act, 1918, for the Exhibition of cinematograph films but excludes a cinema theatre

LEG. REF.

(o) Inserted by D.C. Dept. notification No. 1500-OR/42, dated the 18th July, 1942.

(p) Substituted by D.C. Dept. notification No. 701-OR/41, dated the 15th February, 1941, for the words "and shall also be liable to fine".

(p-1) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February,

1941, for the words "and shall also be liable to fine".

(q) Inserted by D.C. Dept. notification No. 347-OR/40, dated the 26th February, 1940.

(r) Inserted by Defence Dept. Notification No. 5-DC. (24)/43, dated 15th May, 1943.

exclusively reserved for the members of His Majesty's forces and their families accompanying them.] (See *Gazette of India*, Pt. I, Sec. 1, dated 7th July, 1945, p. 877).

(c) 'exhibitor' means a person carrying on the business of exhibiting cinematograph films to the public.

(2) Every exhibitor shall cause to be exhibited at each performance given after the 14th September, 1943, in every cinema theatre under his control one or more approved films the total length of which is not less than two thousand feet.

(3) Every exhibitor shall comply with any directions which the Central Government may by general or special order give as to the manner in which approved films shall be exhibited in the course of any performance.

(4) If any person contravenes the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.]

[(5) The Central Government or the Provincial Government may authorise any officer to enter and inspect a cinema theatre at any time with a view to satisfy himself that the provisions of the rule are complied with.

(6) If a licensing authority under the Cinematograph Act, 1918, is satisfied that a person holding a license thereunder has contravened the provisions of this rule he may, notwithstanding anything contained in that Act and whether or not the person holding the license has been proceeded against under sub-R. (4), revoke the license.] (*Gazette of India*, Pt. I, Sec. 1, dated 14th July, 1945, p. 917).

45. (1) Subject to any exemptions for which provision may be made by

order of the appropriate Government, no person shall, except under the authority of a written permit granted by or on behalf of that Government,—

(a) have with him a camera or any material for making a sketch, plan, model or other representation in, or in the vicinity of, any prohibited place, protected place or protected area or any other place or area notified in this behalf by the Central Government, being a place or area in relation to which the restriction of photography [or the making of representations] appears to that Government to be expedient in the interests of the defence of British India; or

(b) make any photograph, sketch, plan, model or other representation—

(i) of a prohibited place, protected place or protected area, or of any part of, or object in, any such place or area;

(ii) of an object of any such description, as may be specified by order of the Central Government;

(iii) of, or of any part of, or object in, any such place or area in British India as may be notified by the Central Government in pursuance of clause (a) of this sub-rule.

(2) In any proceedings arising out of a contravention of clause (a) of sub-rule (1), it shall be a defence for the accused to prove that at the date of the contravention application had been made by him for the first time for the necessary permit in relation to the camera or other article in respect of which the proceedings are taken, and that the application was still pending at that date.

(3) The appropriate Government may, by general or special order, make provision for securing that photographs, sketches, plans and other representations made under the authority of a permit granted in pursuance of sub-rule (1), shall not be published unless and until they have been submitted to, and approved by, such authority or person as may be specified in the order; and may retain, or destroy or otherwise dispose of, anything submitted as aforesaid.

LEG. REF.

(s) Inserted by D.C. Dept. notification

No. 361-OR/40, dated the 4th March, 1940.

(4) If in, or in the vicinity of, any place or area to which this rule or any notification issued in pursuance of this rule applies, any person is found in possession of a camera or material for making a sketch, plan, model or other representation, then, without prejudice to the provisions of sub-rule (5) or to any other proceedings which may be taken against him, such camera or other material shall be liable to forfeiture.

(5) If any person contravenes t[any order made under this rule], he shall be punishable with imprisonment for a term which may extend to five years u[or with fine or with both.]

v[(6) In sub-rules (1) and (3), the expression "appropriate Government" means the Central Government, and except in relation to any prohibited place or to any place or area declared by the Central Government to be a protected place or protected area, includes also the Provincial Government.]

Matters required to be disclosed under the Indian Companies Act, 1913.

w[45-A. If the Central Government certifies that the disclosure—

(1) of any matter required by sub-section (1) of section 93 of the Indian Companies Act, 1913, to be stated in a prospectus issued by or on behalf of a company or by or on behalf of any person who is or has been engaged or interested in the formation of the company, or

(2) of the contents of a contract for the inspection of which or of a copy of which a time and place is required by clause (1) of the said sub-section to be stated in the prospectus, would be prejudicial to the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war or to the maintenance of supplies and services essential for the life of the community, the requirements of the said sub-section (including the requirements of the said sub-section read with sub-section (2) of section 96 of the said Act) shall be deemed to have been complied with by the annexing to the prospectus of a copy of the certificate, and no matter to which the certificate relates shall be stated in the prospectus, nor shall any contract to which the certificate relates or any copy thereof be made available for inspection.]

Restriction of publication of information relating to certain undertakings.

x[45-B. (1) This rule applies to any of the following undertakings carried on in India by any person or authority whatsoever (including Government) :—

- (i) Undertakings for the supply of electricity,
- (ii) Inland water transport undertakings,
- (iii) Port, harbour, dock or pier undertakings.

(2) No person shall publish, or cause or allow to be published, in British India the accounts, or any copy thereof or extract therefrom, of any undertaking to which this rule applies, or any report or other document, or any copy thereof or extract therefrom, relating to the operation of the undertaking which discloses any information contained in any such accounts or any statistical or other information relating to the progress of the undertaking.

(3) Nothing in sub-rule (2) shall, unless the Central Government by general or special order otherwise directs, be deemed—

(a) to relieve any person carrying on an undertaking to which this rule applies from any obligation to furnish to Government or to any Government

LEG. REF.

(t) Substituted by D. C. Dept. notification No. 1500-OR/42, dated the 18th July, 1942, for the words "any of the provisions of this rule".

(u) Substituted by D. C. Dept. notification No. 701-OR/41, dated the 15th February, 1941, for the words "and shall also be liable to fine".

(v) Substituted by D. C. Dept. notification No. 1019-DR/3/41, dated the 11th April, 1942, for the original sub-rule (b) of rule 45.

(w) Inserted by D.C. Dept. notification No. 530-OR/40, dated the 23rd July, 1940.

(x) Substituted by No. 5-D.C. (2)/43, dated 26th February, 1944.

authority such accounts, reports or documents, or copies thereof, or extracts therefrom;

(b) to prohibit the publication of such accounts, reports or documents, or copies thereof, or extracts therefrom, to—

(i) Government;

(ii) any Government or local authority;

(iii) the members of a local authority where the undertaking is carried on by the local authority;

(iv) the directors or managing agents of a company where the undertaking is carried on by the company;

(v) the auditors of the accounts of the undertaking;

(vi) such other persons, or in such circumstances, as may be authorized by the Central Government;

(c) to apply to the publication by or on behalf of any person carrying on an inland water transport undertaking or any time-table relating to such undertaking;

(d) to prohibit inspection of such accounts, reports or documents, or copies thereof, or extracts therefrom, at the offices of the undertaking by any person who but for this rule would have been entitled to obtain, receive or inspect such accounts, reports or documents, or to receive information as to the contents thereof, and who shall have given to the undertaking not less than seven days' prior notice in writing of his desire to inspect the same.

(4) Where publication is made under the provisions of sub-rule (3) to the members of a local authority or to the directors or managing agents of a company, such publication shall only be made if the accounts, reports or documents are clearly marked with a statement that they are confidential and not to be published to any person other than another member of the local authority or another director or a member of the managing agents of the company, as the case may be.

(5) Notwithstanding anything contained in the Indian Companies Act, 1913, a Registrar of Joint Stock Companies may in his discretion refuse to allow inspection, or to grant copies, of any such accounts, reports or documents as are referred to in sub-rule (2).

(6) If any person contravenes any of the provisions of this rule, he shall be punishable with fine which may extend to one thousand rupees.]

[45-C. *Control of publication of information relating to wrecks.*—(1) If a receiver of wreck is of opinion that the publication of a notification under section 267 of the Indian Merchant Shipping Act, 1923, in respect of any wreck taken possession of by him may in any way assist the enemy or prejudice the efficient prosecution of the war, he shall refer the matter to the Central Government and shall not publish the notification required by that section unless directed to do so by the Central Government.

(2) On receiving a report under sub-R. (1), the Central Government may either direct the receiver of wreck to proceed in accordance with the provisions of Ss. 276, 277 and 278 of the Indian Merchant Shipping Act, 1923, or issue such other directions regarding the disposal of the wreck as the Central Government may in the circumstances deem proper.] (*Gazette of India*, Pt. I, Sec. 1, dated 2nd June, 1945, p. 657).

PART VII.

FALSE REPRESENTATIONS, ETC.

Personation and misleading acts and misrepresentations.

46. [Eng. Def. R. 1.] (1) In this rule the expression "Government" means any Government whether within or without British India.

(2) No person shall do any act, or make any statement,—

(a) calculated falsely to suggest that he or any other person is or is not acting (either generally or in a particular capacity) in the service, or on behalf, of any Government, or as a public servant, or

(b) calculated falsely to suggest that any article or property does or does not belong to, or is or is not in the possession or under the control of, Government or has or has not been classified, selected or appropriated on behalf of Government for any particular purpose, or

(c) whereby any directions, instructions or information falsely purporting to be duly issued or given for purposes connected with the defence of British India or the securing of the public safety * [or the maintaining of supplies and services essential to the life of the community] are communicated or are intended to be communicated to the public or to any section thereof, or

(d) having reasonable cause to believe that the said act or statement is likely to mislead any person in the discharge of any lawful functions in connexion with the defence of British India or the securing of the public safety.

(3) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to five years x-1 [or with fine or with both].

Forgery and improper
use of official documents,
etc.

47. (1) In this rule—

(a) "Government" means any Government whether within or without British India;

(b) "official document" includes any passport, pass, permit, certificate, licence, notice or other document issued by or under the authority of any Government or any officer of His Majesty's forces or any police officer;

(c) "official seal" includes any die, seal, plate or other instrument for making an impression or stamp and any impression or stamp of any such die, seal, plate or other instrument belonging to, or used, made or provided by or for, any Government.

(2) No person shall—

(a) forge, alter, tamper with or destroy any official document or any application, request or receipt in respect of any official document; or

(b) use or have in his possession any forged or altered official document, or any document so nearly resembling an official document as to be calculated to deceive; or

(c) personate or falsely represent himself to be, or not to be, a person to whom an official document relates or to whom an official document or any secret official codeword or password has been duly issued or communicated; or

(d) with intent to obtain an official document, secret official codeword or password, whether for himself or for any other person, knowingly make any false statement; or

(e) without lawful authority make, use or have in his possession or under his control any official seal or any die, seal, plate, or other instrument so nearly resembling an official seal as to be calculated to deceive.

(3) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to five years x-2 [or with fine or with both].

Improper use of uni-
forms, etc.

48. (1) No person shall without lawful authority use or wear—

(a) any official uniform, Indian, British or foreign, or any dress so nearly resembling such uniform as to be calculated to deceive; or

(b) any official decoration, medal, badge or mark of rank, rating, qualification or duty, Indian, British or foreign, or any copy or miniature thereof,

LEG. REF.

*See Gazette of India, Pt. I, Sec. 1, dated 17-3-1945, p. 323.

(x-1) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also

be liable to fine."

(x-2) Substituted by D.C. Dept. notification No. 701-OR/41, dated the 15th February, 1941, for the words "and shall also be liable to fine".

or any ribbon or other emblem designed for use therewith or indicating possession thereof, or any article so nearly resembling any of the aforesaid articles as to be calculated to deceive.

(2) No person shall falsely represent himself to be a person who possesses or has possessed lawful authority to use or wear any such uniform or article as is mentioned in sub-rule (1).

(3) No person shall supply or offer to supply any such uniform or article as is mentioned in sub-rule (1) to or for any person whom he knows to be without lawful authority to use or wear it.

(4) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to five years ^y[or with fine or with both].

[(5) In any prosecution under sub-rule (1) or sub-rule (2), the onus of proving that a person possessed lawful authority to use or wear any such uniform or article as is mentioned in sub-rule (1) shall, notwithstanding anything contained in the Indian Evidence Act, 1872, lie upon that person.—(Sub-rule (5) omitted by 5 DC (1) [45, dated 13th January, 1945; *Gazette of India*, Pt. I, Sec. 1, 24th February, 1945, p. 238).]

PART VIII.

PREPARATIONS FOR DEFENCE.

49. [Eng. Def. R. 21] (1) The Central Government ^z[or the Provincial Government] may, if it appears necessary for the

Evacuation of areas.

purpose of meeting any actual or apprehended attack or of protecting persons and property from the dangers involved in ^{z-1}[or resulting from] such attack ^a[or of facilitating any operations of His Majesty's Forces], by order direct, in respect of any specified area, that, subject to any exemptions made by general order or special permission,—

(a) all persons or any class of persons shall remove themselves or be removed from the said area or to any specified part thereof;

^b[(aa) all persons or any class of persons in the said area shall remain therein for such period as may be specified;]

(b) any animals or property or any specified class of animals or property shall be removed from the said area or to any specified part thereof;

(c) within a specified time any building or other property specified in the order shall be destroyed or rendered useless; and may do any other act involving interference with private rights of property which is necessary for any of the purposes aforesaid.

(2) An order made under sub-rule (1) for the removal of persons, animals or property may specify—

(a) the route or routes by which all or any class of persons, animals or property are to remove themselves or be removed from the specified area or to any specified part thereof;

(b) the time or times by which they are to remove themselves or be removed therefrom or to any specified part thereof;

(c) the place or places to which they are to proceed or be taken on removing themselves or being removed from the specified area; and may make such other incidental and supplementary provisions as may appear necessary or expedient for the purposes of the said order.

LEG. REF.

(y) Substituted by D. C. Dept. notification No. 701-OR/41, dated the 15th February, 1941, for the words "and shall also be liable to fine".

(z) Inserted by D. C. Dept. notification No. 657-OR/41, dated the 1st February, 1941.

(z-1) Inserted by D.C. Dept. Notifica-

tion No. 657-OR/41 dated the 1st February 1941.

(a) Inserted by D.C. Dept. notification No. 357-OR/40, dated the 29th February, 1940.

(b) Inserted by D. C. Dept. notification No. 1153-SM/41, dated the 24th December, 1941.

(3) If any order made under sub-rule (1) is contravened in respect of any animal or property, the person in charge of such animal or property shall be deemed to have contravened the order.

c[(3-A) The Provincial Government may, if it appears necessary for any of the purposes specified in sub-rule (1), or for facilitating the evacuation of any area, by general or special order provide for the release, whether temporary or permanent or whether without conditions or upon such conditions as may be specified, of any prisoners or class of prisoners.]

(4) If any person contravenes any order made under this rule; he shall be punishable with imprisonment for a term which may extend to six months d[or with fine or with both].

e[49-A. (1) In the event of the occurrence of hostile attack in the vicinity, any person authorised by the Central Government or the Provincial Government in this behalf may, with a view to securing the public safety or maintaining public order, slaughter any animal which appears to him to be:—

Power to slaughter dangerous and injured animals in the event of hostile attack.

- (a) at large or out of control;
- (b) dangerous or seriously injured.

(2) The power to slaughter an animal conferred by sub-rule (1) shall include power:—

(a) to cause or procure the animal to be slaughtered by some other person;

(b) to enter, and to authorise any such other person to enter, upon any land for the purpose of the slaughter;

(c) to remove and dispose of the carcass, or cause it to be removed and disposed of;

Provided that except where an animal is slaughtered in a place to which the public have access, the power to remove the carcass shall not be exercised if the owner of the animal is present and objects.]

50. [Eng. Def. R. 31-A.] (1) The Central Government or the Provincial Government may, for the purpose of accommodating any persons who have left or been removed from their homes in accordance with any order made under rule 49, f[or who have left their homes on account of actual or apprehended attack] take possession of g[any premises other than—

- (a) premises used for the purpose of religious worship, or
- (b) a private dwelling house in use as such.]

(2) Whenever in pursuance of sub-rule (1) the Central Government or a Provincial Government takes possession of any premises h[and the circumstances are not such as to render the provisions of i[section 19 of the Defence of India Act, 1939,] applicable], rent shall be paid for such premises at such rates as that Government may by general or special order made in this behalf determine.

(3) The Central Government or the Provincial Government, as the case may be, may, at any time, restore possession of any premises in respect of which

LEG. REF.

(c) Inserted by D.C. Dept. notification No. 920-S.M./41, dated the 10th January, 1942.

(d) Substituted by D. C. Dept. notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(e) Inserted by D.C. Dept. notification No. 1305-OR/42, dated the 18th April, 1942.

(f) Inserted by D. C. Dept. notification No. 1053-OR/41, dated the 4th October,

1941.

(g) Substituted by D. C. Dept. notification No. 1346-OR/42, dated the 18th April 1942, for the words "any premises other than premises used for the purpose of religious worship or a private dwelling house".

(h) Inserted by D. C. Dept. notification No. 209-OR/39, dated the 6th October, 1939.

(i) Substituted by D. C. Dept. notification No. 261-OR/39, dated the 14th November, 1939, for the words and figures "section 18 of the Ordinance".

action has been taken under sub-rule (1) to the owner or occupier thereof and may order that no person shall thereafter be in those premises except with the consent of the occupier.

(4) If any person contravenes any order made under this rule, he shall be punishable with fine which may extend to five hundred rupees.

j[50-A. (1) The Central Government may by notified order authorise the carrying out of defence exercises in such area and during such period as may be specified in the order; and thereupon, within the area and during the period so specified,

(a) any persons engaged in the defence exercises may pass over, or encamp, construct works of a temporary character or execute manœuvres on, any land, or supply themselves with water from any source of water;

(b) any officer of His Majesty's forces may, for the purposes of the defence exercises, give directions prohibiting or restricting the use of any part of a railway, water-way, road or path, or of any telegraph or telephone service, or of any premises ordinarily open to the public, and take such further measures as may be authorised in this behalf by general or special order of the Officer Commanding-in-Chief, the Command.

(2) Notwithstanding anything to the contrary contained in the Indian Railways Act, 1890, the Indian Telegraph Act, 1885, or any other enactment, every public servant shall be bound to comply with any directions given to him under sub-rule (1).

k[(3) Where any defence exercises are held under the provisions of sub-rule (1), compensation shall be paid for any damage to person or property or interference with rights or privileges arising from such exercises, including expense reasonably incurred in protecting person, property, rights or privileges; and assessment and payment of compensation shall be made in accordance with the provisions of section 6 of the Manœuvres, Field Firing and Artillery Practice Act, 1938:

Provided that no compensation shall be payable in respect of such interference arising out of any direction given or further measures taken under clause (b) of sub-rule (1)].

l[(4) If any person contravenes any direction given under sub-rule (1) he shall be punishable with fine which may extend to one thousand rupees].

m[50-B. (1) The Central Government or the Provincial Government may by n[* *] order authorise the carrying out of field firing and artillery practice throughout such area and during such period as may be specified in the order; and thereupon such persons as are included in the forces engaged in field firing or artillery practice may, within the area and during the period so specified,—

(a) carry out field firing and artillery practice with lethal missiles;

(b) exercise any of the rights conferred on persons engaged in defence exercises by clause (a) of sub-rule (1) of rule 50-A.

o[Explanation.—In this rule “field firing” includes air armament practice.]

(2) The Officer Commanding the forces engaged in any such practice may declare the specified area or any part thereof to be a danger zone and thereupon the Collector p[or any officer authorised by the Collector by general or special

LEG. REF.

(j) Inserted by D.C. Dept. notification No. 1030-OR/41, dated the 4th September 1941.

(k) Inserted by D. C. Dept. notification No. 1030-OR/41, dated the 29th September 1941.

(l) Re-numbered by *ibid.*, for the original sub-rule (3).

(m) Inserted by D. C. Dept. notification No. 1338-OR/42, dated the 7th April, 1942.

(n) The word “notified” omitted by D.C. Dept. notification No. 5-DC (50)/43, dated 23rd October, 1943.

(o) Inserted by D.C. Dept. notification No. 1472-OR/42, dated the 20th June, 1942.

(p) Inserted by Def. Dept. notification No. 1663-OR/42, dated 26th December 1942.

order in this behalf,] shall, on application made to him by the said officer, prohibit the entry into and secure the removal from such danger zone of all persons and domestic animals during the times when the discharge of lethal missiles is taking place or there is danger to life or health.

(3) Where any field firing or artillery practice is carried out under the provisions of sub-rule (1), compensation shall be payable in accordance with the provisions of section 11 of the Manœuvres, Field Firing and Artillery Practice Act, 1938.

[Provided that in applying the provisions of section 6 of the said Act to any such case, the words 'to accompany the forces engaged in the manœuvres' shall be deemed to have been omitted from sub-section (1) thereof]. (*Gazette of India*, Pt. I, Sec. 1, dated 24th March, 1945, p. 355.)

(4) If during any period specified in an order made under sub-rule (1) any person within an area so specified—

(a) wilfully obstructs or interferes with the carrying out of field firing or artillery practice, or

(b) without due authority enters or remains in any camp, or

(c) without due authority enters or remains in any area declared to be a danger zone at a time when entry thereto is prohibited, or

(d) without due authority interferes with any flag or mark or target or any apparatus used for the purposes of the practice, he shall be deemed to have contravened the provisions of this rule, and shall be punishable with fine which may extend to ten rupees.]

¶[50-C. (Eng. Def. R. 22.) (1) In this rule "the appropriate Government" means in relation to premises in cantonment areas, the Central Government, and in relation to premises in other areas the Central Government or the Provincial Government.

Billeting.

(2) The appropriate Government may by order require the occupier of any premises to furnish therein, while the order remains in force, such accommodation by way of lodging or food or both, and either with or without attendance, as may be specified in the order for such persons as may be so specified.

(3) The appropriate Government may by order require the owner or occupier of any premises to furnish to such authority as may be specified in the order such information with respect to the accommodation contained in the premises and with respect to the persons living therein as may be so specified.

(4) The price payable in respect of any accommodation furnished in any premises to any persons in accordance with an order made under sub-rule ¶[(2)] shall be such as may be determined by the appropriate Government, and shall be paid to the occupier by that Government; and the amount of any sum paid in accordance with this sub-rule by the appropriate Government in respect of accommodation furnished to any person may be recovered by that Government from that person as an arrear of land revenue.

(5) The appropriate Government may by order appoint an authority to hear complaints in respect of orders made under sub-rule ¶[(2)]; and any person who is aggrieved by the service upon him, or by the operation, of such an order may make a complaint to such authority, and upon hearing the complaint such authority may cancel or vary such order as it thinks fit.

(6) If any person contravenes any order made under this rule, he shall be punishable with fine which may extend to one thousand rupees.]

LEG. REF.

(g) Inserted by D.C. Dept. notification No. 1346-OR/42, dated the 4th July, 1942.

(r) Substituted by D. Dept. notification No. 1346-OR/42, dated the 5th September 1942, for the brackets and figure "(1)".

51. [Eng. Def. R. 23.] *[(1) The Central Government or the Provincial

Precautions against hostile attack.

Government may, with a view to protecting the general public or any members thereof against the dangerous involved in any apprehended attack by land, sea or air, or with a view to acquainting the general public or any members thereof with the action to be taken in such an emergency, by order specify the action to be taken by any person or authority on such occasions as may be specified.]

(2) An order made under sub-rule (1) may provide that upon the giving of any specified notice or signal any person or class of persons may, subject to such conditions and in such circumstances as may be specified, enter and remain in or on any premises or property †[(notwithstanding that such premises or property would not otherwise be open to the public)] which may be specified or which may be appointed for the purpose of this rule by any specified authority or person.

(3) No person shall—

(a) wilfully obstruct any person entering or seeking to enter any premises or property in accordance with an order made under this rule, or

(b) eject from any premises or property any person who is entitled to remain there by virtue of such an order.

(4) If any person contravenes any of the provisions of this rule, ‡[or any order made thereunder] he shall be punishable with imprisonment for a term which may extend to six months √[or with fine or with both].

Watching of premises to detect fire.

¶[51-A. *[(1) The Central Government or the Provincial Government may by general or special order make provision—

(a) for requiring the occupiers of any premises to which the order applies to make and carry out such arrangements as may be specified in the order with a view to securing that fires occurring at the premises as a result of hostile attack will be immediately detected and combated;

(b) for requiring the occupiers of several premises jointly to make and carry out such arrangements as aforesaid for all those premises, and in particular for requiring that they shall take turns, of duty at specified premises and perform such fire prevention duties as may be allotted to them under those arrangements;

(c) for empowering any authority, in such circumstances as may be specified in the order, to make and carry out such arrangements as aforesaid, including a joint arrangement, as respects any premises to which the order applies, and where it carries out such arrangements, to recover from the occupiers, concerned the expenses of so doing.

Explanation.—In clause (b) of this sub-rule, “fire prevention duties” means the duties of keeping a watch for the fall of incendiary bombs, taking such steps as are immediately practicable to combat a fire caused by such bombs and summoning such assistance as may be necessary, and includes the duty of being in readiness to perform any such duties as aforesaid.]

√[(1-A) An order under sub-rule (1) shall entitle any person required thereby to be present on premises to which the order applies to have access to those premises for the purpose of complying with the order notwithstanding that the premises would not otherwise be open to the public, and anyone who obstructs

LEG. REF.

(s) Substituted by D.C. Dept. notification No. 558-OR/40, dated the 21st September, 1940, for the original sub-rule (1).

(t) Inserted by D.C. Dept. notification No. 770-OR/41, dated the 19th April, 1941.

(u) Inserted by D. C. Dept. notification No. 1500-OR/42, dated the 18th July, 1942.

(v) Substituted by D.C. Dept. notification No. 701-OR/41, dated the 15th Febru-

ary 1941, for the words “and shall also be liable to fine”.

(w) Rules 51-A, 51-B and 51-C were inserted by D.C. Dept. notification No. 713-OR/41, dated the 15th February, 1941.

(x) Substituted by D. C. Dept. notification No. 1294-OR/42, dated the 14th March 1942, for the original sub-rule (1).

(y) Inserted by D.C. Dept. notification No. 713-OR/41, dated the 2nd January, 1942.

access thereto by any such person for that purpose shall be deemed to contravene the provisions of the order.]

(2) Any police officer, or any other person authorised in this behalf by the Central Government or the Provincial Government, may at any time enter and inspect any premises to which any order made under sub-rule (1) applies for the purpose of seeing whether the order is being complied with.

(3) If any person contravenes any of the provisions of an order made under this rule, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

51-B. [Eng. Def. R. 27.] z[(1) With a view to preventing the spread, or

Measures for dealing with outbreaks of fire.

facilitating the z-1[detection and] extinction, of fire caused by hostile attack from the air, the Central Government or the Provincial Government may by order make provision for requiring the owners or occupiers of the premises to which the order applies to take a[within such period as may be specified in the order such measures as may be so specified.]

(2) Any police officer, or any person authorised in this behalf by the Central Government or the Provincial Government, may at any time enter and inspect any premises to which an order made under sub-rule (1) applies for the purpose of seeing whether the order has been complied with; and if that officer or person finds that the order has not been complied with, he may, without prejudice to any other proceedings which may be taken in respect of the contravention of the order, take such steps and use such force as may appear to him to be reasonably necessary for giving effect to the order.

b[(2-a) If in the opinion of the Central Government or the Provincial Government any person who has been ordered under sub-rule (1) to take any measures has failed to take or is unlikely to complete the measures within the period specified in the order, then, without prejudice to any other proceedings which may be taken in respect of the contravention of the order, that Government may cause the said measures to be taken or completed and the cost thereof shall be recoverable from the owner or occupier of the premises by the Collector as if it were an arrear of land revenue.]

(3) In the event of any outbreak of fire, any person authorised in this behalf by the Central Government or the Provincial Government, may take or cause to be taken such steps and give such directions as appear to him to be necessary for preventing the spread of fire; and the steps which may be so taken include entering upon any land or other property whatsoever and the destruction or removal of anything in, on or over any land or property.

(4) If any person contravenes any of the provisions of an order made under this rule, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

51-C. (1) The Central Government may by order require the owner, manager or agent of any mine, or the occupier or manager of any factory—

(a) to make, within such period as may be specified in the order, a report in writing stating the measures which he has taken or is taking or proposing to take to secure the due functioning of the mine or factory, and the safety of persons and property therein and in the vicinity thereof, [in the event of an outbreak of fire whether caused by accident or otherwise.]*

LEG. REF.

(z) Substituted by D. C. Dept. notification No. 856-OR/41, dated the 14th June 1941, for the original sub-rule (1) of rule 51-B.

(z-1) Inserted by D.C. Dept. notification No. 713-OR/41, dated the 2nd January, 1942.

(a) Substituted by D. C. Dept. notification No. 1368-OR/42, dated the 25th April 1942, for the words "such measures as may be specified in the order".

(b) Inserted by D.C. Dept. notification No. 1368-OR/42, dated the 25th April, 1942.

* Substituted by 5 D.C. (16)/45, dated 9th June, 1945, p. 719.

(b) to take, within such period as may be specified in the order, such measures as may be so specified, being measures the taking of which is in the opinion of the Central Government necessary for the purposes aforesaid.

(2) The Central Government may by order require any person or class of persons employed in or in connexion with, or resident within three miles of, any mine or factory, or class of mines or factories, or any local authority within whose jurisdiction any mine or factory is situated, to take, within such period as may be specified in the order, such measures as may be so specified, being measures the taking of which is in the opinion of the Central Government necessary to secure the due functioning of such mine or factory, or class of mines or factories, and the safety of persons or property therein or in vicinity thereof, *[in the event of an outbreak of fire whether caused by accident or otherwise].

(3) Any person authorised in this behalf by the Central Government may at any time—

(a) enter and inspect any factory or mine for the purpose of ascertaining what measures have been, or ought to be, taken to secure the due functioning of the mine or factory, and the safety of persons and property therein and in the vicinity thereof *[in the event of an outbreak of fire whether caused by accident or otherwise].

(b) enter and inspect any premises belonging to or occupied by any person or authority to whom an order made under sub-rule (1) or sub-rule (2) relates for the purpose of seeing whether the order has been complied with.

(4) If in the opinion of the Central Government any person or authority who has been ordered under sub-rule (1) or sub-rule (2) to take any measures has failed to take, or is unlikely to complete, the measures within the period specified in the order, then, without prejudice to any other proceedings which may be taken in respect of the contravention of the order, the Central Government may cause the said measures to be taken or completed and the cost thereof shall be recoverable c[* *] by the Collector as if it were an arrear of land revenue d[from such person or authority, or where such person is the manager or agent of a mine or the manager of a factory, from the owner of the mine or, as the case may be, the occupier of the factory].

e[(4-A) For the purposes of this rule—

(i) “mine” means any mine subject to the operation of the Mines Act, 1923;

(ii) “factory” means any factory subject to the operation of the Factories Act, 1934, and includes any other premises which in the opinion of the Central Government are being used for maintaining supplies or services essential to the life of the community.]

(5) If any person contravenes any of the provisions of an order made under this rule, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

f[51-D. (1) The Central Government or the Provincial Government may

Security of buildings. by order as respects any area specified in the order

provide for securing that, subject to any exemptions for which provision may be made in the order, no building, or no building of such class as may be specified in the order, shall be erected, extended or structurally altered except with the permission of that Government and in accordance with

LEG. REF.

(c) The words “from such person or authority” omitted by D.C. Dept. notification No. 713-OR/41, dated the 19th February, 1941.

(d) Added by *ibid.*

(e) Inserted by D.C. Dept. notification No. 871-SM/41, dated the 20th September

1941.

(f) Substituted by D. C. Dept. notification No. 796-OR/41, dated the 16th August 1941, for the original rule which was inserted by D.C. Dept. notification No. 796-OR/41, dated the 3rd May, 1941.

* Substituted by 5 D.C. (16)/45, *Gazette of India*, Pt. I, Sec. 1, 9th June, 1945, p. 719.

such requirements as to lay-out, materials and construction as that Government may impose, being requirements which it is in the opinion of that Government necessary to impose for the purpose of rendering the building less vulnerable to air raids or of affording better protection to persons using or resorting to it.

(2) If any person contravenes any of the provisions of an order made under this rule, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.]

g[51-E. (1) The Central Government or the Provincial Government may by order, as respects such premises as may be specified in the order,—

(a) require the owner of the premises to take h[within such period as may be specified in the order, such measures as may be so specified] or

(b) authorise any person to take such measures as may be so specified, being measures which are in the opinion of that Government necessary to secure that such premises are or can be made less readily recognisable in the event of hostile attack.

i[(1-A) If in the opinion of the Central Government or, as the case may be, the Provincial Government, any person who has been ordered under sub-rule (1) to take any measures has failed to take, or is unlikely to complete, the measures within the period specified in the order, then, without prejudice to any other proceedings which may be taken in respect of the contravention of the order, that Government may cause the said measures to be taken or completed, and the cost thereof shall be recoverable from such person by the Collector as if it were an arrear of local revenue.]

(2) No person shall, except with permission granted by or on behalf of the Central Government or the Provincial Government, as the case may be, remove, alter, or tamper with any work done in pursuance of this rule.

(3) If any person contravenes any of the provisions of this rule, j[or any order made thereunder] he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.]

k[51-F. (1) In this rule, “the appropriate Government” means, in relation to Cantonment authorities and in relation to port authorities in major ports, the Central Government, and in relation to other local authorities the Provincial Government.

Power to require local authorities to take precautionary measures.

(2) provisions of this rule and of any order made thereunder shall have effect notwithstanding anything contained in any law or instrument defining the powers, duties or obligations of a local authority.

(3) The appropriate Government may by order require any local authority to take, within such period as may be specified in the order, such measures as may be so specified, being measures which are in the opinion of that Government necessary for the protection of persons and property under the control or within the jurisdiction of such authority from injury or damage, or for ensuring the due maintenance of the vital services of the authority, in the event of hostile attack; and thereupon—

(a) it shall be the duty of the local authority to comply with the order,

LEG. REF.

(g) Inserted by D. Dept. notification No. 987-OR/41, dated the 23rd August 1941.

(h) Substituted by D.C. Dept. notification No. 987-OR/1/41, dated the 30th May 1942, for the words “such measures as may be specified in the order”.

(i) Inserted by *ibid*.

(j) Inserted by D. C. Dept. notification No. 1500-OR/42, dated the 18th July 1942.

(k) Inserted by D.C. Dept. notification

No. 871-SM/41, dated the 6th September 1941.

R. 51-F.—When an issue is raised that an order superseding a Municipality under R. 51-F has been made in bad faith or for a collateral purpose, the Court is bound to inquire into the facts. See 48 C.W.N. 766 cited under S. 16 *supra*. See also 1945 Nag. 8.

(b) the funds of the local authority shall be applicable to the payment of the charges and expenses incidental to such compliance, and

(c) priority shall be given to such compliance over all other duties and obligations of the local authority.

(4) If in the opinion of the appropriate Government any local authority which has been ordered under sub-rule (3) to take any measures has failed to take, or is unlikely to complete, the measures within the period specified in the order, then, without prejudice to any other proceedings which may be taken in respect of the contravention of the order, the appropriate Government ¹[may authorise any person to take or complete the said measures; and any person so authorised may, for the purpose of taking or completing the said measures, exercise all or any of the powers of the local authority or of its officers, issue such directions as he thinks fit to the officers or servants of the local authority and employ any outside agency, and all charges and expenses incurred by him shall, except to such extent, if any, as the appropriate Government may direct to be paid out of its revenues, be paid out of the funds of the local authority.]

^m[(4-A) Any person authorised in this behalf by the appropriate Government may, if he considers it necessary or expedient so to do,—

(a) by order direct a local authority or any of its officers or servants to take such action as may be specified in the order, being action which is in his opinion necessary for the protection of persons and property under the control or within the jurisdiction of the local authority from the danger involved in or resulting from an actual or apprehended hostile attack;

(b) impress and use or cause to be used for the aforesaid purpose any property belonging to or in the possession of the local authority in such manner as he thinks fit;

and it shall be the duty of the local authority and of its officers and servants to comply forthwith with any order made under this rule, and the funds of the local authority shall be applicable to the payment of any charges and expenses incidental to such compliance.]

ⁿ[(5) The appropriate Government may, if it considers it necessary or expedient so to do, by order authorise any person to take over from a local authority and administer in accordance with such directions as may be issued from time to time by that Government such of the services of the local authority as may be specified in the order; and any person so authorised may, for the purpose of administering the said services, exercise all or any of the powers of the local authority ^o[or of any committee or officer of the local authority], issue such directions as he thinks fit to the officers or servants of the local authority and employ any outside agency, and all charges and expenses incurred by him shall, except to such extent, if any, as the appropriate Government may direct to be paid out of its revenues, be paid out of the funds of the local authority.

(6) If the appropriate Government is of opinion that any local authority has failed to comply, or has delayed in complying, with any order made under sub-rule (3), or that it is necessary or expedient so to do for ensuring the due maintenance of the vital services of the authority in the event of hostile attack, the appropriate Government may by order supersede the local authority for such period as may be specified in the order.

(7) When an order of supersession has been made under sub-rule (6)—

(a) all the members of the local authority shall, as from the date of supersession, vacate their offices as such members;

LEG. REF.

(l) Substituted by D. C. Dept. notification No. 871-SM/41, dated the 20th December, 1941, for the words "may cause the said measures to be taken or completed, and direct that the cost thereof shall be defrayed out of the funds of the local authority".

(^m) Inserted by D.C. Dept. notification No. 871-SM/41, dated the 4th July, 1942.

(ⁿ) Inserted by D.C. Dept. notification No. 871-SM/41, dated the 20th December 1941.

(^o) Substituted by 5-DC (51)/43, dated 4th December, 1943.

(b) all the powers and duties which may, by or under any law for the time being in force, be exercised or performed by or on behalf of the local authority shall, during the period of supersession, be exercised and performed by such person or persons as the appropriate Government may direct;

(c) all property vested in the local authority shall, during the period of supersession, vest in the appropriate Government.

(8) On the expiration of the period of supersession specified in the order under sub-rule (6), the appropriate Government may—

(a) extend the period for such further term as it may consider necessary;

(b) by order direct that the local authority shall be re-constituted in the manner provided for the constitution of the authority by or under the ordinary law relating thereto, and in such case any persons who vacated their offices under clause (a) of sub-rule (7) shall not be deemed disqualified for election, appointment or nomination; or

(c) by order direct that the local authority shall be reconstituted by the persons who vacated their offices under clause (a) of sub-rule (7) and shall recommence functioning as if it had not been superseded:

Provided that the appropriate Government may at any time before the expiration of the period of supersession whether as originally specified under sub-rule (6) or as extended under this sub-rule take action under clause (b) or clause (c) of this sub-rule.]

p[51-G. [Eng. Def. R. 34.] (1) The Central Government or the Provincial

Keeping of dangerous articles and substances.

Government may by order, in respect of any articles or substances from the explosive or inflammable nature of which [special precautions are in the opinion of that Government necessary or expedient for securing the public safety] issue directions:—

(a) prohibiting the keeping of such articles or substances in or on such premises as may be specified in the order;

(b) prescribing the quantity of such articles or substances which may be kept in or on any premises;

(c) requiring the owner or occupier of any premises in or on which such articles or substances are kept to take such measures as may be specified in the order for the protection of persons or property therein or thereon, or in the vicinity thereof;

(d) for any incidental or supplementary matters for which that Government thinks it expedient for the purposes of the order to provide, including, in particular, the entering and inspection of premises to which the order relates with a view to securing compliance with the order.

“(I-A) If in the opinion of the Central Government or, as the case may be, the Provincial Government, any person who has been ordered under sub-R. (1) to take any measures has failed to take, or is unlikely to complete, the measures within the period specified in the order, then, without prejudice to any other proceedings which may be taken in respect of the contravention of the order, that Government may cause the said measures to be taken or completed, and the cost thereof shall be recoverable from the owner or occupier of the premises by the Collector as if it were an arrear of land revenue.” (*Gazette of India*, Pt. I, Sec. 1, dated 12th May, 1945, p. 572).

(2) If any person contravenes any order made in pursuance of this rule, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.]

q[51-H. (1) The Central Government or the Provincial Government may by

LEG. REF.

(p) Inserted by D.C. Dept. notification No. 966-OR/41, dated the 1st November, 1941. See also 5 D.C. (79)144. *Gazette of*

India, Pt. I, Sec. I, 12—5—1945, p. 572.

(q) Inserted by D.C. Dept. notification No. 1199-OR/42, dated the 28th February, 1942.

Maintenance of water-supply. order require the owner, or any person having control, of any source of water-supply which is or is capable of being used for drinking purposes,—

(a) to keep the same in good order, clear it from time to time of silt, refuse and decaying vegetation, and protect it from contamination, in such manner as may be specified in the order;

(b) to make the same available at all reasonable times for the use of the public or of such section of the public as may be specified in the order.

(2) Any person authorised in this behalf by the Central Government or, as the case may be, the Provincial Government may at any time inspect any source of water-supply, in respect of which an order under sub-rule (1) has been made, for the purpose of seeing whether the order has been, or is being, complied with.

(3) If any person contravenes any of the provisions of an order made under this rule, he shall be punishable with imprisonment for a term which may extend to one month, or with fine, or with both.]

r[51-I. (1) If in respect of any premises the Central Government or the Provincial Government considers it necessary or expedient so to do for the purpose of affording protection to persons living or employed therein or thereon, that Government may by order require the owner of the premises to construct therein or thereon an air raid shelter, within such period and in accordance with such requirements as to lay-out, materials and construction as may be specified in the order.

(2) Any police officer, or any person authorised in this behalf by the Central Government or, as the case may be, the Provincial Government, may, at any time enter and inspect any premises to which an order under sub-rule (1) applies for the purposes of seeing whether the order has been complied with.

(3) If in the opinion of the Central Government or, as the case may be, the Provincial Government any person who has been ordered under sub-rule (1) to construct an air raid shelter has failed to do so, or is unlikely to complete doing so within the period specified in the order, that Government may cause the shelter to be constructed, and the cost thereof shall be recoverable from the owner of the premises by the Collector as if it were an arrear of land revenue.

(4) If any person contravenes s[any order made under this rule], he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.]

t[51-J. (1) In this rule "the appropriate Government" means in relation to any cantonment area, the Central Government, and in relation to any other area the Provincial Government.

(2) The appropriate Government may by order direct that any site or premises on which an air raid shelter is or has been constructed shall, on being certified by an officer appointed in this behalf by the appropriate Government, be exempt from any tax or rate, or from any enhancement of any tax or rate levied by a local authority to which the site or premises would not have been liable if the shelter had not been constructed.]

u[51-K. (1) The Central Government or the Provincial Government may by order, as respects such premises as may be specified in the order,

LEG. REF.

(r) Inserted by D.C. Dept. notification No. 1293-OR/42, dated the 14th March 1942.

(s) Substituted by D. C. Dept. notification No. 1500-OR/42, dated the 18th July

1942, for the words "any of the provisions of this rule".

(t) Inserted by D.C. Dept. notification No. 1141-OR/41, dated the 25th April, 1942.

(u) Inserted by D. C. Dept. notification No. 1388-OR/42, dated the 9th May, 1942.

(a) require the owner or the occupier of the premises to take such measures as may be specified in the order, or

(b) authorise any person to take such measures as may be so specified, being measures which are in the opinion of that Government necessary to minimise danger to persons being in or in the vicinity of such premises in the event of hostile attack.

(2) If any person contravenes u-1 [any order made under this rule], he shall be punishable with imprisonment for a term which may extend to one month, or with fine, or with both.]

v[51-L. The Central Government or the Provincial Government may, if it considers it necessary in the interests of public safety or the defence of British India so to do, by notified order declare the provisions of this rule to apply to any local area specified in the order; and thereupon so long as the order remains in force, it shall be lawful notwithstanding anything contained in the Indian Companies Act, 1913—

(a) for the registrar to remove from any registration office situate within that area all or any of the documents connected with the registration of companies, keep them in such place of safety as he may think fit, and suspend the inspection thereof and the grant of any certificate, certified copy or extract therefrom under sub-section (5) of section 248 of the said Act;

(b) for any company the registered office of which is situate in that area to remove from the registered office all or any of its registers, books of account and other documents and keep them in such place of safety as the directors of the company may think fit:

Provided that any company removing any of its documents under this rule shall, either before such removal or as soon as practicable thereafter, give notice of the removal to its members and to the registrar.]

“51-M. (1) The Central Government may, with a view to ensuring safety of any major port and of persons and property therein in the event of fire, by order require the port authority to make, within such period as may be specified in the order, such fire-fighting arrangements as may be so specified; and thereupon—

(a) it shall be the duty of the port authority to comply with the order;

(b) the funds of the port authority shall be applicable to the payment of the charges and expenses incidental to such compliance; and

(c) priority shall be given to such compliance over all other duties and obligations of the port authority.

(2) Nothing in sub-rule (1) or in any order made thereunder shall be deemed to affect the discharge by any other local authority of the duty imposed on it by any other law for the time being in force of extinguishing fire and of protecting life and property in the event of fire within the port.” (5 D.C. (73) 44, *Gazette of India*, dated 22nd July, 1944, at pages 959-960.)

[(3) The Central Government may, with a view to ensuring the safety of any major port and of persons and property therein, by notified order provide for the precautionary measures to be taken by the port authority, its officers and servants, the municipal fire brigade and all persons using the port, and for the co-ordination of fire-fighting operations in the event of fire; and it shall be the duty of all persons concerned, including public servants and members of His Majesty's forces, to act in conformity with the order.] (*Gazette of India*, Pt. I, Sec. 1, dated 2nd June, 1945, p. 657).

LEG. REF.

(u-1) Substituted by D.C. Dept. notification No. 1500-OR/42 dated the 18th July, 1942 for the words “any of the provisions of

this rule.”

(v) Inserted by D.C. Dept. notification No. 1414-OR/42, dated the 23rd May 1942.

Control of lights and sounds. 52. [Eng. Def. R. 24.] (1) The Central Government or the Provincial Government may by order provide—

(a) for prohibiting or regulating the display of lights of any specified description;

w[(aa) for the screening of any lighting apparatus, whether for the time being alight or not, carried on, or attached to, any specified class of vehicles;]

(b) for securing that, in specified circumstances, indication of the position of such premises and places, and warning of the presence of such vehicles and vessels, as may be specified shall be given by means of such lights as may be specified, and for prescribing the manner in which any apparatus used for the purpose of exhibiting such lights is to be constructed, installed or used;

(c) for prohibiting or regulating the use of roads by any particular class of traffic, so far as appears to it to be necessary for avoiding danger consequent on compliance with any provisions of an order made under this rule which relate to the lighting of roads or of vehicles on roads;

(d) for prohibiting or regulating such activities as may be specified being activities which consist of or involve the emission of smoke, flames, sparks or glare or the making of noise.

(2) An order under sub-rule (1) may be made so as to apply to any specified area or premises, may make different provisions as respects different parts of an area or different classes of premises, places, vehicles or vessels therein, may provide for exempting any premises, places, vehicles or vessels (either absolutely or conditionally) from the operation of any of the provisions of the order, and may contain such incidental and supplementary provisions as appear to the authority making the order to be necessary or expedient for the purposes of the order.

(3) If any order made under sub-rule (1) is contravened in respect of, or in relation to, any light, premises, place, vehicle, vessel, apparatus, road or activity to which the order applies, any police officer, or any person authorised in this behalf by the authority making the order, may take such steps and use such force as may, in his opinion, be reasonably necessary for giving effect to the order, and in the exercise of this power shall have a right of access to any land or other property whatsoever.

(4) If any order made under this rule is contravened in respect of any premises, place, vehicle or vessel, the occupier of the premises or place, the person in charge of the vehicle, or the master of the vessel, as the case may be, shall (without prejudice to any proceedings which may be taken against any other person) be deemed to have contravened the provisions of this rule:

Provided that in any proceedings which by virtue of this sub-rule are taken against any person in respect of a contravention of such an order on the part of another person, it shall be a defence for the accused to prove that the contravention or non-compliance occurred without his knowledge and that he exercised all due diligence to secure compliance with the order.

(5) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to six months x[or with fine or with both].

y[52-A. (1) The Central Government or the Provincial Government may by order provide for requiring motor vehicles or any class of motor vehicles to be rendered, when not being driven, incapable of use by unauthorised persons:

Control of motor vehicles.

LEG. REF.

(w) Inserted by D.C. Dept. notification No. 538-OR/40, dated the 31st August 1940.

(x) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th Febru-

ary 1941, for the words "and shall also be liable to fine".

(y) Inserted by D.C. Dept. Notification No. 1214-OR/42, dated the 7th April, 1942.

and any such order may contain provisions with respect to the manner in which vehicles are to be rendered incapable of use as aforesaid.

(2) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.]

z[53. [Eng. Def. R. 37.] (1) The Central Government or the Provincial Government may, by order, direct that, subject

Curfew. to any specified exemption, no person present within any specified area shall between such hours as may be specified be out of doors except under the authority of a written permit granted by a specified authority or person.]

(2) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to six months z-1[or with fine or with both].

PART IX.

CONTROL OF ARMS AND EXPLOSIVES.

54. a[(1) The Central Government or the Provincial Government may, by general or special order, prohibit, restrict or impose conditions on, the possession, carrying, use, sale or other disposal of—

(a) arms or articles capable of being used as arms;

(b) ammunition;

[(c) substances which are, or are declared to be, explosives within the meaning of the Indian Explosives Act, 1884, or which are declared in the Order to be capable of being used in the manufacture of explosives, all of which substances are hereinafter referred to as explosive substances.] (*Gazette of India*, Pt. I, Sec. 1, dated 21st July, 1945, p. 967.)

(2) Without prejudice to any powers conferred by or under any other law for the time being in force,—

(a) if any police officer not below the rank of head constable or any other public servant authorised by the Central Government or a Provincial Government to act under this rule, suspects that any arms, b[articles capable of being used as arms,] ammunition, or explosive substances are in or upon any land, vehicle, aircraft, vessel, building or other premises in contravention of an order made under sub-rule (1), he may enter, if necessary by force, and search the land, vehicle, aircraft, vessel, building or premises in or upon which he suspects that a contravention of an order made under sub-rule (1) has been committed at any time of the day or night, and may seize any arms, c[articles capable of being used as arms,] ammunition, or explosive substances found therein or thereon which he suspects to be therein or thereon in contravention of such order;

(b) if any police officer, or any other public servant authorised by the Central Government or the Provincial Government to act under this rule, suspects that any person is carrying, or in possession of, arms, c[articles capable of being used as arms,] ammunition, or explosive substances d* * * in contravention of an order made under sub-rule (1) such officer or other public servant may stop and search or cause to be searched such person and seize any arms, c[articles capable of being used as arms,] e[ammunition or explosive substances] d[* *] possessed or carried by him c[which such officer or other public servant suspects to be possessed or carried] in contravention of such order:

LEG. REF.

(x) Substituted by D.C. Dept. Notification No. 516-OR/40, dated the 26th October 1940, for the original sub-rule (1).

(z-1) *Vide* footnote (x), p. 376.

(a) Substituted by D.C. Dept. Notification No. 516-OR/40, dated the 26th October 1940 for the original sub-rule (1).

(b) Inserted by *ibid*.

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(c) Inserted by D.C. Dept. Notification No. 516-OR/40, dated the 26th October 1940.

(d) The words "or other articles" omitted by D.C. Dept. Notification No. 516-OR/40, dated the 26th October 1940.

(e) Substituted by *ibid*, for the words "ammunition, explosive substances".

Provided that no female shall be searched in pursuance of the provisions of this rule except by a female.

(3) Any arms, ammunition, explosive substances or other articles seized under the provisions of this rule may be destroyed or otherwise disposed of as may be ordered by the Provincial Government.

(4) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to five years f[or with fine or with both.]

55. [Eng. Def. R. 35.] (1) The Central Government may, as respects any premises used for producing, treating, handling or keeping any munitions of war, explosives or petroleum or any other substance to which any of the provisions of the Indian Explosives Act, 1884, or of the Petroleum Act, 1934, apply, or may be applied, by order make provision for the safety of persons and property in, or in the vicinity of, such premises; and by any such order may authorise the searching of persons entering, or seeking to enter, or being within any premises to which the order applies:

Manufacture and transport of explosives, and other dangerous articles.

Provided that no female shall be searched in pursuance of such order except by a female.

(2) The Central Government may by order make, in relation to the conveyance on vehicles or vessels of any description of any such articles or substances as are mentioned in sub-rule (1), such provision as may appear to be necessary or expedient for the protection of persons or property against danger arising from, or in connection with, such conveyance.

(3) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to two years g[or with fine or with both].

PART X.

PUBLIC SAFETY AND ORDER.

56. [Eng. Def. R. 39-E.] (1) h[The Central Government or the Provincial Government] may, i[for the purpose of securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war] by general or special order, prohibit, restrict or impose conditions upon, the holding of or taking part in public processions, meetings or assemblies

Control of processions, meetings, etc.

j* * *

LEG. REF.

(f) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(g) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(h) Substituted by D.C. Dept. Notification No. 583-OR/40, dated the 21st October 1940, for the words "The Provincial Government".

(i) Inserted by D.C. Dept. Notification No. 232-OR/5/39, dated the 9th September, 1939.

(j) The words "for such period as may be specified in the order" omitted by D.C. Dept. Notification No. 583-OR/40, dated the 21st October, 1940.

R. 56: SCOPE OF.—The power given to the police officers to disperse meetings was thought to be very wide; but an attempt to curtail the powers was not adopted by the assembly.

ORDER PROMULGATED UNDER—CONSTRUCTION OF—PREAMBLE TO RULE.—The preamble to R. 56 is only relevant on the question of the validity of an order issued under it. If it could be proved that the purpose of Government in framing an order was not such as is indicated in the rule, then the order would be bad; but once the order has been promulgated, its construction must depend upon the language in which it is framed, and the preamble to R. 56 has nothing to do with the construction of the order. 45 Bom.L.R. 310=1943 Bom. 177.

R. 56 (1): "PROCESSION"—MEANING OF.—The only important ingredients of a "procession" in R. 56, are a common purpose and a formal or demonstrative march. Even two persons can form a procession. Where two persons, one of them carrying a flag and both shouting slogans, march together in a line along a public road for the purpose of demonstration, they constitute a "procession" and are guilty under R. 56 (1). 45 Bom.L.R. 303.

A procession may be defined as a formal

(2) For the purposes of sub-rule (1), any procession, meeting or assembly which is open to the public or to any class or portion of the public, whether held in a public or a private place and whether admission thereto is restricted by the issue of tickets or otherwise, shall be deemed to be a public procession, meeting or assembly as the case may be.

(3) Any police officer may take such steps, and use such force, as may be reasonably necessary for securing compliance with any order made under this rule.

(4) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to three years k[or with fine or with both].

LEG. REF.

(k) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

and organised march of two or more persons "formal" implying a kind of solemnity or something spectacular, so as to attract attention, and organised implying a common intention or unity of purpose. 45 Bom.L.R. 303=1943 Bom. 209.

R. 56 (3): EXTENT OF POWERS OF POLICE OFFICERS, EXPLAINED.—R. 56 (3) does not give wide powers to the police officers as to enable them to close a road wholesale and prevent innocent passers-by from making legitimate use of it. If it be thought necessary that any road should be thus closed, a proper order should be obtained from the Police Commissioner under the Bombay City Police Act. But such a wide power is not conferred upon the Inspector or his subordinates. Preamble is only relevant on the question of the validity of an order issued under it. If it could be proved that the purpose of Government in framing the order was not such as is indicated in the rule, then the order would be bad; but once the order has been promulgated, its construction must depend upon the language in which it is framed, and the preamble to R. 56 has nothing to do with the construction of the order: [1943 Bom. 177, *Rel. on.*] 1944 Bom. 139, at pp. 142-143.

R. 56 (4): TAKING PART IN PRIVATE ASSEMBLY—OFFENCE—"PUBLIC ASSEMBLY"—WHAT IS.—It is perfectly plain that the order promulgated by the Government of Bombay applies only to public assemblies and does not apply to private assemblies. An assembly, to be a public assembly, must be qualified both as to its purpose, and as to its composition. A public assembly is one the object of which is the furtherance of some public purpose, and the constitution of which involves the admission of members of the public, whether conditionally or unconditionally. The public must have access to it, though it may be in limited numbers or on payment. If the assembly is confined to the members of a particular body or association, it would generally not be a public assembly. The question whether any particular assembly or meeting is a public assembly or meeting must be determined on the facts of each

case. The place where the assembly meets may have some relevance, since it is obvious that a meeting which takes place in a public hall is more likely to be a public meeting than one which takes place in a private house. The accused, who were members of a society called the "Rashtriya Seva Dal", the main purpose of which was to indulge in gymnastic exercises, took part in a meeting of the society. The assembly consisted of about 150 persons, all of whom were members of this body, and they sang *vande-mataram* and saluted the congress flag, which might give some political flavour to the meeting. *Held*, that it was not established that the public had any access to the assembly or that the object of the assembly was to further some public purpose, and it did not fall within the rule and the accused were not consequently liable to conviction under R. 56 (4). 45 Bom.L.R. 310=A.I.R. 1943 Bom. 177.

An offence under R. 56 (4) is committed by a person who contravenes any order made under the rule; and before a Court can convict or uphold a conviction, under the rule, it must first be satisfied that there was an order lawfully issued under that rule by an officer properly empowered thereto. Where the only evidence relating to the existence of such an order is a statement of a Sub-Inspector of Police to the effect that an order of the District Magistrate banning processions, meetings and assemblies was issued and proclaimed by beat of drum before the date of the occurrence on which the charge is based, that is insufficient and it is impossible for any Court to come to a finding and to convict under R. 56 (4). The fact that there is no cross-examination by the defence on the point or that that accused in his statement under S. 342, Cr. P. Code, answers in the affirmative a question, "Did you contravene R. 56 (4) of the Defence of India Act by taking part in a procession?" cannot be interpreted as an admission by the defence of the existence of such a lawful order under R. 56 (4). It is for the prosecution to prove all the essentials necessary to establish the guilt of the accused and if they do not do so, the prosecution must fail. Nor can the prosecution be allowed to fill in gaps in its evidence at a late stage in the appellate Court. 23 Pat. 1=A.I.R. 1944 Pat. 345. *See also* 1945 P.W.N. 65.

Prevention of *hartals* in places of employment.

1[56-A. (1) In this rule—

(a) 'trade dispute' means a trade dispute as defined in the Trade Dispute Act, 1929.

(b) '*hartal*' means any concerted cessation of work or refusal to work by a body of persons employed in any place of employment, except a cessation or refusal in furtherance of a trade dispute with which such body of persons is directly concerned.

(2) If in the opinion of the Provincial Government a body of persons employed in any place of employment is likely to take part in, or is taking part in, a *hartal*, then, without prejudice to any other proceedings which may by order in writing require the person owning or having the management of such place of employment to take, within such time as may be specified in the order, such measures as may be so specified to secure that the *hartal* shall not take place, or, as the case may be, shall cease.

(3) If in the opinion of the Provincial Government a place of employment has been closed for reasons other than the furtherance of a trade dispute, the Provincial Government may by order in writing require the owner or persons having the management of such place of employment to take, within such time as may be specified in the order, such measures as may be so specified to secure that the place of employment shall be opened, and shall remain open, for the uninterrupted employment of persons employed therein.

(4) If any person contravenes the provisions of any order made under this rule, he shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to five lakhs of rupees and to a further fine which may extend to one lakh of rupees for every day after the first during which the contravention continues, or with both such imprisonment and fine as aforesaid.]

(5) m[* * *].

57. (1). The Central Government n[or the Provincial Government] may,

Power to restrict use of motor vehicles.

by general or special order, prohibit, restrict or impose conditions upon, the use or possession of any motor vehicle by any person, other than a member of His Majesty's forces, without a permit from such military authority as may be specified or from the senior police officer in the district in which the said person resides.

(2) If any police officer or any other person authorised by the Central Government, n[or the Provincial Government], in this behalf suspects that any motor vehicle is or is kept in or upon any building, land, vehicle, vessel or other premises or is being used by any person in contravention of an order made under this rule, such officer or person may—

(i) enter and search such building, land, vehicle, vessel or other premises at any time of the day or night and may seize any motor vehicle found therein or thereon which he suspects to be therein or thereon in contravention of such order;

LEG. REF.

(i) Inserted by Def. Dept. Notification No. 1558-SM[42, dated the 17th April, 1943.

(m) Deleted by No. 5-D.C. (5)[44, dated the 22nd January 1944.

(n) Inserted by D.C. Dept. Notification No. 895-SM[41, dated the 26th July 1941.

PERSONS NOT PRESENT WITHIN CORDON FORMED BY POLICE OFFICERS—IF GUILTY OF OFFENCE.—Any person who attempts to interfere with any police officer who may be engaged in enforcing the order of the District Magistrate prohibiting all public

processions and meetings unless permission had been obtained from himself or some other proper authority, is guilty of an offence under R. 56 (4), whether or not he is actually present at the place where preparations are being made for taking out the procession and round which the police officers have formed a cordon with the object of preventing the processionists from passing. 78 C.L.J. 217.

It is the duty of the prosecution in a trial on a charge of violation of an order under R. 56 to prove in a legal manner the order on which it relies for proof of the com-

(ii) stop such person and seize any motor vehicle which is being used in contravention of such order.

(3) [The Central Government or the Provincial Government may] declare any motor vehicle seized in pursuance of this rule to be forfeited to His Majesty and thereupon such motor vehicle shall be disposed of in such manner as may be p[ordered by that Government].

(4) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to six months q[or with fine or with both].

58. [Eng. Def. R. 39-D.] (1) The Central Government or the Provincial Government may, by general or special order, prohibit or restrict in any area any such exercise, movement, evolution or drill of a military nature as may be specified in the order.

[(1-A). The Central Government or the Provincial Government may by general or special order, with a view to securing that no unauthorised exercise, movement, evolution or drill of a military nature is performed at any place, prohibit, restrict or impose conditions on the holding of, or taking part in, any such camp, parade, meeting or assembly, or such class thereof, as may be specified in the order.] (*Gazette of India*, Pt. I, S. 1, p. 252.)

(2) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to five years r[or with fine or with both].

59. [Eng. Def. R. 39-C.] s[(1) If the Central Government or the Provincial Government is satisfied that—

(a) the wearing in public of any dress or article of apparel resembling any uniform or part of a uniform required to be worn by a member of His Majesty's Forces or by a member of any official Police Force or of any force constituted under any law for the time being in force.

(b) the wearing or display in public of any distinctive dress or article of apparel or any emblem, would be likely to prejudice the public safety, the maintenance of public order, the defence of British India or the prosecution of the war, the Central Government or the Provincial Government as the case may be, may, by general or special order, prohibit or restrict the wearing or display in public of any such dress, article of apparel or emblem.]

(2) For the purposes of this rule, a dress, an article of apparel or an emblem shall be deemed to be worn or displayed in public if it is worn or displayed so as to be visible to a person in any place to which the public have access.

LEG. REF.

(o) Substituted by D.C. Dept. Notification No. 895-SM/41, dated the 26th July 1941, for the words "The Central Government may".

(p) Substituted by *ibid.*, for the words "ordered by the Central Government".

(q) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(r) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(s) Substituted by D.C. Dept. Notification No. 536-OR/40, dated the 3rd August 1940, for the original sub-rule (1).

mission of the offence charged, *viz.*, the order which is alleged to have been contravened. 1945 P.W.N. 65.

R. 58: APPLICABILITY AND SCOPE—"EXERCISE OF A MILITARY CHARACTER"—MEANING OF.—It is difficult to say what "exercise, movement, evolution or drill" is not of a military character. A thing is said to be of a military nature when it resembles something done by or appertaining to or belonging to soldiers. Where the object of certain exercises made by a body of persons, about 150 in number, 75 of whom are armed with lathis about four to six feet long, is found to be to enable a large body of men to respond immediately to a word of command so that it would be possible for one man in charge of a large body of persons to make them execute his will without the need for any elaborate explanations or directions, it must be held that the exercise are of a military nature, and the organisers as well as the instructor of such exercises are guilty of the offence under R. 58 (1). (1942) 1 M.L.J. 380—1942 Mad. 439.

(3) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to three years s-1 [or with fine or with both].

59-A. (1) Any officer of Government authorised in this behalf by general Powers to require the assistance of certain persons. or special order of the Provincial Government may, within such area as may be specified in the order, require any male person in that area to assist in the maintenance or restoration of law and order or in the protection of property for such period and in such manner as the officer may direct.

(2) If any person fails to comply with any lawful direction given to him under sub-rule (1), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

59-B. [Eng. Def. R. 40.] u[(1)] A District Magistrate, a Sub-divisional Magistrate, any police officer not below the rank of Deputy Superintendent, or any other officer of Government authorised in this behalf by the Provincial Government may, by order appoint persons to act as special police officers for such time and within such limits as may be specified in the order; and every person so appointed shall have the same powers, privileges and protection, shall be liable to perform the same duties and v[subject to the same disciplinary measures], and shall be subordinate to the same authorities as the ordinary officers of police within those limits.

w[(2) If any person, being appointed a special police officer as aforesaid, neglects or refuses, without sufficient excuse, to serve as such or to obey such lawful orders or directions as may be given to him for the performance of his duties, or withdraws from the duties of his office without permission, he shall be punishable with imprisonment for a term which may extend to three months or with fine not exceeding one hundred rupees or with both.]

PART XI.

SHIPPING AND AIRCRAFT.

***[59-C.** (1) Any person authorised in this behalf by the Central Government may by order direct that any vessel at any port in British India shall leave the port within such period as may be specified in the order * [and may further by such order direct that the vessel shall proceed] to such other port in British India by such route as may be so specified.

(2) If any order made under sub-rule (1) is contravened, the master of the vessel and the owner or other person having the management thereof shall each be deemed to have contravened the order, and shall be punishable with imprisonment for a term which may extend to five years or with fine or with both.]

60. [Eng. Def. R. 43.] (1) The Provincial Government as respects inland waters, and the Central Government as respects y[any waters], may by order make provision for regulating the places in or to which vessels may be or go, and the movements, navigation, pilotage, anchorage, mooring, berthing and lighting of vessels, in such waters.

(2) If in the case of any vessel any order made under sub-rule (1) is

LEG. REF.

(s-1) *Vide footnote (r)*, p. 381.

(t) Rules 59-A and 59-B inserted by D. C. Dept. Notification No. 872-SM/41, dated the 2nd January, 1942.

(u) Re-numbered by D.C. Dept. Notification No. 1349-SM/42, dated the 11th April 1942.

(v) Substituted by *ibid.*, for the words "amenable to the same penalties".

(w) Inserted by *ibid.*

(x) Inserted by D.C. Dept. Notification No. 1330-OR/42, dated the 5th April 1942. *Substituted by 5-D.C. (70)/44-Gazette of India, dated 1st July 1944, p. 879.

(y) Substituted by D. Dept. Notification No. 1617-OR/42, dated the 24th October 1942, for the words "waters other than inland waters".

contravened, the master of the vessel shall be punishable with imprisonment for a term which may extend to five years ^a[or with fine or with both].

^a[60-A. [Eng. Def. R. 44-A.] (1) The Central Government may, if it appears to it to be necessary or expedient so to do for the purpose of facilitating the protection of shipping or the efficient prosecution of war, by order require any vessel registered in British India to leave, or to keep away from, any area specified in the order, and any such order may make provision for such incidental and supplementary matters as appear to the Central Government to be necessary or expedient.

(2) If in the case of any vessel registered in British India an order under sub-rule (1) is contravened or not complied with, the master of the vessel and the owner or other person having the management thereof shall each be punishable with imprisonment for a term which may extend to five years ^b[or with fine or with both].

61. [Eng. Def. R. 44.] (1) No person shall, except under permission granted by the Central Government, discontinue, alter or remove, or make any variation in the mode of exhibiting or operating, any light, buoy, beacon or other apparatus used for the purpose of aiding the navigation of shipping or aircraft.

(2) The Central Government may make orders for prohibiting or restricting the exhibition or operation of, or requiring the removal, alteration or concealment of, or the making of any variation in the mode of exhibiting or operating, any such light, buoy, beacon or other apparatus as aforesaid.

(3) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to five years ^b[or with fine or with both].

Measures for safety of Indian vessels.

62. [Eng. Def. R. 45.] (1) The Central Government may by order make provision—

(a) for securing that any vessel registered in British India shall not, except under permission granted by the Central Government, proceed to sea from any port (whether within or outside British India) unless such requirements in respect of the alteration of the structure or external appearance of the vessel, and in respect of the equipping of the vessel with any particular apparatus, contrivance, appliance or defensive equipment, as may be contained in the order have been complied with;

(b) for securing the proper maintenance and efficient use of any apparatus, contrivance, appliance or defensive equipment with which any such vessel is equipped in pursuance of the order;

^c[(bb) for prescribing the wireless telegraph services to be maintained, and the number, grade and qualifications of operators and watchers to be carried in connexion with the operation of any wireless telegraphy apparatus provided in any such vessel, whether in pursuance of the order or otherwise;]

(c) for any incidental or supplementary matters for which it appears to the Central Government to be necessary for the purposes of the order to provide.

(2) An order under sub-rule (1) may be made so as to apply either to a particular vessel or to vessels of a particular class, and so as to apply to any such vessel or vessels either wherever it or they may be or while in such waters, or engaged in such voyages, as may be specified.

LEG. REF.

(s) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(a) Inserted by D.C. Dept. Notification No. 1330-OR/42, dated the 5th April 1942.

(b) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(c) Inserted by D.C. Dept. Notification No. 547-OR/40, dated the 17th August, 1940.

(3) If any vessel proceeds or attempts to proceed to sea in contravention of an order made under this rule, the master of the vessel and the owner or other person having the management thereof shall each be punishable with imprisonment for a term which may extend to five years c-1 [or with fine or with both].

d[62-A. [(1) The Central Government may, in respect of any vessel or class of vessels while in port in British India, by order, make provision—

(a) for securing that there shall be kept on board such vessel or vessels, such class or description of persons, or such number of persons, or such number of persons of such class or description, as may be specified in the order;

(b) for regulating the carrying out of any operations on Board such vessel or vessels.]e

(2) Any member of His Majesty's forces acting in the course of his duty as such or any other person authorised in this behalf by the Central Government, may at any time board and inspect any vessel to which any such order applies for the purpose of ascertaining whether the provisions of the order are being complied with.

(3) If any order made under sub-rule (1) is contravened, the master of the vessel and the owner or other person having the management thereof shall each be deemed to have contravened the order, and shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.]

f[62-AA. (1) Any person authorised by the Central Government in this behalf may give directions to the owner or master of any vessel which is for the time being at a port in British India g[or of any vessel registered in British India which is for the time being at a port outside British India] requiring him—

(a) to take such steps as may be specified in the directions for the purpose of securing that, while the vessel remains at the port, fires occurring in the vessel *[* *] will be immediately detected and combated;

(b) to secure that, while the vessel remains at the port, either at all times or during such periods as may be specified in the directions—

(i) in a case where the vessel is equipped with a gun or other instrument or device capable of being used to defend the vessel against hostile attack, that the gun, instrument or device will be manned;

(ii) in a case where the vessel is propelled by mechanical power, that the vessel is capable of being moved under her own power and of proceeding to sea immediately when ordered to do so;

(c) for the purpose of taking such steps or securing such matters as aforesaid, to secure that such number of persons, or such number of persons of such class or description, as may be specified in the directions, shall be or remain on board the vessel, either at all times while the vessel remains at the port or during such period as may be so specified;

(d) to do or not to do such other things as may appear necessary or expedient to do or not to do for the purpose of securing the safety of the vessel or preventing the vessel from endangering other vessels or property at the port in the event of [fire, explosion, hostile attack or other similar occurrence].*

(2) Any member of His Majesty's forces acting in the course of his duty as such, or any other person authorised in this behalf by the Central Government, may at any time board and inspect any vessel to which any directions given under

LEG. REF.

(c-1) *Wide* footnote (b), p. 383.

(d) Inserted by D.C. Dept. Notification No. 843-OR/41, dated the 9th August 1941.

(e) Substituted by Defence Dept. Notification No. 5-DC (43)/43, dated 21st August 1943.

(f) Inserted by D.C. Dept. Notification No. 1330-OR/42, dated the 5th April 1942.

(g) Inserted by D. Dept. Notification No. 1330-OR/1/42, dated the 15th August 1942.

*Omitted and substituted by 5-D.C. (2)/45, dated 20th January 1945.

sub-rule (1) relate for the purpose of ascertaining whether the directions are being complied with.

[(2-A) Any person authorised by the Central Government in this behalf if he considers that any vessel in any port in British India, whether because it is on fire or has suffered damage by fire or otherwise, or for any other reason constitutes a danger to other vessels or to the efficient working of the port, may give directions to the owner or master of such a vessel requiring him to scuttle or beach the vessel in such a position as may be specified in the directions.] (5 D.C. (70) [44, *Gazette of India*, dated 24th June, 1944, at page 838.)

(3) If the owner or master of any vessel to which any directions given under sub-rule (1) or sub-rule (2-A) relate fails to comply with such directions, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.]

Loading of ships. i[62-B. (1) In this rule, unless the context otherwise requires,

(a) "the Act" means the Indian Merchant Shipping Act, 1923;

(b) "assigning authority" has the same meaning as in the load-line rules;

(c) "load-line rules", "load-line certificate" and "international load-line certificate" have the same meanings as in the Act;

(d) "unsafe ship" has the same meaning as in sub-section (1) of section 232 of the Act.

(2) Sub-section (1) of section 221 of the Act shall have effect, in relation to a ship to which this sub-rule applies, subject to the following amendments:—

(a) where the ship is entitled under the load-line rules to be loaded to the depth indicated by the summer load-line prescribed by the said rules, the appropriate load-line for the purposes of the said sub-section shall be the tropical load-line so prescribed;

(b) where the ship is entitled under the load-line rules to be loaded to the depth indicated by the tropical load-line prescribed by the said rules, the appropriate load-line for the purposes of the said sub-section shall be the tropical fresh water load-line so prescribed.

(3) Subject to the provisions of this rule, sub-rule (2) shall apply to all British ships registered in British India (not being exempt from the provisions of Part V of the Act, relating to load-lines) with such exceptions and subject to such restrictions as may be specified in a general or special order by the Central Government.

(4) Sub-rule (2) shall not apply to a ship unless the load-line certificate issued in respect thereof bears an endorsement in the prescribed form signed by or on behalf of an assigning authority stating—

(a) that the ship is one to which the said sub-rule applies;

(b) the effect of the said sub-rule;

(c) any restrictions specified in any such order subject to which the said sub-rule applies to the ship.

(5) A certificate issued in respect of a ship shall not be endorsed by or on behalf of an assigning authority in pursuance of sub-rule (4) unless the authority is satisfied that the ship, if loaded in accordance with sub-section (1) of section 221 of the Act [as amended by sub-rule (2)], will not be an unsafe ship.

(6) It shall be the duty of the owner of every ship mentioned in sub-rule (3) not being a ship excepted by an order made by the Central Government under that sub-rule, to apply in writing to an assigning authority within the prescribed time for endorsement of the ship's load-line certificate in pursuance of sub-rule (4).

LEG. REF.

(i) Inserted by D.C. Dept. Notification

Ca. C. M.-I-49

No. 1135-OR/41, dated the 29th November 1941.

(7) After receiving any such application with respect to a ship, the assigning authority may by order in writing served on the owner or master of the ship exercise all or any of the following powers, namely:—

(a) require such documents and information with respect to the ship as may be specified in the order to be delivered to it within such period as may be so specified;

(b) require the ship to be submitted for survey at such place and within such period as may be so specified;

(c) in a case where it appears to the assigning authority (whether as the result of a survey or otherwise) that the ship, if loaded as mentioned in sub-rule (5) would be an unsafe ship, require the ship, within such period as may be so specified, to be altered in such manner, or to be equipped with such apparatus, contrivances or appliances, as may be so specified, being alterations or equipment which in its opinion will cause the ship not to be an unsafe ship if loaded as aforesaid;

(d) require the ship's load-line certificate to be delivered to it for endorsement within such period as may be so specified.

(8) The provisions of clause (ii) of sub-section (1) of section 224-C and sub-section (1) of section 224-D of the Act shall, in the case of a ship the load-line certificate of which has been endorsed by virtue of sub-rule (4), have effect as if the particulars mentioned in the said provisions included particulars of the endorsement.

(9) Where the load-line certificate of a ship has been endorsed by virtue of sub-rule (4) and the ship ceases, by virtue of an order under sub-rule (3) to be a ship to which sub-rule (2) applies, the owner of the ship shall forthwith deliver up the certificate to an assigning authority who shall cancel the endorsement

(10) Where the Central Government is satisfied that provision has been made by the law of any country to which the International Convention respecting load-lines, 1930, applies similar to the provisions of sub-rule (2) and for the endorsement of load-line certificates of ships of that country in manner similar to that required by sub-rule (4) it may by order direct that, where a certificate issued in respect of a ship of that country bears such an endorsement in such form as may be specified in the order, the certificate—

(a) shall be deemed for the purposes of Part V of the Act, to be a valid international load-line certificate, notwithstanding that it bears the endorsement, if, but for the endorsement, it would be such a certificate; and

(b) shall have effect, for the purposes of the said Part V, as varied by the endorsement.

(11) Where an order is in force under sub-rule (10) as respects ships of any country, section 224-I of the Act shall have effect in relation to any such ship as if the following sub-clause were substituted for sub-clause (a) of clause (ii) thereof, namely:—

(a) in case of a ship in respect of which there is produced on such an inspection as aforesaid a valid international load-line certificate, the load-line appearing by the certificate to indicate the maximum depth to which the ship is for the time being entitled to be loaded;

(12) If any person contravenes any of the provisions of this rule, [or any order made thereunder] he shall be punishable with fine which may extend to one thousand rupees.]

k[62-C. (1) The Central Government may for the purpose of securing

LEG. REF.

(j) Inserted by D.C. Dept. Notification No. 1500-OR/42, dated the 18th July 1942.

(k) Inserted by D.C. Dept. Notification No. 981-DR/41, dated the 20th December 1941.

Provisioning of vessels. the defence of British India, the public safety, the efficient prosecution of war or for maintaining supplies and services essential to the life of the community, by general or special order make provision for requiring any—

(a) vessel proceeding to sea from a port in British India on a voyage to any port [in the continent of India], Burma or Ceylon,

(b) vessel registered in British India proceeding to sea from any port, to have on board such emergency rations m[supplies of fuel or other stores] as may be specified in the order.

(2) Any provisions of an order under sub-rule (1) may be framed so as to apply to any specified class of such vessels and so as to apply to any such vessel while engaged in such trades as may be specified in the order.

(3) If any vessel proceeds or attempts to proceed to sea without complying with an order under sub-rule (1) or if otherwise there is any contravention of such an order in the case of a vessel, the master of the vessel and the owner or other person having the management thereof shall each be punishable with imprisonment for a term which may extend to six months or with fine or with both.]

Employment in Indian vessels.

63. [Eng. Def. R. 45-A.] (1) The Central Government may, as respects any class of vessels registered in British India, by order make provision—

(a) for securing that, subject to any exemptions for which provision may be made by the order, any such class of persons as may be specified in the order shall not be employed on board the vessels to which the order applies;

(b) for prohibiting the employment of any persons or class of persons on board such vessels unless they are holders of certificates of identity issued in such form and manner as may be specified and for determining the circumstances in which certificates of identity may be granted and revoked.

(2) An order under sub-rule (1) may be made so as to restrict the employment of persons either in any capacity or in such capacity as may be specified and so as to restrict the employment of persons on such vessels as aforesaid either wherever they may be or while in such waters, or engaged in such trades or on such voyages, as may be specified.

(3) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to five years n[or with fine or with both].

o[63-A. Notwithstanding anything contained in section 12 of the Indian

Officers authorised in United Kingdom deemed duly certificated.

Merchant Shipping Act, 1923, an officer who has been authorised by or on behalf of the competent authority in the United Kingdom under Regulation 47-C of the Defence (General) Regulations, 1939, to act as master or officer of any grade of a British ship shall, while acting in pursuance of the authorisation, be deemed to be duly certificated under the said Act.]

64. [Eng. Def. R. 45-B.] (1) The Central Government, with a view to

Employment abroad of agents for Indian vessels.

preventing the employment abroad, in connexion with the management of vessels registered in British India of enemy aliens or persons connected with the enemy, may by order direct that, as from such date as may be specified, the owner, manager or charterer of any vessel registered in British India, being a person resident in British India, or a corporation incorporated under the law of British India, shall not employ in any foreign country or territory, in connexion

LEG. REF.

(l) Substituted by D.C. Dept. Notification No. 1481-OR/42, dated the 27th June 1942, for the words "in India".

(m) Inserted by D.C. Dept. Notification No. 1330-OR/42, dated the 5th April 1942.

(n) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(o) Inserted by D.C. Dept. Notification No. 537-OR/40, dated the 3rd August 1940,

with the management of the vessel, any person other than a person approved for the purpose by the Central Government; and an order under this rule may be made so as to apply either generally to employment in all foreign countries or territories or to employment in such foreign countries or territories, or such class of foreign countries or territories, as may be specified in the order.

(2) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to five years [or with fine or with both].

65. [Eng. Def. R. 46.] (1) Without prejudice to any order made under sub-rule (1) of q[rule 60], the Central Government, with a view to securing that vessels registered in British India are used in such manner only as the Central Government considers expedient in the interests of the defence of British India and the efficient prosecution of the war, or for the maintenance of supplies and services essential to the life of the community, may by order provide that any such vessel registered in British India as may be specified in the order shall not proceed to sea from any port (whether within or outside British India) except under the authority of a licence granted by such authority or person as may be specified in the order; and any such order may contain provisions whereby a licence under the order may be granted subject to such limitations and conditions as the authority or person granting the licence thinks fit to impose with respect to—

(a) the trades in which the vessel may be engaged and the voyages which may be undertaken by the vessel;

(b) the class of cargoes or passengers which may be carried in the vessel;

(c) the hiring of the vessel and the terms upon which cargoes or passengers may be carried in the vessel;

and may also contain provisions for requiring any vessel in respect of which such a licence is in force to comply with any directions given on behalf of the Central Government as to the ports to which and the routes by which the vessel is to proceed for any particular purposes.

(2) Any provisions of an order made under sub-rule (1) may be framed so as to apply to any such vessels either wherever they may be or while in such waters, or engaged in such trades or on such voyages, as may be specified.

(3) Without prejudice to any of the provisions of sub-rules (1) and (2), the Central Government, with a view to regulating the use of vessels in the coasting trade, may by order provide that no vessel shall proceed to sea from any port in British India on a voyage to any other such port except under the authority of a licence granted by such authority or person as may be specified in the order.

(4) Without prejudice to any order made under sub-rule (1) of rule 60 or to any other provision of these Rules, the Central Government may make such orders with respect to any r[vessel or class of vessels]—

(a) for securing that goods or passengers shall not be put off or taken on board s[such vessel or class of vessels] in British India elsewhere than at a prescribed port,

(b) for determining the class of goods or passengers that may be put off or taken on board s[such vessel or class of vessels] at a port in British India, t[or

(c) for determining the order of priority in which specified goods or

LEG. REF.

(p) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(q) Substituted by D.C. Dept. Notification No. 250-OR/39, dated the 13th October 1939, for the word and figures "rule

61".

(r) Substituted by D.C. Dept. Notification No. 250-OR/39, dated the 13th October, 1939, for the words "particular vessel".

(s) Substituted by *ibid.*, for the words "the vessel".

(t) Inserted by *ibid.*

classes of goods shall be put off or taken on board such vessel or class of vessels at a port in British India,]

as the Central Government considers necessary or expedient in the interests of the defence of British India and the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community.

(5) If any vessel proceeds or attempts to proceed to sea in contravention of an order made under this rule, or if otherwise there is any contravention of such an order in the case of a vessel, the master of the vessel and the owner or other person having the management thereof shall each be deemed to have contravened such order and shall be punishable with imprisonment for a term which may extend to five years ^u[or with fine or with both].

Requisitioning of vessel.

66. ^v[(1) The Central Government may by order in writing requisition—

(a) any vessel in British India or anything on board a vessel in British India;

(b) any vessel registered in British India, or anything on board such vessel, wherever such vessel may be;

and may make such further orders as appear to the Central Government to be necessary or expedient in connection with the requisitioning:

Provided that the preceding provisions of this rule shall not authorise the requisitioning of any vessel registered in the United Kingdom or in any Dominion within the meaning of the Statute of Westminster, 1931, or of anything on board such vessel.]

^w[(1-a) Any vessel requisitioned under the Requisitioning of Vessels Ordinance, 1939, shall be deemed to have been requisitioned by order of the Central Government under sub-rule (1).]

^x[(2) Where the Central Government has requisitioned any vessel under sub-rule (1), the Central Government may use or deal with the vessel for such purpose and in such manner as may appear to it to be expedient, and may acquire it by serving on the owner or person having the management thereof ^y[or where the owner or person having the management thereof is not readily traceable or the ownership is in dispute, by publishing in the official gazette] a notice stating that the Central Government has acquired it in pursuance of this rule.

Where such notice of acquisition is served on the owner or person having the management of the vessel ^z[or, as the case may be, published in the official gazette] then at the beginning of the day on which the ^z[notice is so served or published] the vessel shall vest in the Central Government free from any mortgage, pledge, lien or other similar obligation, and the period of the requisition thereof shall end.]

^a[(2-a) The Central Government may by order require the owner, or the person having the management, of any vessel ^b* * * to furnish to such authority as may be specified in the order such information in his possession relating to the vessel or to things on board the vessel (being information which may reasonably be required of him in connexion with the execution of this rule) as may be so specified.]

LEG. REF.

(^u) Substituted by D. C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(^v) Substituted by D.C. Dept. Notification No. 324-OR/40, dated the 17th July 1940, for the original sub-rule (1).

(^w) Inserted by D.C. Dept. Notification No. 324-OR/40, dated the 10th February 1940.

(^x) Substituted by Defence Co-ordination Department Notification, No. 900-SM/41,

dated the 11th October, 1941, for the original sub-rule (2).

(^y) Inserted by D.C. Dept. Notification No. 1336-OR/2/42, dated the 25th April 1942.

(^z) Defence Dept. Notification No. 5 D.C. (23)/43, dated 1st May 1943.

(^a) Inserted by D.C. Dept. Notification No. 532-OR/40, dated the 21st September 1940.

(^b) The words "registered in British India" omitted by D.C. Dept. Notification No. 1287-OR/42, dated the 11th March 1942.

(3) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to three years ^c[or with fine or with both].

67. [(1) No person shall transfer any vessel registered in British India, or any share or interest in such a vessel, without the previous consent in writing of the Central Government.] (5 D.C. (74)|44, *Gazette of India*, dated 22nd July, 1944, at page 960.)

(2) Notwithstanding anything contained in section 53 of the Merchant Shipping Act, 1894, an application made (whether before or after the commencement of the Ordinance) for the transfer of the registry of a ship registered in British India from one port to another, shall not be granted except with the approval of the Central Government.

(3) If any person contravenes any of the provisions of sub-rule (1), he shall be punishable with imprisonment for a term which may extend to seven years ^d[or with fine or with both].

^e[(4) Any transaction effected in contravention of the provisions of sub-rule (1) shall be void and unenforceable.]

^f[67-A. (1) In this rule "foreign ship" means a ship which is not a ship registered in the British Isles, or in India, or in British Burma, or in any Dominion as defined in the Statute of Westminster, 1931, or in any Colony.

Power to restrict use of foreign ships.

(2) The Central Government may by notified order make provision for regulating or restricting the charter by persons in British India, whether on their own behalf or as agents for other persons whether within or without British India, of foreign ships or of space or accommodation therein and the entering into agreements for the carriage of goods in foreign ships by or on behalf of persons in British India.

(3) If any person contravenes the provisions of any order made under sub-rule (2), he shall be punishable with fine.]

68. [Eng. Def. R. 54.] (1) The Central Government may by order in writing require the owner, or the person having the management, or the master, of any vessel registered in British India—

Power to take up accommodation in certain vessels.

(a) to place at the disposal of Government the whole or any part of the space or accommodation available on such vessel, and to employ such space or accommodation for the carriage of any persons, animals or things to any place specified in the order, and

(b) to undertake or permit to be undertaken such structural additions or alterations on board such vessel as may be necessary to fit it for the safe carriage of any persons, animals or things.

(2) Whenever in pursuance of clause (a) of sub-rule (1) any space or accommodation in any vessel is placed at the disposal of the Central Government ^g[and the circumstances are not such as to render the provisions of ^hsection 19 of the Defence of India Act, 1939,] applicable], the owner of such vessel shall be paid therefor at such rates as the Central Government may by order made in this behalf determine.

(3) Whenever in pursuance of clause (b) of sub-rule (1) the Central Government requires any structural additions or alterations to be undertaken on

LEG. REF.

(c) Substituted by D. C. Dept. Notification No. 701-OR|41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(d) Inserted by D.C. Dept. Notification No. 701-OR|41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(e) Inserted by D.C. Dept. Notification No. 115-OR|39, dated the 11th November

1939.

(f) Inserted by D.C. Dept. Notification No. 1040-OR|41, dated the 9th October, 1941.

(g) Inserted by D.C. Dept. Notification No. 209-OR|39, dated the 6th October 1939.

(h) Substituted by D.C. Dept. Notification No. 261-OR|39, dated the 14th November, 1939, for the words and figures "section 18 of the Ordinance".

board any vessel the owner of such vessel shall be paid the actual cost of such additions or alterations.

(4) Where, in respect of any vessel, there subsists between a British subject resident in India or a corporation incorporated under the law of British India and any other person a charter-party or other contract under which the first-mentioned person is entitled to possession of it, or has the right to have any articles carried in it or to use any space or accommodation in it, the Central Government may serve on the first-mentioned person, in any manner appearing to the Central Government to be convenient, a notice stating that on such date as may be specified in the notice his rights and liabilities under the contract will be transferred to the Central Government; and in that event the contract shall, as regards any rights exercisable, or liabilities incurred on or after the said date, have effect, subject to the provisions of sub-rule (1), as if the Central Government were a party to the contract instead of the person on whom the notice was served, and as if for any reference in the contract to that person there were substituted a reference to the Central Government.

(5) The Central Government may at any time cancel a notice served under the provisions of sub-rule (4) in respect of a contract, and thereupon the provisions of the said sub-rule shall, unless and until a further notice is served thereunder in respect of that contract, cease to operate in relation to the contract as regards any rights exercisable, or liabilities incurred, on or after the date on which the cancellation takes effect.

(6) If any order made under sub-rule (1) is contravened, the master of the vessel and the owner or other person having the management thereof shall each be deemed to have contravened such order and shall be punishable with imprisonment for a term which may extend to three years i[or with fine or with both].

69. j[(1) The Central Government, if it appears to it to be necessary or expedient so to do in the interests of the defence of British India, the public safety or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community, may by order direct—

(a) as regards any class of vessels in British India, that no vessel of that class shall leave any port or place in British India at which it may be, or

(b) as regards any particular vessel at any port or place in British India, that that vessel shall not leave that port or place,

except with permission granted by such authority as may be specified in the order.

(2) If any vessel leaves or attempts to leave any port or place in contravention of an order made under sub-rule (1), the master of the vessel shall be punishable with imprisonment for a term which may extend to five years k[or with fine or with both].]

70. [Eng. Def. R. 47.] l[(1) No person shall without the previous consent in writing of the Central Government transfer †[* *] any interest in any aircraft registered under the Indian Aircraft Act, 1934, m[wherever such aircraft may be] whether the certificate of registration of such aircraft is in force or not, or in any part of an aircraft, or in any materials identified, under any system recognised by the Director of Civil Aviation in India, for the purpose of the construction of aircraft.

Power to restrict the transfer of aircraft.

LEG. REF.

(i) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(j) Substituted by D. C. Dept. Notification No. 484-OR/40, dated the 1st February 1941, for the original rule which was inserted by D.C. Dept. Notification No. 3540/40, dated the 18th May, 1940.

(k) Substituted by D.C. Dept. Notifica-

tion No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(l) Substituted by D.C. Dept. Notification No. 115-OR/39, dated the 11th November 1939, for the original sub-rule (1).

† The words "or acquire" omitted by 5 D.C. (74)/44, dated 22nd July, 1944.

(m) Inserted by D. C. Dept. Notification No. 631-OR/40, dated the 8th February, 1941.

(1-A) Any transaction effected in contravention of the provisions of sub-rule (1) shall be void and unenforceable.]

(2) If any person contravenes any of the provisions of sub-rule (1), he shall be punishable with imprisonment for a term which may extend to seven years ^{m-1} [or with fine or with both].

71. The pilot of any aircraft flying in contravention of any provision of, or of any rule made under, the Indian Aircraft Act, 1934, shall, on being warned in the manner prescribed by the rules made under that Act, immediately land, and if such pilot fails to comply with such warning as aforesaid, any commissioned officer of His Majesty's forces may take or cause to be taken such action as may be necessary to terminate the flight.

72. (1) The Central Government, subject to the provisions of sub-rule (2), may by order in writing requisitioning of aircraft—

(a) any aircraft in British India and anything on board or forming part of any aircraft in British India;

(b) any aircraft registered under the Indian Aircraft Act, 1934, or anything on board or forming part of such an aircraft wherever such aircraft may be;

(c) any machinery, plant, material or thing used for the operation, manufacture, repair or maintenance of aircraft;

and may give such further orders as appear to the Central Government to be necessary or expedient in connection with the requisitioning.

(2) Nothing in sub-rule (1) shall authorise the requisitioning of any aircraft registered in the United Kingdom, or any Dominion within the meaning of the Statute of Westminster, 1931, or of anything on board or forming part of such aircraft.

n[(3) Where the Central Government has requisitioned any aircraft under sub-rule (1), the Central Government may use or deal with the aircraft for such purpose and in such manner as may appear to it to be expedient, and may acquire it by serving on the owner or person having the management thereof o[or where the owner or person having the management thereof is not readily traceable or the ownership is in dispute, by publishing in the official gazette] a notice stating that the Central Government has acquired it in pursuance of this rule.

Where such notice of acquisition is served on the owner or person having the management of the aircraft p[or, as the case may be, published in the official Gazette] then at the beginning of the day on which the p[notice is so served or published] the aircraft shall vest in the Central Government free from any mortgage, pledge, lien or other similar obligation, and the period of the requisition thereof shall end.]

q[(3-a) The Central Government may by order require the owner, or the person having the management of, any such aircraft or thing as is referred to in sub-rule (1) to furnish to such authority as may be specified in the order such information in his possession relating to the said aircraft or thing (being information which may reasonably be required of him in connexion with the execution of this rule) as may be so specified.]

(4) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to three years r[or with fine or with both].

LEG. REF.

(m-1) See footnot (k), p. 391.

(n) Substituted by D.C. Dept. Notification No. 900-SM/41, dated the 11th October, 1941, for the original sub-rule (3).

(o) Inserted by D. C. Dept. Notification No. 1336-OR/242, dated the 25th April, 1942.

(p) Substituted by Def. Dept. Notifica-

tion No. 5 D. C. (23)/43, dated 1st May 1943.

(q) Inserted by D. C. Dept. Notification No. 532-OR/40, dated the 21st September, 1940.

(r) Substituted by D. C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

73. [Eng. Def. R. 54.] (1) The Central Government may, by order in writing, require the owner or the person having the management or the pilot of any aircraft registered under the Indian Aircraft Act, 1934,—
 Power to take up accommodation in aircraft.

(a) to place at the disposal of Government the whole or any part of the space or accommodation available in or on such aircraft and to employ such space or accommodation for the carriage of any persons, animals or things to any place specified in the order; and

(b) to undertake or permit to be undertaken such structural additions or alterations to such an aircraft as may be necessary to fit it for the safe carriage of any persons, animals or things.

(2) Whenever in pursuance of clause (a) of sub-rule (1) any space or accommodation in any aircraft is placed at the disposal of the Central Government s[and the circumstances are not such as to render the provisions of t[section 19 of the Defence of India Act, 1939,] applicable], the owner of such aircraft shall be paid therefor at such rates as the Central Government may by order made in this behalf determine.

(3) Whenever in pursuance of clause (b) of sub-rule (1) the Central Government requires any structural additions or alterations to be undertaken on board any aircraft, the owner of such aircraft shall be paid the actual cost of such additions or alterations.

(4) Where in respect of any aircraft there subsists between a British subject resident in India or a corporation incorporated under the law of British India and any other person a contract under which the first-mentioned person is entitled to possession of it, or has the right to have any articles carried in it or to use any space or accommodation in it, the Central Government may serve on the first-mentioned person, in any manner appearing to the Central Government to be convenient, a notice stating that on such date as may be specified in the notice his rights and liabilities under the contract will be transferred to the Central Government; and in that event the contract shall, as regards any rights exercisable, or liabilities incurred on or after the said date, have effect, subject to the provisions of sub-rule (1). as if the Central Government were a party to the contract instead of the person on whom the notice was served, and as if for any reference in the contract to that person there were substituted a reference to the Central Government.

(5) The Central Government may at any time cancel a notice served under sub-rule (4) in respect of a contract, and thereupon the said sub-rule shall, unless and until a further notice is served thereunder in respect of that contract, cease to operate in relation to the contract as regards any rights exercisable, or liabilities incurred, on or after the date on which the cancellation takes effect.

(6) If any order made under sub-rule (1) is contravened, the pilot of the aircraft and the owner or other person having the management thereof shall each be deemed to have contravened such order and shall be punishable with imprisonment for a term which may extend to three years u[or with fine or with both].

74. (1) Any person authorised in this behalf by the Central Government may, if it appears to that person to be necessary in the interests of the defence of British India so to do, Stopping of aircraft.
 order, with respect to any particular aircraft at any place in British India, that the aircraft shall not leave the place until permitted to do so by such authority or person as may be prescribed in the order.

LEG. REF.

(s) Inserted by D. C. Dept. Notification No. 209-OR/39, dated the 6th October, 1939.

(t) Substituted by D. C. Dept. Notification No. 261-OR/39, dated the 14th November 1939, for the words and figures

Cr. C. M.-I—50

"section 18 of the Ordinance".

(u) Substituted by D. C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(2) Subject to the provisions of sub-rule (3), if any aircraft leaves or attempts to leave any place in contravention of any such order as aforesaid, the pilot of the aircraft shall be punishable with imprisonment for a term which may extend to three years ▼[or with fine or with both].

(3) Any order made under this rule shall cease to have effect ninety-six hours after the time at which it is made, unless in the meantime it has been confirmed by the Central Government.

75. (1) The Central Government may, by order, make provision as to the places in British India in or to which seaplanes may be or go, and generally for regulating the movements, navigation, pilotage, anchorage, mooring, berthing and lighting of seaplanes on the surface of the water.

(2) For the purposes of this rule seaplanes taking off from, or alighting on, the water shall be deemed to be on the surface of the water while they are in contact therewith.

(3) If in the case of any seaplane an order made under the provisions of sub-rule (1) is contravened, the pilot of the seaplane shall be punishable with imprisonment for a term which may extend to five years ▼[or with fine or with both].

PART XII.

ESSENTIAL SUPPLIES AND WORK.

w[75-A. [Cf. Eng. Def Rr. 51-53.] (1) If in the opinion of the Central Government or the Provincial Government it is necessary or expedient so to do for securing the defence of British India, public safety, the maintenance of public order or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, that Government may by order in writing requisition any property, movable or immovable, and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning :

LEG. REF.

(v) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine."

(w) Inserted by D. C. Dept. Notification No. 1336-OR/42, dated the 25th April, 1942

R. 75-A [See also under Rule 81]: REQUISITIONING A PRIVATE HOUSE FOR RESIDENCE OF COLLECTOR.—The Collector of Madras is in charge of supplies which are essential to the lives of the citizens of Madras and moreover he is the Deputy Civil Defence Commissioner. The provision of a house for his residence is something which is necessary for the "maintaining of supplies and services essential to the life of the community" within the meaning of R. 75-A of the Rules. (1944) 1 M.L.J. 263.

R. 75-A in so far as it relates to the requisitioning of movable property cannot be held to be *ultra vires*. S. 102 of the Government of India Act, 1935 and Sch. VII, List II, Items 27 and 29 confer such a power. The power to make laws with respect to "trade and commerce" and with respect to "the production, supply and distribution of goods" includes the power to requisition goods for public purposes. (1945) 8 F.L.J. 59=1945 M.W.N. 55.

OPINION OF AUTHORITY AS TO NECESSITY OF

REQUISITIONING PROPERTY—IF AND WHEN CAN BE QUESTIONED IN COURT OF LAW.—The formation of the opinion of the authority concerned as to the necessity or expediency of making a requisition of property under R. 75-A of the Defence of India Rules, is clearly a matter for executive discretion and cannot be questioned in a Court of law. The Court cannot investigate into the grounds or the sufficiency or otherwise of the materials or evidence on which that opinion is formed and substitute its own opinion for that of the authority concerned. But if such power is exercised in bad faith or for a collateral purpose, it is an abuse of the power and not in reality an exercise of the power and the Court can interfere with such colourable exercise of power. Where the issue is raised as to bad faith or collateral purpose, the Court has to investigate the matter and decide the issue. 49 C. W. N. 322.

Where the exercise of the requisitioning power under R. 75-A is not *mala fide*, no Court can interfere. A Court has no power to inquire into the necessity or expediency of such requisitioning. 49 C.W.N. 583.

There is full power of delegation under S. 2 (4) of the Act and when such power has been delegated the person or authority to whom the delegation has been made has all the powers of the Central Government

Provided that no property used for the purpose of religious worship and no such property as is referred to in rule 66 or in rule 72 shall be requisitioned under this rule.

(2) Where the Central Government or the Provincial Government has requisitioned any property under sub-rule (1), that Government may use or deal with the property in such manner as may appear to it to be expedient, and may acquire it by serving on the owner thereof, or where the owner is not readily traceable or the ownership is in dispute, by publishing in the official gazette, a notice stating that the Central or Provincial Government, as the case may be, has decided to acquire it in pursuance of this rule.

(3) Where a notice of acquisition is served on the owner of the property or published in the official gazette under sub-rule (2), then at the beginning of the day on which the notice is so served or published, the property shall vest in Government free from any mortgage, pledge, lien or other similar encumbrance, and the period of the requisition thereof shall end.

(4) Whenever in pursuance of sub-rule (1) or sub-rule (2) the Central Government or the Provincial Government requisitions or acquires any movable property, the owner thereof shall be paid such compensation as that Government may determine:

*[Provided that, where immediately before the requisition, the property was by virtue of a hire purchase agreement in the possession of a person other than the owner, the amount determined by Government as the total compensation payable in respect of the requisition or acquisition shall be apportioned between that person and the owner in such manner as they may agree upon, and in default of agreement in such manner as an arbitrator appointed by the Government in this behalf may decide to be just.]

LEG. REF.

(x) Inserted by D. Dept. Notification No. 1530-Comp. 142, dated the 15th August 1942.

unless the order of delegation contains some restriction on the exercise of the power. The order of delegation by notification, dated 25th April, 1942, under which the Collector of Madras acted (in requisitioning a private bungalow for housing the incoming Collector) contained no restriction on his power to requisition houses in Madras. Under sub-S. (4) of S. 2 of the Act, the power may be delegated so as to apply only in specified circumstances and under specified conditions but the delegation may be unrestricted. The power delegated by the order was a power to requisition for any of the purposes mentioned in R. 75-A, if the occasion should arise, subject to the property being within the jurisdiction of the Collector issuing the requisition order. (1944) 1 M.L.J. 263.

The existence of the Land Acquisition Act is no bar to the power of the legislature to provide for requisitioning of property for any of the purposes mentioned in R. 75-A of the rules as the Land Acquisition Act relates to acquisition of absolute ownership when property is required for a public purpose or for a public company and not to requisitioning in an emergency. (1944) 1 M.L.J. 263.

"PROPERTY"—MEANING OF—ORDER REQUISITIONING HOTEL BUSINESS.—The words "any property, movable or immovable" in R. 75-A of the Defence of India Rules, must if

necessarily include all kinds of property except those referred to in the proviso. They *prima facie* cover business and its good will. An order requisitioning a commercial undertaking (e.g.) the business of a hotel, is not, therefore, *ultra vires* of the Rule. 49 C.W.N. 583. See also 49 C.W.N. 322.

CERTIFICATE TO APPEAL TO FEDERAL COURT.—An application for a certificate to file appeal under S. 205 of the Government of India Act, 1935, on the ground that the question whether the legislature had power to requisition when the Land Acquisition Act (1894) remained unrepealed involved an interpretation of the Constitution Act, S. 292 was rejected on the ground that no such question of interpretation was involved and even if it did involve such interpretation the question was not a substantial one. (1944) 1 M.L.J. 263.

RR. 75-A AND 81: ACQUISITION OF AN UNDERTAKING—POWER OF GOVERNMENT.—Under R. 75-A, Government can requisition or acquire only movable and immovable property but not an undertaking like an Electric Supply Company as a going concern. R. 81 is obviously the rule contemplated for dealing with the control of an undertaking. Sub-R. (1) of that rule shows that orders taking control of the supply of electric energy were deliberately contemplated by this rule. But under this rule Government has no power to acquire but can only control an undertaking for the duration of the war and a limited period afterwards. 45 P.L.R. 71=1943 Lah. 41=I.L.R. (1943) Lah. 617 (F.B.).

(5) The Central Government or the Provincial Government may, with a view to requisitioning any property under sub-rule (1) or determining the compensation payable under sub-rule (4), by order—

(a) require any person to furnish to such authority as may be specified in the order such information in his possession relating to the property as may be so specified;

(b) direct that the owner, occupier or person in possession of the property shall not without the permission of Government dispose of it ^y[or where the property is a building, structurally alter it] ^z[or where the property is movable remove it from the premises in which it is kept] till the expiry of such period as may be specified in the order.

a(5-a) Without prejudice to any powers otherwise conferred by these Rules, any person authorised in this behalf by the Central Government or the Provincial Government may enter any premises and inspect such premises and any property therein or thereon for the purpose of determining whether, and if so, in what manner, an order under this rule should be made in relation to such premises or property, or with a view to securing compliance with any order made under this rule.]

(6) Any orders made, and any action taken, under or in relation to rule 76, 79 or 83 before the 16th May, 1942, shall be deemed to have been made or taken under or in relation to this rule and to be as valid as if this rule had been then in force.

(7) If any person contravenes b[any order made under this rule] he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.]

76. [Powers relating to buildings and premises.] Omitted by D. C. Dept. Notification No. 1336-OR/42, dated the 25th April, 1942.

c[76-A. (1) The Central Government d[or the Provincial Government] may by order in writing require the owner, or the person having the management, of any warehouse or cold storage depot to place at the disposal of Government the whole or any part of the space or accommodation available in such warehouse or cold storage depot and to employ such space or accommodation for the storage of any articles or things specified in the order; and such an order may require the said owner or person to afford such facilities, and maintain such services, in respect of the storage of such articles or things, as may be specified.

(2) Whenever in pursuance of an order made under sub-rule (1) any space or accommodation in a warehouse or cold storage depot is placed at the disposal of the Central Government d[or, as the case may be, of the Provincial

LEG. REF.

(y) Inserted by D.C. Dept. Notification No. 1336-OR/42, dated the 27th June, 1942.

(z) Inserted by D. Dept. Notification No. 5-D.C. (58)/44, dated 15th February, 1944.

(a) Inserted by D. Dept. Notification No. 1477-OR/42, dated the 1st August 1942.

(b) Substituted by D. C. Dept. Notification No. 1500-OR/42, dated the 18th July 1942, for the words "the provisions of this rule".

(c) Inserted by D. C. Dept. Notification No. 294-OR/39, dated the 8th December, 1939.

(d) Inserted by D. C. Dept. Notification No. 898-SM/41, dated the 6th September, 1941.

R. 75-A (7) : DISPOSAL OF GOODS—MEANING OF.—"Disposal" within R. 75-A (7) does

not mean any actual removal or delivery by actual movement of the goods. The receipt of a delivery order by the purchaser and payment of money by the purchaser to vendor's agent, will certainly amount to a disposal of the goods. If the intention of the parties was that the property in the goods should pass with the delivery order, the subsequent acceptance of the money by the vendor's agent is another act of disposal, as actual delivery of the goods by him would be if he allows the purchaser to remove the goods. 79 C.L.J. 189. It is quite legitimate for the prosecution under S. 236, Cr. P. Code, to charge the accused in the alternative either that they had disposed of the goods in contravention of the freezing order or had falsely informed the authorities that they had done so. 79 C.L.J. 189. *Writ of certiorari, if lies.* See 49 C.W.N. 322.

Government], and the circumstances are not such as to render the provisions of section 19 of the Defence of India Act, 1939, applicable, the owner of such warehouse or cold storage depot shall be paid therefor at such rates * [as that Government] may by order made in this behalf determine.

[(2-A) The Central Government or the Provincial Government may, with a view to requisitioning any space or accommodation under sub-R. (1) or to determining the compensation payable therefor, by order require any person to furnish to such authority as may be specified in the order such information in his possession as may be so specified.] (D.D. No. 5-D.C. (64) 44, dated 29th April, 1944, *Gazette of India*, Pt. I, S. 1, p. 562.)

(3) If any person contravenes any order made in pursuance of this rule, he shall be punishable with imprisonment for a term which may extend to six months † [or with fine or with both].

‡ [76-B. h[(1) In this rule, "building" includes a compound wall, a concrete road inside private premises and any other structure in which stone, lime, sand, brick, cement, steel or timber is used.]

Control of building operations.

(2) The Central Government or the Provincial Government, if in its opinion it is necessary so to do for the purpose of maintaining supplies and services essential to the life of the community, may by order direct that, within such area as may be specified in the order, no building, or no building of such class as may be so specified, shall be erected, re-erected, constructed or altered except under the authority of a written permit granted by or on behalf of that Government.

‡ [(3) Every authority granting permits in pursuance of an order made under sub-rule (2) shall have power to impose on the permit-holder such conditions as that authority thinks fit for conserving essential building materials, and to revoke, or modify the terms of, any permit granted by it.]

(4) If any person contravenes any order made j [under sub-rule (2) or fails to comply with any condition imposed under sub-rule (3)], he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.]

77. Nothing contained in any law for the time being in force, or in any

Power to exempt buildings from the operation of building laws.

rule made under any such law, to regulate the erection, re-erection, construction, alteration or maintenance of buildings shall apply to any building the use of which by or on behalf of Government is certified by the Central Government k [or the Provincial Government] to be necessary or expedient for the successful prosecution of the war and the defence of British India l [or to any works executed, whether in relation to a building or otherwise, by any person with the sanction of the Central or the Provincial Government, for the purpose of providing air raid shelter or rendering any building less vulnerable to hostile attack.]

LEG. REF.

(e) Substituted by D.C. Dept. Notification No. 898-SM/41, dated the 6th September 1941, for the words "as the Central Government".

(f) Substituted by D. C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(g) Inserted by D.C. Dept. Notification No. 1420-OR/42, dated the 20th June 1942.

(h) Inserted by D. D. Notification No.

1620-OR/42, dated 26th December 1942.

(i) Old Sub-Rules (1) and (2) renumbered as Sub-Rules (2) and (4) and new Sub-Rules (1) and (3) inserted by *Ibid*.

(j) Substituted by *Ibid*.

(k) Inserted by D. C. Dept. Notification No. 898-SM/41, dated the 6th September, 1941.

(l) Inserted by D.C. Dept. Notification No. 1186-OR/42, dated the 10th January 1942.

m[77-A. (1) In this rule "the appropriate Government" means in relation to cantonment authorities and port authorities in major ports, the Central Government, and in relation to other local authorities, the Central Government or the Provincial Government.

Restrictions on certain powers of local authorities.

(2) No local authority shall, except with the permission of appropriate Government, exercise its powers of entry and inspection, or its powers of calling for information, in respect of any buildings or other premises which the Central Government may, with a view to prevent leakage of information valuable to the enemy, certify in this behalf; and the appropriate Government may, at the time of granting the permission or subsequently, impose such conditions as it thinks fit on the manner in which, and the extent to which, the powers shall be exercisable by or on behalf of the local authority in respect of those buildings or other premises.

n[(3) No local authority shall except with the permission of the appropriate Government, exercise its powers of demolition in respect of any building which may be certified by the Central Government as being used for purposes essential to the defence of British India the efficient prosecution of the war or the maintenance of essential services or supplies and the appropriate Government may at any time of granting the permission or subsequently impose such condition as it thinks fit on the manner in which and the extent to which the powers shall be exercisable by or on behalf of the local authority in respect of the building.]

78. [Cf. Eng. Def. R. 50.] (1) For the purposes of this rule **o**[and of rule 78-A], the doing of work on land shall include the demolition or rendering useless of anything placed in, on or over the land, the removal from the land of anything so demolished or rendered useless **p**[* * *] and the maintenance of any work or thing in, on or over the land.

Power to do work on land.

(2) Any member of His Majesty's forces acting in the course of his duty as such, and any other person authorised by the Central Government **q**[or the Provincial Government] in that behalf, may, if in the opinion of such member or person it is necessary or expedient so to do for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community, do any work on any land, or place anything in, on or over any land.

(3) If in the opinion of the Central Government **q**[or the Provincial Government] it is necessary or expedient so to do for securing the defence of British India, the public safety, the maintenance of public order, or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community, **r**[that Government may] by order provide for prohibiting **or** restricting the doing on any particular land of any such work as may be specified in the order.

(4) No person shall, except with permission granted by or on behalf of the Central Government **q**[or the Provincial Government, as the case may be], remove, alter or tamper with any work done, or thing placed in, on or over any land in pursuance of this rule.

s[(4-A) Anything removed from any land in pursuance of this rule may be sorted, and stored, or disposed of, in such manner as the Central Government or the Provincial Government, as the case may be, may by general or special order direct.]

LEG. REF.

(m) Inserted by D.C. Notification No. 1140-OR/41, dated the 6th June, 1942.

(n) Added by D. Dept. Notification No. 1648-OR/42, dated 5th December, 1942.

(o) Inserted by D.C. Dept. Notification No. 872-SM/41, dated the 2nd January 1942.

(p) Omitted by D. Dept. No. 1655-OR/

42, dated 6th March 1943.

(q) Inserted by D. C. Dept. Notification No. 699-OR/41, dated the 15th March 1941.

(r) Substituted by *ibid.*, for the words "the Central Government may".

(s) Substituted by D.C. Dept. Notification No. 1319-OR/42, dated the 28th March 1942, for sub-rule (4-a).

(5) If any person contravenes any of the provisions of this rule, t[or any order made thereunder] he shall be punishable with imprisonment for a term which may extend to six months, u[or with fine or with both].

v[78-A. (1) Any officer of Government authorised in this behalf by general or special order of the w[Central Government or the Provincial Government] may, within such area as Powers to require certain persons to do work. may be specified in the order, require any male person in that area to assist in the doing of work on land for such period and in such manner as the officer may direct, being work the doing of which is in the opinion of the officer necessary to meet an actual or apprehended attack, or to repair or reduce the damage resulting therefrom or to facilitate offensive or defensive operations in the area.

(2) Any person doing work in compliance with any direction under sub-rule (1) shall be paid such remuneration for doing the work as the officer giving the direction may determine.

(3) If any person fails to comply with any lawful direction given to him under sub-rule (1), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.]

Salvage from premises damaged by war operations. x[78-B. (1) The Central Government or the Provincial Government may by general or special order provide—

(a) x-1[for the clearing of any premises which, in consequence of war operations, are substantially damaged or are contaminated by any lethal gas or noxious substance;]

(b) for the protection of any y[animals, articles or things] left upon such premises as aforesaid;

(c) for the removal, storage, or disposal of any such y[animals, articles or things] as aforesaid, including the disinfection or destruction of y[animals, articles or things] which may be a source of danger to public health or safety.

y[Explanation.—In this sub-rule, 'premises' includes buildings, lands, harbours, docks, piers, wharves and other such places and 'articles' include vehicles and vessels.]

(2) Any y[animals, articles or things] removed from any premises in accordance with an order under sub-rule (1) shall, subject to any provisions of the order authorising destruction or disposal, be held on behalf of the person for the time being entitled thereto until they are delivered to him.

(3) Where any y[animals, articles or things] are disposed of, whether by sale at the premises or otherwise, in accordance with an order under sub-rule (1) the net proceeds, if any, of such sale or disposal shall be held on behalf of the person for the time being entitled thereto until they are delivered to him.

(4) If any person contravenes the provisions of any order made under sub-rule (1) he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.]

79. [Requisitioning of land.] Omitted by D. C. Notification No. 1336-OR/42, dated the 25th April, 1942.

80. [Eng. Def. R. 52.] (1) Without prejudice to any other of these

LEG. REF.

(t) Inserted by D. C. Dept. Notification No. 1500-OR/42, dated the 18th July, 1942.

(u) Substituted by D. C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(v) Inserted by D. C. Dept. Notification No. 872-SM/41, dated the 2nd January 1942.

(w) Substituted by D. Dept. Notification

No. 872-SM/42, dated the 26th September 1942, for the words "Provincial Government".

(x) Notification No. 1655-OR/42, dated 6th March, 1943.

(x-1) Vide No. 1655-OR/42, dated 4th September, 1943.

(y) Added by D. Dept. Notification No. 1655-OR/42.

Use of land for purposes of His Majesty's forces.

Rules 2[the Central Government or the Provincial Government may] by order authorise, subject to any restrictions or conditions imposed by the order, the use of any specified land for naval, military or air force purposes, during such period as may be specified; and any such order may, so far as appears 2[to that Government] to be necessary or expedient for the purposes of the order, provide—

(a) for entitling ^b[any] person using any land in pursuance of the order to do such acts in relation to that land as may be specified;

(b) for prohibiting or restricting the exercise of rights of way over that land, and of other rights relating thereto which are enjoyed by any person, whether by virtue of an interest in land or otherwise.

(2) If any person contravenes ^c[any order made under this rule], he shall be punishable with imprisonment for a term which may extend to six months, ^d[or with fine or with both].

^e[80-A. (1) The Central Government so far as appears to it to be necessary or expedient for the efficient prosecution of the war or for maintaining supplies and services essential to the life of the community may by order provide that lighting arrangements in any factory or class of factories shall be in accordance with such standard as may be specified in the order.

Power to provide lighting arrangement in factories.

(2) If any person contravenes any order made under this rule he shall be punished with imprisonment for a term which may extend to one year or with fine or with both.]

^f[80-B. [Cf. Eng. Def. Rr. 61-63.] (1) The Central Government or the Provincial Government, so far as it appears to it to be necessary or expedient for regulating or increasing the supply of articles which can be used in connection with the conduct of war or for maintaining supplies and services essential to the life of the community, may by order provide—

Control of agriculture.

(a) for prohibiting, restricting, or otherwise controlling the cultivation of specified crops;

(b) for bringing under cultivation any waste or arable land whether appurtenant to a building or not, and for the growing therein of specified crops;

(c) for any incidental and supplementary matters for which the Central Government or the Provincial Government thinks it expedient for the purposes of the order to provide including in particular the entering and inspection of land or premises to which the order relates with a view to securing compliance with the order; the seizure of any crops or other produce of land cultivated or grown in contravention of the order, and the grant or issue of permits and other documents for the purposes of the order; and an order under this rule may be made so as to apply either to persons or lands generally, or to any particular person or land or class of persons or lands, and so as to have effect either generally or in any particular area:

Provided that no order shall be made by a Provincial Government under clause (a) except with the previous approval of the Central Government.

LEG. REF.

(s) Substituted by D. C. Dept. Notification No. 898-SM/41, dated the 6th September 1941, for the words "the Central Government may".

(a) Substituted by *ibid.* for the words "to the Central Government".

(b) Inserted by D. C. Dept. Notification No. 361-OR/40, dated the 4th March 1940.

(c) Substituted by D. C. Dept. Notification No. 1500-OR/42, dated the 18th July

1942, for the words "any of the provisions of this rule".

(d) Substituted by D. C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(e) Defence Dept. No. 5-DC (32)/43, dated 4th September, 1943.

(f) No. 1568-OR/42, dated 15th January 1944.

(2) If in the opinion of the Provincial Government the person in possession or effective control of any land to which an order made under clause (b) of sub-rule (1) applies has failed to comply with the order, that Government may, without prejudice to any other action that may be taken against that person hereinafter referred to as the defaulter) in respect of the contravention, by order direct that the land shall be placed in the exclusive possession of such person and for such period as may be specified in the order, and during the period of continuance of the last mentioned order the person specified therein shall have all the rights of the defaulter to manage the land and realise the profits arising therefrom and shall only be liable to pay on behalf of the defaulter the Government revenue, all other charges of a public nature and the rent, if any accruing due in respect of the land during that period.

(3) If any person contravenes any order made under this rule otherwise than under clause (b) of sub-rule (1) he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both, and in addition any Court trying such contravention may direct that any crops or other produce of land cultivated or grown in contravention of the order shall be forfeited to His Majesty.]

81. [Eng. Def. R. 55.] (1) In this rule §[any reference to article shall be construed as including a reference to electrical energy, and] the expression "undertaking" means any undertaking by way of any trade or business h[and includes the occupation of handling, loading or unloading goods in the course of transport].

LEG. REF.

(g) Inserted by D. C. Dept. Notification No. 694-OR/41, dated the 5th April, 1941.

(h) Inserted by D. Dept. Notification No. 531-OR/40, dated the 19th September 1942.

R. 81: SCOPE AND OPERATION OF.—R. 81 is merely an enabling rule and merely provides that Government may in certain circumstances by order provide for certain things. There is nothing in the rule itself which has to be obeyed by any one. 22 Pat. 602=A.I.R. 1944 Pat. 1.

Defence of India Act, in so far as it purports to invest the Provincial Government with power to authorise certain officers to fix the prices of commodities is not invalid as contravening the provisions of the Constitution Act. A.I.R. 1944 Pat. 205; 46 Bom. L.R. 529=1944 Bom. 292; 1944 Cal. 317.

The word "undertaking" in R. 81 is, broadly speaking, synonymous with the word "business", and includes, therefore, the business of carrying on a hotel. 49 C.W.N. 583.

POWERS OF PROVINCIAL GOVERNMENTS—DELEGATION TO ADDITIONAL DISTRICT MAGISTRATE.—A provincial Government has all the powers conferred by R. 81 and it has the power of delegation. Where a Provincial Government delegates to all Additional District Magistrates the power of controlling the transport of rice or paddy to places outside the districts concerned, every Additional District Magistrate has power to pass an order prohibiting the export of paddy or rice from his district without a permit issued by a proper authority. The validity of such an order cannot be called in

question. A person offends such an order if he removes or takes any steps towards the removal of paddy or rice from the district without a permit and it matters not whether the intended removal is to the adjoining district or to a Native State, so long as the removal is outside the district. Such an order by the Additional District Magistrate is *intra vires*. 1944 F.L.J. 200: (1944) 2 M.L.J. 49.

Before a person can be punished under R. 81, for having contravened the provisions of an order made thereunder, it must be established that the contravention took place after, and not before, the 18th July, 1942, the date on which the amended sub-R. (4) came into force. 47 P.L.R. 134.

R. 81 specifically authorises the Central Government or the Provincial Government to make orders for regulating the letting and sub-letting of accommodation. Where such an order is made by the Provincial Government the personal satisfaction of the Governor is not required. 47 P.L.R. 134.

The rules concerning the letting and sub-letting of residential or other accommodation are not in excess of the powers conferred by sec. 2 (1). An order under R. 81, regulating of accommodation is not *ultra vires*. 47 P.L.R. 134.

Rule 81 is the rule for dealing with the control of an undertaking (like an Electric Supply Co.). 1943 Lah. 41=45 P.L.R. 71 =I.L.R. (1943) Lah. 617 (F.B.).

SALE PRIOR TO NOTIFICATION REGULATING PRICE.—A notification regulating the prices of an article issued subsequent to the date upon which the accused made the sale for which he has been convicted, cannot be used to support the conviction. 208 I.C.

(2) The Central Government ¹[or the Provincial Government], so far as appears to it to be necessary or expedient for securing the defence of British India or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, may by order provide—

(a) for regulating or prohibiting the production, treatment, keeping, storage, movement, transport, distribution, disposal, acquisition, use or consumption of articles or things of any description whatsoever ¹[and in particular for prohibiting the withholding from sale, either generally or to specified persons or classes of persons, of articles or things kept for sale, and for requiring articles or things kept for sale to be sold either generally or to specified persons or classes of persons or in specified circumstances;]

²[(aa) for collecting any information or statistics with a view to the rationing of any article essential to the life of the community;]

¹[(ab) for controlling the rates at which any vessel registered in British India may be hired and the rates at which persons or goods may be carried in or on any such vessel;]

LEG. REF.

(i) Inserted by D. C. Dept. Notification No. 899-SM/41, dated the 29th November, 1941.

(j) Inserted by D. C. Dept. Notification No. 366-OR/40, dated the 8th June 1940.

(k) Inserted by Defence Dept. Notification No. 5-DC (12)/43, dated 7th April 1943 and old cl. (aa) renumbered as (ab).

(l) Inserted by D. C. Dept. Notification No. 570-OR/40, dated the 21st September, 1940.

219=A.I.R. 1943 Pat. 315; see also (1943) 1 M.L.J. 20; (1943) 1 M.L.J. 287; 1940 Pat. 373.

AUTHORITY TO EXERCISE CERTAIN POWERS DELEGATED SUBJECT TO THE SUPERVISION OF THE DELEGATING AUTHORITY—EFFECT.—Where a notification is issued by the Commissioner under an authority delegated to him by the Chief Commissioner to fix rates to be charged for certain commodities subject to the general supervision of the Chief Commissioner, it is quite valid and legal. The reservation of a general power of supervision could not take away the authority conferred on the Commissioner. 1943 A. M.L.J. 41. See also 45 Bom.L.R. 572=1943 Bom. 314.

Order of Additional District Magistrate notifying that “no person shall export any amount of paddy or rice, however small, from any place in his District to places outside its limits, except under a permit issued by the Collector of the District or by an officer authorized by him is *intra vires* his powers under R. 81. (1944) 1 M.L.J. (Notes of Recent Cases) 33.

BREACH OF RULES BY SERVANT—LIABILITY OF MASTER.—When a servant of an owner of a petrol pump fills up a petrol coupon wrongly, there is a contravention of the Petrol Rationing Order. The penal liability under the former rules is an absolute liability and a breach of the rules either by the master or servant would render both of them guilty irrespective of their knowledge of the breach of the rules. The question of *mens rea* cannot affect the conviction but

can only affect the measure of punishment. 1943 A.M.L.J. 38.

R. 81 (2) (a) AND (b)—**VALIDITY.**—The provisions of R. 81 (2) (a) and (b) enabling the making of orders regulating the distribution of articles, requiring them to be sold to specified persons and for incidental matters, relate to the distribution of goods is *intra vires* the Government of India Act, 49 C.W.N. 595. See also 46 Bom.L.R. 877.

R. 81 (2) (bb) (ii)—**JURISDICTION.**—Before an order can be made on an application by a District Magistrate under R. 81 (2) (bb) (ii) he has to be satisfied that it is necessary and expedient to make the order in question “for securing the Defence of British India of the efficient prosecution of the war or for maintaining the supplies and services essential to the life of the community”. An order requiring a landlord who has obtained a decree for eviction of his tenant in a Civil Court, not to interfere with the possession of his tenant cannot ordinarily have any connection with the Defence of British India, etc. An order passed, when none of the conditions are satisfied is without jurisdiction. 47 Bom.L.R. 357.

R. 81 (2) (b).—R. 81 (2) (b) does not relate to withholding from sale. The clause has reference only to the controlling of prices. It is therefore not competent to the Collector of a District under cl. (b) of R. 81 (2) to provide by a Notification that a person selling matches commits an offence when he withholds matches from sale notwithstanding that he possesses saleable stock. Such a notification would be valid only if made under cl. (a). A Notification under cl. (b) is therefore not valid. 1945 M.W.N. 54 = 58 L.W. 20.

R. 81 (2)—**FOOD GRAINS CONTROL ORDER (1942).**—It must be held that under R. 81 (2), the Central Government had the power to issue the Food Grains Control Order (1942), and the provisions of Cl. (3) of that order are in all respects *intra vires* notwithstanding that there is a discretion in the matter of issuing licences. Sec. 2 (2) of the Act expressly empowers the Central Government to make rules for the control of trade,

(b) for controlling the prices ^m[or rates] at which articles or things of any description whatsoever may be sold ^m[or hired] ⁿ[and for relaxing any maximum or minimum limits otherwise imposed on such prices or rates;]

^o[(b-a) * * * *]

^p[(bb) for regulating the letting and sub-letting ^q[of any accommodation or class of accommodation, whether residential or non-residential] whether furnished or unfurnished and whether with or without board, and in particular,—

(i) for controlling the rents for such accommodation ^r[either generally or when let to specified persons or classes of persons or in specified circumstances,]

^{r.1}[(ii) for preventing the eviction of tenants and sub-tenants from such accommodation in specified circumstances and;]

LEG. REF.

(m) Inserted by D. C. Dept. Notification No. 662-OR/41, dated the 21st January 1941.

(n) Inserted by D. C. Dept. Notification No. 787-OR/41, dated the 11th April 1942.

(o) Omitted by No. 5-DC. (11)/43, dated 27th February 1943.

(p) Substituted by D. C. Dept. Notification No. 960-OR/41, dated the 2nd August 1941, for clause (bb) of sub-rule (2), which was inserted by Labour Department Notification No. B-52, dated the 28th September 1939, and amended by D. C. Dept. Notification No. 793-OR/41, dated the 26th April 1941.

(q) Substituted by No. 5-DC. (11)/43, dated 27th February 1943.

(r) Inserted by D. Dept. Notification No. 1527-OR/42, dated the 31st July 1942.

(r-1) See 5 D.C. (39) [44, *Gazette of India*, dated 19th August, 1944, part I, sec. 1, page 1102.

etc., and a power to control includes a power to prohibit; one way of controlling or regulating a trade is by insisting upon those engaged in it taking out licences. 57 L.W. 363.

TRADE DISPUTE.—According to R. 81 (a), for the definitions and technical terms used in the rule, regard is to be had to the Trade Disputes Act. A reference to the notification dated 21st August, 1942, and the definition of 'trade dispute' in sec. 2 of the Trade Disputes Act, shows clearly that there is no warrant for importing into the rule the words 'with his own employer' after the words 'in connection with any trade dispute'. Hence a strike without giving notice would be an offence under the rule even though it was in sympathy with the disputes in another mill. 1944 A.M.L.J. 2.

R.R. 81 (2) (B) AND 119: ORDER, WHEN BECOMES BINDING—PUBLICATION OF ORDER.—Any order passed under R. 81 (2) (b) cannot bind the person concerned unless it is published in accordance with R. 119 of the Defence of India Rules. This latter rule lays an obligation on the officer making the order to publish notice of such order. The manner in which such notice is to be published is no doubt left to the discretion of that officer. If he adopts a mode of publication however inadequate or unreasonable it is not liable to

be questioned in any Court of law. But the burden of proving publication of the notice of that order in the manner contemplated by the officer making the order lies on the prosecution. In other words it must be shown that the officer making the order himself prescribed the manner of its publication and that the publication was made in that manner. The obligation laid on the officer passing the order is a statutory obligation and it is incumbent on the prosecution to prove that the statutory obligation was duly discharged. The prosecution cannot in such a case merely rely on the presumption of S. 114, clause (e) of the Evidence Act, 1943 N.L.J. 605—1944 Nag. 40.

R. 81 (2): WITHHOLDING, WHAT CONSTITUTES.—The Court must construe the word "withhold" in R. 81 (2) (a) of the Defence of India Rules in relation to the facts of each particular case. It cannot be read as "unreasonably withhold"; when the word unreasonably is not in the rule, the Court cannot put it there. But it can and ought to be held that a man has not withheld from sale to any person of a thing, if he has sold some quantity to anyone demanding it and has not evidenced unwillingness to sell the rest to their persons. In order to bring home the offence, the prosecution has to go much further to show that the accused was over a period withholding his stock from sale. A dealer is not bound to sell his whole stock or a large part of it, to the first customer who demands it. If, at the end of a period, it is found that a dealer has not sold his stock, although asked to do so, there may be a case for the prosecution. The accused, who kept a small grocery shop had a stock of sugar consisting of four pounds only. A casual customer hurried up and asked for one pound of sugar at the price fixed. The accused, however, refused to sell him more than one anna worth of sugar, on the ground that he had considerable number of regular customers, and that he was anxious to sell his sugar to them, and in view of the small stock he had he was not prepared to part with one-fourth of his stock to somebody whom he did not know. *Held*, that the accused was not liable to conviction under R. 81 (2) (a). 1943 Bom. 49—44 Bom.L.R. 921.

R. 81, CLS. (2) AND (4).—The proviso in-

(iii) for requiring such accommodation to be let either generally, or to specified persons or classes of persons, or in specified circumstances;]

*[(bc) for requiring any employers or class of employers to supply to all or any class of their employees and to all or any class of dependents of such employees †(such essential articles) in such quantities and at such price as may be specified in the order and to provide such accommodation and other facilities for taking meals at or near the place of employment as may be so specified.].

[(bd) for controlling the recruitment and employment of labour in such areas as may be specified in the order with a view to securing that sufficient workers are available for essential undertakings.] (See 5 D.C. (66)[44, *Gazette of India* dated 10th June, 1944 at page 775).]

‡[(c) for regulating the carrying on of any undertaking engaged in, or capable of doing, work appearing to the Central Government †[or the Provincial Government] essential to any of the above mentioned purposes, and, in particular—

(i) for requiring work to be done by an undertaking;

(ii) for determining the order of priority in which, and the period or periods within which work shall be done by an undertaking;

(iii) for controlling or fixing the charges which may be made by the undertakers in respect of the doing of any work by them;***

(iv) for requiring, regulating or prohibiting the engagement in the undertaking of any ‡[employee] or any class or classes of ‡[employees];

‡[(v) for requiring the undertaking to provide adequate safeguards against sabotage;]

(d) for requiring persons carrying on any undertaking to keep such books, accounts and records relating to the undertaking, ‡[and to employ such accounting and auditing staff], as may be specified in the order;

(e) for requiring persons carrying on, or employed in connexion with, any undertaking to produce to such authority as may be specified in the order any books, accounts or other documents relating to the undertaking; and for requiring such persons to furnish to such authority as may be specified in the order, such estimates, returns or other information relating to the undertaking as may be specified in the order or demanded thereunder;

(ee) ‡[Omitted.]

(f) for any incidental and supplementary matters for which the Central Government ‡[or the Provincial Government] thinks it expedient for the

LEG. REF.

(s) Added by Def. Dep. Notification No. 5-DC. (17)/43, dated the 27th March 1943.

(t) Substituted by Notification No. 5-DC. (17)/43, dated the 22nd January 1944.

(u) Substituted by D.C. Dept. Notification No. 734-OR/41, dated the 8th March 1941, for the original clause (c) of sub-rule (2).

(v) Inserted by D.C. Dept. Notification No. 899-SM/41, dated the 29th November 1941.

(w) The word "and" omitted by D. C. Dept. Notification No. 927-OR/41, dated the 20th September 1941.

(x) Substituted by *ibid.*, for the words "workman" and "workmen" respectively.

(y) Inserted by D. C. Dept. Notification No. 927-OR/41, dated the 20th September 1941.

(z) Inserted by D.C. Dept. Notification No. 734-OR/41, dated the 8th March 1941.

(a) Omitted by No. 5-DC (34)/43.

(b) Inserted by D. C. Dept. Notification

serted at the end of R. 81 (2), on 18th May, 1943, has not repealed the Notification No. 954 P.C.—34 P.C., dated 23rd January, 1943, and the Courts can look into the notification and the order fixing the maximum price of rice. No doubt as soon as the notification and the order in question ceased to have effect it was no longer possible to contravene either of them, but it cannot be said that contravention which had already occurred would not continue to be punishable after the notification and the order had ceased to have effect. Neither the notification nor the order by itself imposed a punishment on anyone. The only effect of the notification and the order in question was to render certain acts unlawful, and that effect was complete as soon as the acts were done. The subsequent events, *viz.*, the prosecution and conviction would be the effect not of the notification and the order but of R. 81 (4). 1944 P.W.N. 147—1944 Pat. 217, Where a dealer who has got large stocks of matches in his shop flatly refuses to sell even a box of matches to a customer, commits the offence of "withholding" from — within

purposes of the order to provide, including, in particular, the entering ^{bb}[search] and inspection of premises to which the order relates with a view to securing compliance with the order ^{bb}[the seizure subject to the provisions of sub-rule (3-C) by a person authorised to make such search of any articles in respect of which such person has reason to believe that a contravention of the order has been, is being or is about to be committed] ^c[the grant or issue of licences, permits, certificates and other documents, and the charging of fees therefor];

and an order under this rule ^d* * * may be made so as to apply either to persons or undertakings generally or to any particular person or undertaking or class of persons or undertakings, and either to the whole or to any part of any undertaking, and so as to have effect either generally or in any particular area:

^e[Provided that—

(i) no order made, whether before, on or after the 18th May, 1943, in exercise of the powers conferred by clause (a) of this sub-rule on a Provincial Government shall have effect so as to prohibit or restrict the export from any place in the Province to any place outside India or articles or things;

(ii) no order made, whether before, on or after the 18th May, 1943, in exercise of the powers conferred by clause (a) of this sub-rule on the Provincial Government of Assam, Bengal, Bihar or Orissa shall have effect so as to prohibit or restrict the movement, transport, distribution, disposal or acquisition of any foodgrains or their products,

(iii) the powers conferred by clause (b) of this sub-rule on the Provincial Government of Assam, Bengal, Bihar or Orissa shall not be exercisable in relation to any foodgrains or their products, and all orders made, whether before, on or after the 18th May 1943, in exercise of those powers, shall cease to have effect in so far as they relate to any foodgrains or their products.]

^f[(2-A) Any orders made, and any action taken, under or in relation to clause (ba) of sub-rule (2) before the 15th March 1943, shall be deemed to have been taken under or in relation to clause (bb) of that sub-rule as amended with effect from that date.]

^g[(3) If it appears to the Central Government ^h[or the Provincial Government] that in the interests of the defence of British India or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, it is necessary to exercise control over the whole or any part of an existing undertaking, ⁱ[that Government may] by order authorise any person (hereinafter referred to as an authorised controller,) to exercise, with respect to the undertaking or any part thereof specified in the order, such functions of control as may be provided by the order; and so long as an order made under this sub-rule is in force with respect to any undertaking or part of an undertaking—

(a) the authorised controller shall exercise his functions in accordance with any instructions given to him by the Central Government ^h[or the Provincial Government], so, however, that he shall not have power to give any directions

LEG. REF.

No. 899-SM/41, dated the 29th November 1941.

(bb) Added by No. 5-DC (34)/43.

(c) Inserted by Defence Department Notification No. 1641-OR/42, dated the 21st November 1942.

(d) The words "may prohibit the doing of anything regulated by the order except under, and in accordance with the conditions of, a licence granted by such authority as may be specified in the order, and" omitted by *ibid*.

(e) Substituted by No. 5-DC (28)/43, dated the 18th May 1943.

(f) Added by No. 5-DC (11)/43, dated

the 27th February, 1943.

(g) Substituted by D. C. Dept. Notification No. 709-OR/41, dated the 14th June 1941, for the original sub-rule (3) of rule 81.

(h) Inserted by D.C. Dept. Notification No. 899-SM/41, dated the 29th November, 1941.

(i) Substituted by D. C. Dept. Notification No. 709-OR/41, dated the 14th June, 1941, for the words "the Central Government may".

the meaning of the Notification prohibiting withholding under the Defence of India Rules. 58 L.W. 30—1945 M.W.N. 54.

inconsistent with the provisions of any Act or other instrument determining the functions of the undertakers except in so far as may be specifically provided by the order; and

(b) the undertaking or part shall be carried on in accordance with any directions given by the authorised controller in accordance with the provisions of the order, and any person having any functions of management in relation to the undertaking or part shall comply with any such directions.]

j[(3-A) The Central Government, so far as it appears to it to be necessary or expedient for securing the defence of British India or the efficient prosecution of the war or for maintaining supplies and services essential to the life of the community, may direct the employment of persons subject to the Indian Army Act, 1911, or the Indian Air Force Act, 1932, in any undertaking or part thereof—

(i) which is being carried on by the Central or a Provincial Government, or

(ii) which, in the opinion of the Central Government, is engaged in any trade or business essential to the life of the community, or

(iii) with respect to which an order made under sub-rule (3) is in force; and thereupon it shall be the duty of every person so subject to obey any command given by any superior officer in relation to such employment and every such command shall be deemed to be a lawful command within the meaning and for the purpose of the Indian Army Act, 1911, or the Indian Air Force Act, 1932, as the case may be.

(3-B) A direction under sub-rule (3-A) may be made with or without the consent of the person carrying on the undertaking or part thereof to which the direction relates but if made without his consent shall be communicated to such person who shall thereupon be deemed to have contravened an order made under this rule if he obstructs or fails to facilitate the employment of persons subject to the Indian Army Act, 1911, or the Indian Air Force Act, 1932, in pursuance of the direction.]

k[(3-C) Any articles seized under the authority of any order made under clause (f) of sub-rule (2) shall be conveyed without delay before a Magistrate who may give such directions as to their temporary custody as he thinks fit, so however, that where no prosecution is instituted for a contravention of the order in respect of the articles seized within a period in his opinion reasonable, the Magistrate shall direct their return to the person from whom they were seized; and subject to the foregoing provisions of this sub-rule, the provisions of the Code of Criminal Procedure, 1898, shall so far as they may be applicable, apply to any search or seizure under the authority of any such order as they apply to any search or seizure under Chapter VII of that Code.]

(4) If any person contravenes l[any order made under this rule], he shall be punishable with imprisonment for a term which may extend to three years m[or with fine or with both], n[and if the Order so provides any Court trying such contravention may direct that any property in respect of which the Court is satisfied that the order has been contravened shall be forfeited to His Majesty];

LEG. REF.

(j) Inserted by D. Dept. Notification No. 531-OR/40, dated the 21st August, 1942.

(k) Added by No. 5-DC (34)/43, dated the 23rd June, 1943.

(l) Substituted by D. C. Dept. Notification No. 1500-OR/42, dated the 18th July 1942, for the words "any of the provisions of this rule".

(m) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(n) Added by No. 5-DC (9)/43, dated

the 5th February, 1943.

R. 81 (4) : CONSTRUCTION AND EFFECT OF OFFENCE UNDER R. 81 (4) IS COGNIZABLE AND NON-BAILABLE. 47 P.L.R. 229. The expression "contravenes any of the provisions of this rule" in R. 81 (4) is unfortunate. It is difficult to comprehend how any person, except possibly the Central or Provincial Government, could contravene any of these provisions. What was evidently meant was that a person should be punishable for contravening the provisions of any order passed under the rule, not for contravening any provisions

[Provided that where the contravention is of an order relating to an article of food which contains an express provision in this behalf, the Court shall make such direction, unless for reasons to be recorded in writing it is of opinion that the direction should not be made in respect of the whole, or as the case may be, a part of the property.] (5 D.C. (48) 43, *Gazette of India*, dated 17th June, 1944, at page 805).

of the rule itself, which provisions in themselves do not fix any prices. 208 I.C. 219—A.I.R. 1943 Pat. 315. See also 1943 M. 281—(1943) 1 M.L.J. 99. The words “if the order so provides” in R. 81 (4) limit the Court's power to order confiscation under the general provisions of S. 517, Criminal P. C. and clearly indicate that the property which is the subject matter of the proceedings can be confiscated only if the order alleged to have been contravened provides for confiscation. If the order alleged to have been contravened does not so provide there is no power of confiscation. (A.I.R. 1944 Bom. 292 (F.B.), Foll. A.I.R. 1944 Bom. 247. Approved) A.I.R. 1945 Lab. 149 (F.B.).

APPLICABILITY—INFRINGEMENT OF ORDER BEFORE AMENDMENT MAKING INFRINGEMENT PUNISHABLE.—Until an amendment was made by which infringement of an order under the rule was made punishable with the same penalty as breach of the rule itself, it was not an offence to commit a breach of an order made under the rule. 308 I.C. 639—A.I.R. 1943 Pat. 313.

R. 81 (4), in its unamended form (amendment being of 18th July, 1942), contained no provision for punishment for contravention of orders framed under R. 81 (2) (b) and the rule cannot be construed in a liberal sense so as to make punishable contravention of an order before the date of the amendment of the rule. (1943) 1 M.L.J. 20—1943 Mad. 255; (1943) 2 M.L.J. 287; 9 Cut.L.T. 18; 9 Cut.L.T. 19. As to burden of proof of publication of order see (1945) P.W.N. 243.

SALE OF ARTICLE AT EXCESS PRICE.—Where the price of an article has not been controlled under R. 81 (2) (b) a conviction for selling the article at a price in excess of that fixed by the Local Press Advisory Committee is illegal. (1943) 1 M.L.J. 22.

TRADER INCREASING PRICE OF DHOTIES BY 10 PER CENT.—Before a trader who increases the price of cloth can be held to be liable under R. 81 (4), it must be proved that there is an order controlling the price of cloth. When there is no order fixing the price of cloth in a District, a trader in that District who increases the price of dhoties by about 10 per cent. cannot be held to have committed an offence under the Defence of India Rules. 21 Pat.L.T. 273—A.I.R. 1940 Pat. 373; see also 1943 A.M.L.J. 33 (failure to sell wheat on tender of fixed price is offence).

CHARGE OF SELLING ABOVE PRICE FIXED—ESSENTIALS TO BE PROVED.—On a charge under R. 81 (4) of having sold a specified commodity at a price more than 20 per cent. in excess of price prevalent on a specified date the prose-

cutors, in order to make out the offences, have to prove (1) that they purchased the article at a particular price from the accused; (2) the price that prevailed on the specified date for that class of commodity; and that such price was more than 20 per cent. less than the price charged by the accused. Unless these are satisfactorily proved, it cannot be said that the offence is established and a conviction cannot be sustained. 42 Bom. L.R. 473—1940 Bom. 254.

BURDEN OF PROOF.—In a prosecution under R. 81 (4) for selling an article at a price in excess of that which is authorised, it must be proved by the prosecution that the person authorised under the Rules had fixed the price of the article in question in the absence of such evidence, the accused cannot be convicted of an offence under R. 81. 11 Cut. L.T. 9.

KEROSENE SOLD AT CONTROLLED RATE PLUS TRANSPORTATION CHARGES.—Where the accused sold kerosene oil at the controlled rate plus transportation charges and it is not shown that the amount charged on account of costs of transportation was excessive it cannot be said that the prosecution succeeded in proving that any provision of R. 81 or any order made thereunder has been contravened. 211 I.C. 132—A.I.R. 1943 Cal. 643. Where a notification issued by the Collector of a district directs licensees dealing in kerosene to issue receipts in respect of sales and to exhibit lists of maximum prices of kerosene fixed by the Collector, such notification applies only to wholesale dealers and only wholesale dealers have to take out licenses. A retail merchant vending kerosene cannot be prosecuted or convicted under R. 81 (4) for not complying with the notification. (1944) 2 M.L.J. 154. See also (1945) 1 M.L.J. 457.

FOOD GRAINS CONTROL ORDER—LICENCE UNDER, CONDITION—CONTRAVENTION OF—OFFENCE.—A wholesale dealer in rice holding a licence under the Food Grains Control Order of 1942, sold rice to various persons without showing in the receipts or in the duplicate maintained by him the name, address and licence number of the various purchasers, in contravention of condition No. 6 of the licence granted to him. He was charged under R. 81 (4), read with cl. (3) of the Food Grains Control Order. Held, that the omission on the part of the dealer to mention the particulars in the receipts and counterfoils amounted to an offence under R. 81 (4), as he contravened the Food Grains Control Order which was an order under the Defence of India Rules, and he was therefore liable to conviction. (1943) 2 M.L.J. 378—1944 Mad. 41. A condition in a licence for

the purchase, sale or storage, for sale, in wholesale quantities, of food grains issued to the 1st accused, the owner of a rice mill, required the licensee to issue a receipt or invoice giving particulars of any sale and to keep a duplicate for the same. The 1st accused's son, the second accused who was managing the mill, sold a bag of rice for a price which would be the price if sold in retail, but refused to pass a receipt. The accused, who were prosecuted for breach of the condition in the licence pleaded that the condition applied only to wholesale sales. *Held*, that the condition applied to retail as well as wholesale sales by the licensee and both the accused were liable to conviction for breach of the condition. (1945) M.W.N. 263—(1945) 1 M.L.J. 457. The conditions of a licence issued under the Food Grains Control Order should be regarded as part of that order itself, so that any contravention of any one of the conditions would be a contravention of an order made under R. 81 (2) and punishable under R. 81 (4). [(1943) 2 M.L.J. 378, *Foll.*; 26 Cal. 571, *Dist.*] 57 L.W. 548—(1944) 2 M.L.J. 299. *See also* 57 L.W. 363; 1944 Pat. 308; (1945) 1 M.L.J. 389. Purchase of food-grains as buying agent of another without licence is offence. *See* (1944) 2 M.L.J. 183. Storage of paddy in wholesale quantities without licence for sale at a future date is an offence. 1944 M.W.N. 444; (1944) 2 M.L.J. 33. *See also* 1944 Pat. 308—25 Pat.L.T. 81. As to Motor Spirit Ration Order. *See* 1945 P.W.N. 228.

OFFENCE UNDER—BAIL—GRANT OF.—The offence under R. 81 (4) is not one that has been notified by the Government as non-bailable. It must, therefore, be considered a bailable offence subject to the provisions of R. 130-A (a). The burden lies on the prosecution to make out special circumstances why the accused persons should be denied the advantage of the law in their favour. 1944 N.L.J. 75. As to bail, *see also* 1943 A.M.L.J. 43; 45 Bom.L.R. 72; (1941) 2 M.L.J. 1014—1942 Mad. 221.

SENTENCE.—The appellant, a dealer in tin and lead was charged with having sold and delivered some slabs of tin to different persons on different dates without permit and without licence and also failed to submit returns provided for in the order. It was found that he violated the terms of the order deliberately. He pleaded guilty and was sentenced to suffer imprisonment for three months and to pay a fine of one thousand rupees. Before the High Court it was urged on behalf of the appellant that the sentence of imprisonment should be set aside. *Held*, a sentence of fine is not enough; a sentence of imprisonment is also necessary in the present case. Though R. 81, sub-R. (4) prescribes the alternative penalty of fine for the contravention of any order under the rule it is the duty of the Court to determine which punishment is called for by the circumstances of the case, and the Court would be failing in its duty if it lost sight of the inclination

of dealers to make profit out of irresponsible commerce in commodities which are needed by the nation and sought to be controlled by Government, and to pass deterrent sentences in proper cases. (1943) Cal.L.J. 461.

R. 81 (4): PROFITEERING CASES—PROPER SENTENCE.—The fact that the bigger dealers are rarely prosecuted for profiteering and those who sell at the source, never and most of those who are prosecuted are, relatively small dealers such as shopkeepers and in some of the instances these shopkeepers had to pay more than the controlled prices for the goods they dealt with, is no reason for not giving sentences which will be an effective deterrent for what is unquestionably a grave and a growing evil, namely, profiteering and breaking the law which prescribes that goods and articles should not be sold at more than the controlled prices. Magistrates should not hesitate to use their powers to inflict imprisonment where a maximum sentence of fine seems to them to be inadequate. The practice of using contributions to the police poor box as a substitute for prosecutions and punishments according to law, lends itself to abuse, and an abuse which may bring those who use it within the reach of the law. The sooner the practice ceases the better both from the point of view of the public and of the police. 212 I.C. 104—A. I. R. 1944 Cal. 121. Although sub-R. (4) of R. 81 prescribes the alternative penalty of fine for the contravention of any orders made under the Rule, it is the duty of the Court to determine which punishment is called for by the circumstances of the case and the Court would be failing in its duty if it lost sight of the inclination of dealers to make profit out of irresponsible commerce in commodities which are needed by the nation and sought to be controlled by the Government. A sentence of fine is not enough but a sentence of imprisonment is necessary on conviction of a dealer for deliberately violating the Non-Ferrous Metals Control Order, 1941, as amended by a Central Government Notification, dated 8th January, 1942, by selling and delivering quantities of tin without a permit 77 C.L.J. 461.

R. 81 (4): ORDER OF FORFEITURE.—The clear meaning of R. 81 (4), which provides for confiscation, is that the property in respect of which the offence is committed may be forfeited by order of the Court only if the order promulgated under R. 81 (2) so provides, but not otherwise. S. 517, Cr.P. Code, is inconsistent with R. 81 (4) and cannot be invoked by reason of S. 3 of the Defence of India Act so to enable a Court to exercise powers of forfeiture which R. 81 (4) does not give him. Where an order of the Collector prohibiting export of chillies from a district is contravened, but the order at the time contains no provision for confiscation of the property transported, a Court has no jurisdiction to order forfeiture or confiscation of the property under S. 517, Cr. P. Code. 57 L.W. 475—1944 M.W.N. 558

o[81-A. (1) If in the opinion of the Central Government it is necessary

Avoidance of strikes and
lockouts.

or expedient so to do for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community, the Central Government may, by general or special order, applying generally or to any specified area, p[make provision—

(a) for prohibiting, subject to the provisions of the order, a strike or lock-out in connection with any trade dispute;

(b) for requiring employers q[workmen or both] to observe for such period as may be specified in the order such terms and conditions of employment as may be determined in accordance with the order;

(c) for referring any trade dispute for conciliation or adjudication in the manner provided in the order;

(d) for enforcing for such period as may be specified in the order r[all or any of] the decisions of the authority to which a trade dispute has been referred for adjudication;

(e) for any incidental and supplementary matters which appear to the Central Government necessary or expedient for the purposes of the order:

Provided that no order made under clause (b)—

(i) shall require an employer to observe terms and conditions of employment less favourable to the workmen than those s[which were applicable to them] at any time within three months preceding the date of the order;

(ii) where a trade dispute is referred for adjudication under clause (c), shall be enforced after the decision of the adjudicating authority is announced by, or with the consent of, the Central Government.]

LEG. REF.

(o) Inserted by D. C. Dept. Notification No. 1204-SM/42, dated the 21st January 1942.

(p) Substituted by D. C. Dept. Notification No. 1408-OR/42, dated the 23rd May 1942, for the words beginning with the words "make provision for" and ending with the words "purposes of the order."

(q) Inserted by No. 5-DC (8)/43, dated 11th December, 1943.

(r) Added by Defence Dept. Notification No. 5-DC (8)/43, dated the 11th December 1943.

(s) Substituted by No. 5-DC (8) |43, dated the 6th February, 1943.

=(1944) 2 M.L.J. 229. See also 1944 P. W.N. 128; (1945) 8 F.L.J. 61; 48 Bom. L.R. 529=1944 Bom. 247. Where an order under R. 81 (2), prohibiting the removal of certain articles outside certain limits did not direct that any article in respect of which the order had been contravened should be liable to forfeiture, the Court would have no power under R. 81 (4) as amended later, to direct forfeiture. 46 Bom.L.R. 449: A.I.R. 1944 Bom. 247. Rule 81 (4) as amended in 1943 provides that an order of confiscation may be made if the order so provides. That shows a clear intention on the part of the Legislature that no order for confiscation can be made if the order does not provide for it. The words "if the order so provides" in R. 81 (4) limit the Court's Power to order confiscation under the general provisions of S. 517, Cr.P. Code. 46 Bom.L.R. 529 (F.B.) See also 1944 Bom. 247: 46 Bom.L.R. 449; 58 L.W. 879=(1945) 2 M.

L.J. 172. The High Court, while upholding a conviction in revision, has power to interfere with an order of forfeiture passed by the trial Court under R. 81 (4). 49 C.W.N. 548.

RR. 81 (4) AND 121: QUOTING ABOUT CONTROLLED PRICE OR OFFERING TO BUY ABOVE CONTROLLED PRICE—WHETHER OFFENCE.—Under R. 81 (4) read with R. 121 of the Defence of India Rules, not only is it an offence against the anti-profiteering laws to sell at above the controlled price, but it is an offence to buy at above the controlled price. It is also an offence to quote a price above the controlled price or offer to sell above the controlled price or offer to buy at above the controlled price. 212 I.C. 104=A.I.R. 1944 Cal. 121. See also 47 P.L.R. 229.

RR. 81 (4), 130 (4).—A case relating to an offence under R. 81—Sub-sec. (4) of the Defence of India Rules would be a warrant case—Ordinarily such a case could not be tried summarily though under R. 130 (4) it may be so tried. If it is so tried the provisions of Ss. 262 to 265, Cr.P. Code, must be followed. S. 262 is an imperative provision and a breach of it would be not merely an irregularity but an illegality. 1945 O. W.N. (H.C.) 1=1945 O.A. (H.C.) 11=1945 A.L.W. 1=1945 A.W.R. (H.C.) 11.

R. 81-A: APPLICABILITY—MILITARY RESERVE BASE DEPOT.—R. 81-A does not apply to a strike by the workers employed in a Military Reserve Supply Base Depot. It applies to trade disputes as defined by the Trades Disputes Act. A Reserve Base Depot is not a trade or industry, but is only a store house of certain commodities and the workers there are employed to arrange them and load and unload them when they are to be trans-

[(1-A) Where a trade dispute referred for adjudication under clause (c) of sub-rule (1) has arisen only in a particular undertaking or group of undertakings, the Central Government may include in the adjudication proceedings any other undertaking either its own initiative or on an application received in this behalf, whether a trade dispute exists at the time in that undertaking or not provided that the Central Government is satisfied—

(a) that the undertaking to be so included is engaged in the same type of industry or business as the undertaking or the group of undertakings in which the trade dispute referred for adjudication has arisen; and

(b) that the inclusion of the undertaking in the adjudication proceedings will not materially delay the award; and

(c) that the issues involved in the trade dispute referred for adjudication have already given rise, or are such as, in the circumstances, may reasonably be expected to give rise, to a similar dispute in the undertaking to be so included.

(1-B) Where an undertaking has been included in adjudication proceedings under sub-rule (1-A) the provisions of this rule and of any order or award made thereunder shall (save as may be expressly provided to the contrary in any such order or award) apply to and in relation to such undertaking as they apply to and in relation to any undertaking or group of undertakings in which the trade dispute referred for adjudication has arisen.]*

(2) Unless any such order makes express provision to the contrary, nothing therein shall affect the power to refer any trade dispute or matters connected therewith for report or settlement under the Trade Disputes Act, 1929.

(3) Nothing in the Arbitration Act, 1940, shall apply to any proceedings under any such order.

s.1[(3-A) An order made under sub-rule (1) referring a trade dispute for adjudication shall specify as far as may be practicable the matters upon which adjudication is necessary or desirable:

Provided that—

(i) the Central Government may of its own motion, or at the instance of any adjudicating authority add to, amend or vary the matters so specified;

(ii) The Central Government may with a view to specify the said matters direct the adjudicating authority to make a preliminary enquiry into the nature of the dispute, and postpone specification for such time as may be reasonably required.]

(4) If any person contravenes ^t[any order made under this rule], he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

u[(5) In this rule the expressions 'employer', 'lock-out', 'strike', 'trade-dispute' and 'workman' shall have the meanings respectively assigned to them in section 2 of the Trade Disputes Act, 1929 (VII of 1929), subject to the modification that the references to 'trade or industry' in the definitions of 'strike' and 'workman' in the said section shall be construed as including the performance of its functions by a local authority.]

v[81-B. If any person being a British subject domiciled in any part of

India leaves any employment in contravention of
Provision with respect to
Defence Regulation 58-AC.

Regulation 58-AC of the Defence (General) Regulations, 1939 [being Regulation made by His Majesty in Council under the Emergency Powers (Defence) Acts, 1939 and 1940], he

LEG. REF.

*See *Gazette of India*, Pt. I, S. 1, p. 1666.

(s-1) Added by Defence Dept. Notification No. 5 DC (8)/43, dated the 11th December, 1943.

(t) Substituted by D. C. Dept. Notification No. 1500-OR/42, dated the 18th July 1942, for the words "any of the provisions of this rule".

(u) Substituted by No. 5-DC (8)/43, dated the 8th May, 1943.

(v) Inserted by D.C. Dept. Notification No. 1256-OR/42, dated the 7th March 1942.

ported; Hence the cessation of work of the employees of the depot does not fall within the definition of a "strike." 46 Bom.L.R. 444=A.I.R. 1944 Bom. 248.

shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.]

w[81-C. If any person being a British subject domiciled in any part of India leaves any employment in contravention of Regulation No. 2 of 1942 made under the Persian Gulf States (Emergency) Order in Council, 1939, he shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.]

Shops trading in essential articles.

x[81-D. (1) In this rule—

(a) "scheduled article" means an article specified in the Schedule to this rule, and includes an article which the Provincial Government or the District Magistrate, being of opinion that the maintenance of the supply thereof is essential to the life of the community, declares by order in writing to be a scheduled article;

y[(aa) "essential article" means an article which the Provincial Government or the District Magistrate, being of opinion that the maintenance of the supply thereof is essential to the life of the community, declares by order in writing to be an essential article;]

(b) "shop" means any premises wherein any retail trade is carried on in scheduled articles, whether or not in addition to retail trade in other articles and whether for the benefit of the public generally or of a class or classes of persons only;

(c) "restaurant" means any premises wherein is carried on, whether or not in addition to other forms of business, the business of supplying meals or refreshments to the public or a class of the public, for consumption on the premises;

y[(cc) "wholesale establishment" means any premises wherein any wholesale trade is carried on in essential articles, whether or not in addition to wholesale trade in other articles, or wherein any essential articles are kept, whether or not in addition to other articles, for wholesale trade;]

(d) "essential business" means z[in relation to a wholesale establishment, wholesale trade in essential articles], in relation to a shop, retail trade in scheduled articles, and in relation to a restaurant, the business of supplying meals or refreshments for consumption on the premises;

(e) "proprietor" of a a[wholesale establishment, shop or restaurant] includes any person responsible for the management thereof.

(2) The District Magistrate, if he considers it necessary for the purpose of maintaining supplies essential to the life of the community, may, by general or special order and subject to the provisions of any law for the time being in force relating to shop-hours, require the proprietor of a a[wholesale establishment, shop or restaurant] to keep open the a[wholesale establishment, shop or restaurant] for the conduct of the essential business thereof during such period or periods as may be specified in the order.

(3) No proprietor of a a[wholesale establishment, shop or restaurant] shall close the a[wholesale establishment, shop or restaurant] on the occasion of a *hartal* or in contravention of any order under sub-rule (2), or suffer the same to be so closed.

(4) If a a[wholesale establishment, shop or restaurant] is closed in contravention of sub-rule (3), the District Magistrate or any person authorised by him by general or special order in this behalf may cause the a[wholesale

LEG. REF.

(w) Inserted by D. C. Dept. Notification No. 1470-OR/42, dated the 20th June, 1942.

(x) Inserted by D. Dept. Notification No. 1533-SM/42, dated the 7th August, 1942.

(y) Inserted by D. Dept. Notification

No. 1533-SM/42, dated the 22nd August, 1942.

(z) Inserted by D. Dept. Notification No. 1533-SM/42, dated the 22nd August, 1942.

(a) Substituted by *ibid.*, for the words "shop or restaurant."

establishment, shop or restaurant] to be opened and the essential business thereof to be carried on through such agency as he may think fit and at such prices as may be specified in the order, and may use or cause to be used all such force as may be necessary for the enforcement of this sub-rule.

(5) Where the essential business of a ^{a-1}[wholesale establishment, shop or restaurant] is carried on in pursuance of an order under sub-rule (4), all stock-in-trade relevant to the essential business thereof may be sold or disposed of by the agency through which the essential business is carried on, and there shall be paid to the proprietor of the ^{a-1}[wholesale establishment, shop or restaurant] a sum certified by the District Magistrate or by a person authorised by him in this behalf as representing the proceeds of the sale or disposal of such stock-in-trade less the amount of the cost of carrying on the essential business of the ^b[wholesale establishment, shop or restaurant] and the sum so certified shall be final and shall not be called in question in any Court.

(6) Where the proprietor of a ^b[wholesale establishment, shop or restaurant] does not close the ^b[wholesale establishment, shop or restaurant] on the occasion of a *hartal* or in contravention of an order under sub-rule (2), but on such occasion or during the period or periods specified in such order, as the case may be, refuses to carry on the essential business thereof except on terms in excess of the normal, the ^b[wholesale establishment, shop or restaurant] shall be deemed to be closed in contravention of sub-r. (3) for all the purposes of this rule.

(7) The powers and functions of the District Magistrate under this rule shall, in a Presidency-town, be exercisable by the Commissioner of Police.

(8) Any person who contravenes any of the provisions of this rule or any order made thereunder shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

THE SCHEDULE.

Grains, pulses and flour, and any food-stuffs made from any of them.

Sugar and gur.

Milk and milk products, including ghee.

Eggs.

Vegetable oils.

Vegetables and fruits, all sorts.

Meat, fish and poultry.

Spices.

Salt.

Kerosene oil.

Charcoal, steam coal and fire wood.

Matches.

Medicines.

Household soap.

Fodder, bran, pollard and oilcakes.

^c[81-E. (1) In this rule, 'public servant' includes a village chowkidar and any person engaged in any employment or class of employment to which the Essential Services (Main-

tenance) Ordinance, 1941, applies.

(2) No person shall—

(a) refuse to deal or do business with or to supply goods, or to let a house or land to, or to render any customary service to, any public servant or any person in whom a public servant is interested or refuse to do so on the terms on which such things would be done in the ordinary course;

(b) abstain from such professional or business relations as he would ordinarily maintain with such public servant or person;

I.E.G. REF.

(a-1) Substituted by D. Dept. Notification No. 1533-SM/42, dated the 22nd August, 1942.

(b) Substituted by D. Dept. Notification No. 1533-SM/42, dated the 22nd Au-

gust, 1942, for the words "Shop or Restaurant".

(c) Inserted by Defence Department Notification No. 1621-SM/1/42, dated the 31st October, 1942.

(c) threaten such public servant or person with any such refusal or abstention as aforesaid.

(3) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both:

Provided that no person shall be convicted of such contravention if the Court is satisfied that his refusal, abstention or threat, as the case may be, was not intended to harass the public servant or person affected thereby in the discharge of the duties of his office or employment, or to cause him to terminate his services or fail in his duty or commit a breach of discipline.]

d[81-F. The Central Government or any Provincial Government may, if

Power to relax obligation to publish memoranda or lists in Official Gazette. it considers it necessary so to do for conserving supplies of paper, by notified order, relax, modify or suspend any obligation to publish any memoranda or lists in the Official Gazette which has been imposed upon it or any officer or authority subordinate to it by a law for the time being in force.]

e[81-G. (1) Notwithstanding anything contained in sections 32 and 151 of

Modification of annual list of members returnable under S. 32 of Act VII of 1913. the Indian Companies Act, 1913, a company having more than 50 members shall be deemed to have complied with the requirements of the said sections in respect of the annual list of members (other than the first) for the year 1943 or any subsequent year if, instead of making every year the list referred to in sub-section (1) of section 32 of the form prescribed for the purpose in Form E of the Third Schedule to the said Act, the Company furnishes a statement showing all changes in membership and in the number of shares held by members that have taken place since the date of last return, together with the summary prescribed in sub-section (2) of the said section 32 and files with the Registrar of Joint Stock Companies a copy of the same in the manner provided in sub-section (3) thereof.

(2) The Central Government may by order prescribe the particulars which shall be contained in the statement referred to in sub-rule (1).]

e-1[81-H. Notwithstanding anything to the contrary contained in its Articles

Modification of the notice to shareholders resident outside British India liable to be given under Regulation 113 of Table A of the First Schedule to Act VII of 1913. of Association, a company shall be deemed to have complied with any provision thereof which enables it to give notice by advertisement in a newspaper to a member who has no registered address in British India and has not supplied to the company an address within British India for the giving of notices to him, if it prominently displays such notice at its registered office in British India. A notice so displayed shall be deemed to be duly given to him on the day on which the notice is so displayed.]

82. (1) No owner of a mine shall, without the previous sanction of the

Restriction on transfer of mines. Central Government, transfer the mine or any interest therein to any person other than a British subject, or to a foreign-controlled company.

(2) If—

(a) any person to whom a transfer of any mine has been made in contravention of this rule; or

(b) any agent entrusted with the charge, control or management of a mine by or on behalf of any person to whom a transfer of a mine has been made in contravention of this rule, and having reason to believe that this rule has been so contravened, works such mine or removes any produce or output thereof, he shall be deemed to have contravened this rule.

LEG. REF.

(d) 5 D.C. (15)/43, *Gazette of India*, dated 17th June 1944, at p. 805.

(e) Added by D. D. Notification No. 5-

DC (15)/43, dated the 19th June, 1943.

(e-1) 5 D.C. (15)/43, *Gazette of India*, dated 22nd July 1944, at p. 960.

establishment, shop or restaurant] to be opened and the essential business thereof to be carried on through such agency as he may think fit and at such prices as may be specified in the order, and may use or cause to be used all such force as may be necessary for the enforcement of this sub-rule.

(5) Where the essential business of a ^{a-1}[wholesale establishment, shop or restaurant] is carried on in pursuance of an order under sub-rule (4), all stock-in-trade relevant to the essential business thereof may be sold or disposed of by the agency through which the essential business is carried on, and there shall be paid to the proprietor of the ^{a-1}[wholesale establishment, shop or restaurant] a sum certified by the District Magistrate or by a person authorised by him in this behalf as representing the proceeds of the sale or disposal of such stock-in-trade less the amount of the cost of carrying on the essential business of the ^b[wholesale establishment, shop or restaurant] and the sum so certified shall be final and shall not be called in question in any Court.

(6) Where the proprietor of a ^b[wholesale establishment, shop or restaurant] does not close the ^b[wholesale establishment, shop or restaurant] on the occasion of a *hartal* or in contravention of an order under sub-rule (2), but on such occasion or during the period or periods specified in such order, as the case may be, refuses to carry on the essential business thereof except on terms in excess of the normal, the ^b[wholesale establishment, shop or restaurant] shall be deemed to be closed in contravention of sub-r. (3) for all the purposes of this rule.

(7) The powers and functions of the District Magistrate under this rule shall, in a Presidency-town, be exercisable by the Commissioner of Police.

(8) Any person who contravenes any of the provisions of this rule or any order made thereunder shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

THE SCHEDULE.

Grains, pulses and flour, and any food-stuffs made from any of them.

Sugar and gur.

Milk and milk products, including ghee.

Eggs.

Vegetable oils.

Vegetables and fruits, all sorts.

Meat, fish and poultry.

Spices.

Salt.

Kerosene oil.

Charcoal, steam coal and fire wood.

Matches.

Medicines.

Household soap.

Fodder, bran, pollard and oilcakes.

^c[81-E. (1) In this rule, 'public servant' includes a village chowkidar and any person engaged in any employment or class of employment to which the Essential Services (Maintenance) Ordinance, 1941, applies.

(2) No person shall—

(a) refuse to deal or do business with or to supply goods, or to let a house or land to, or to render any customary service to, any public servant or any person in whom a public servant is interested or refuse to do so on the terms on which such things would be done in the ordinary course;

(b) abstain from such professional or business relations as he would ordinarily maintain with such public servant or person;

L.E.G. REF.

(a-1) Substituted by D. Dept. Notification No. 1533-SM/42, dated the 22nd August, 1942.

(b) Substituted by D. Dept. Notification No. 1533-SM/42, dated the 22nd Au-

gust, 1942, for the words "Shop or Restaurant".

(c) Inserted by Defence Department Notification No. 1621-SM/1/42, dated the 31st October, 1942.

(c) threaten such public servant or person with any such refusal or abstention as aforesaid.

(3) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both:

Provided that no person shall be convicted of such contravention if the Court is satisfied that his refusal, abstention or threat, as the case may be, was not intended to harass the public servant or person affected thereby in the discharge of the duties of his office or employment, or to cause him to terminate his services or fail in his duty or commit a breach of discipline.]

d[81-F. The Central Government or any Provincial Government may, if

Power to relax obligation it considers it necessary so to do for conserving supplies of paper, by notified order, relax, modify or suspend any obligation to publish any memoranda or lists in the Official Gazette which has been imposed upon it or any officer or authority subordinate to it by a law for the time being in force.]

e[81-G. (1) Notwithstanding anything contained in sections 32 and 151 of

Modification of annual the Indian Companies Act, 1913, a company having list of members returnable more than 50 members shall be deemed to have complied with the requirements of the said sections in under S. 32 of Act VII of 1913. respect of the annual list of members (other than the first) for the year 1943 or any subsequent year if, instead of making every year the list referred to in sub-section (1) of section 32 of the form prescribed for the purpose in Form E of the Third Schedule to the said Act, the Company furnishes a statement showing all changes in membership and in the number of shares held by members that have taken place since the date of last return, together with the summary prescribed in sub-section (2) of the said section 32 and files with the Registrar of Joint Stock Companies a copy of the same in the manner provided in sub-section (3) thereof.

(2) The Central Government may by order prescribe the particulars which shall be contained in the statement referred to in sub-rule (1).]

e-1[81-H. Notwithstanding anything to the contrary contained in its Articles

Modification of the notice to shareholders resident outside British India liable to be given under Regulation 113 of Table A of the First Schedule to Act VII of 1913.

of Association, a company shall be deemed to have complied with any provision thereof which enables it to give notice by advertisement in a newspaper to a member who has no registered address in British India and has not supplied to the company an address within British India for the giving of notices to him, if it prominently displays such notice at its registered office in British India. A notice so displayed shall be deemed to be duly given to him on the day on which the notice is so displayed.]

82. (1) No owner of a mine shall, without the previous sanction of the

Restriction on transfer of mines.

Central Government, transfer the mine or any interest therein to any person other than a British subject, or to a foreign-controlled company.

(2) If—

(a) any person to whom a transfer of any mine has been made in contravention of this rule; or

(b) any agent entrusted with the charge, control or management of a mine by or on behalf of any person to whom a transfer of a mine has been made in contravention of this rule, and having reason to believe that this rule has been so contravened,

works such mine or removes any produce or output thereof, he shall be deemed to have contravened this rule.

LEG. REF.

(d) 5 D.C. (15)/43, *Gazette of India*, dated 17th June 1944, at p. 805.

(e) Added by D. D. Notification No. 5-

DC (15)/43, dated the 19th June, 1943.

(e-1) 5 D.C. (15)/43, *Gazette of India*, dated 22nd July 1944, at p. 960.

(3) In this rule—

(a) "British subject" means a person who is a natural-born British subject within the meaning of the British Nationality and Status of Aliens Act, 1914, and includes a subject of an Indian State;

(b) "foreign-controlled company" includes any company, firm or association or body of individuals whether incorporated or not—

(i) which is not established in and subject to the laws of some part of His Majesty's dominions or of some British Protectorate, and has not its principal place of business therein; or

(ii) in which the majority of the directors or of the partners, or of the persons occupying the position of directors or partners, by whatever name called, are not British subjects; or

(iii) in which the majority of the voting power or the predominant interest is in the hands of persons who are not British subjects or of persons who exercise their voting power or hold their interest directly or indirectly on behalf of persons who are not British subjects; or

(iv) of which the control is by any other means whatever in the hands of persons who are not British subjects; or

(v) of which the managing body is a company, or the majority of the managing body are appointed by a company, of the nature described in any of the above sub-clauses;

(c) "mine" includes a quarry and any mineral deposit or land known or believed to contain a mineral deposit of commercial value;

(d) "owner" includes a lessee, any person having a transferable interest and any agent of an owner or a lessee or of any person having such interest.

(4) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to five years ²[or with fine or with both.]

83. [Requisitioning of movable property.] Omitted by D. C. Department Notification No. 1336-OR/42, dated the 25th April, 1942. See 79 C.L. J. 189.

Power to prohibit or restrict the import and export of goods.

84. (1) In this rule—

(a) "import" means bringing into British India by sea, land or air;

(b) "export" means taking out of British India by sea, land or air.

(2) The Central Government may by notified order prohibit or restrict the import or export of all goods or goods of any specified description, from or to any specified person or class of persons.

§[(3) The Central Government may by notified order make provision for prohibiting, restricting or otherwise controlling, in all cases or in specified classes of cases, and subject to such exceptions, if any, as may be made ^h[by or under the order,—

(i) the import, export, carriage coastwise or shipment as ships' stores of all goods or goods of any specified description;

(ii) the shipment of fresh water on seagoing vessels];

¹[(iii) the bringing into any port or place in British India of goods of any specified description intended to be taken out of British India without being removed from the ship or conveyance in which they are being carried.]

(4) Where, by an order made under sub-rule (2) or sub-rule (3), the import or export or the carriage coastwise or the shipment as ships' stores ¹[or

LEG. REF.

(f) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February, 1941, for the words "and shall also be liable to fine".

(g) Substituted by D.C. Dept. Notification No. 313-OR/39, dated the 5th January, 1940, for the original sub-rule (3).

(h) Substituted by D. C. Dept. Notifica-

tion No. 592-OR/40, dated the 2nd November, 1940, for the words "by or under the order, the import or export, or the carriage coastwise or the shipment as ships' stores, of all goods or goods of any specified description".

(i) Inserted by D. C. Dept. Notification No. 607-OR/40, dated the 30th November, 1940.

the bringing into any port or place] of any goods [or any shipment of fresh water], is prohibited, restricted or otherwise controlled, such goods [or as the case may be such fresh water] shall be deemed to be goods of which the import or export has been prohibited or restricted under section 19 of the Sea Customs Act, 1878, and all the provisions of that Act shall have effect accordingly],^k [except that section 183 thereof shall have effect as if for the word 'shall' in that section the word 'may' were substituted].

¹[(5) Notwithstanding anything contained in the Sea Customs Act, 1878, the Central Government may by order prohibit, restrict, or impose conditions on the clearance whether for home consumption or for shipment to a foreign port of any goods or class of goods imported into British India.]

[(6) If any person contravenes any order made under this rule, he shall without prejudice to any confiscation or penalty to which he may be liable under the provisions of the Sea Customs Act, 1878, as applied by sub-rule (4), be punishable with imprisonment for a term which may extend to three years or with fine or with both.] (5 D.C. (83) [44]).

Definitions.

^m[84-A. (1) In rule 84-B, unless there is anything repugnant in the subject or context,—

(a) "Enemy" and "enemy subject" have the meaning respectively assigned to them by rules 97 and 103;

(b) "Design", "invention", "patent" and "patentee" have the meaning assigned to them by section 2 of the Indian Patents and Designs Act, 1911.

(2) Where a patent has been granted to any person in respect of an invention communicated to him by some other person, that other person shall, for the purposes of rule 84-B, be deemed to have an interest in the patent unless the contrary is proved.

Power of Central Government to grant licences under patents, or designs of enemies and enemy subjects.

84-B. (1) Where—

(a) an enemy or an enemy subject is, or has at any time subsequent to the 2nd September, 1939, been, whether alone or jointly with any other person, the proprietor of a patent or registered design, or entitled to any other interest in a patent or registered design (not being merely the interest of a licensee);

(b) the Central Government is satisfied that it is expedient for securing the defence of British India or the efficient prosecution of the war or for maintaining supplies and services essential to the life of the community that the rights conferred by the patent should be exercised, or that the design should be applied, as the case may be, and that a person who is not an enemy or an enemy subject desires to exercise the said rights or apply the said design and is in a position so to do,

the Central Government may, on the application of that person, make an order granting to him a licence under the patent or for the application of the design, as the case may be, either for the whole of the residue of the term of the patent or the registration, or for such less period as the Central Government thinks fit.

(2) The power of the Central Government under this rule to make an order granting a licence shall include the power—

(a) to make an order granting an exclusive licence;

(b) to make an order granting a licence in relation to a patent or registered design, notwithstanding that a licence, whether exclusive or otherwise (not being an exclusive licence granted by virtue of the powers conferred by this rule), is in force in relation thereto; and

LEG. REF.

(j) Inserted by D. C. Dept. Notification No. 592-OR/40, dated the 2nd November, 1940.

(k) Added by D. C. Dept. Notification No. 665-OR/41, dated the 25th January, 1941.

(l) Added by D.C. Dept. Notification No. 972-OR/41, dated the 12th August, 1941.

(m) Rules 84-A to 84-C inserted by D. C. Dept. Notification No. 334-OR/40, dated the 17th February, 1940.

(c) to make an order granting a licence on any terms that the Central Government may think expedient.

(3) Where, under the power conferred by this rule, the Central Government makes an order granting a licence in relation to a patent or registered design, in relation to which any other licence has been granted otherwise than by an order made under this rule, the Central Government may, in relation to that other licence, make such order—

(a) revoking the licence;

(b) revoking or varying any conditions subject to which the licence has effect; or

(c) revoking or varying any of the provisions of a contract relating to the licence in so far as they relate thereto, as appears to it to be expedient having regard to the order made under sub-rule (1).

^a[(3-A)] Where under the power conferred by this rule, the Central Government has made an order granting a licence under a patent in which an enemy or an enemy subject was or had been interested, a licence under the patent granted by any other person after the making of the said order or the coming into force of this sub-rule, whichever is later, shall be void unless before the granting thereof that other person has applied for and obtained a certificate of approval by the Central Government of the granting of the licence and of the terms thereof, and shall cease to have effect if any conditions subject to which the certificate was granted or contravened or not complied with:

Provided that this sub-rule shall not affect—

(a) a licence granted under any powers conferred by the said order of the Central Government, or

(b) a licence granted, whether expressly or by implication, to a person acquiring any article if the licence was granted to him as being a person acquiring that article and not as being a particular person.]

(4) An order granting a licence under this rule shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting the licence which the patentee or the proprietor of the registered design, as the case may be, and all other parties having any interest therein, had executed with full capacity so to do, and the order shall accordingly operate to take away from any such party any right in relation thereto, the exercise whereof would be inconsistent with the exercise of the licence in accordance with and subject to the terms on which it is granted.

(5) A licensee under a licence granted under this rule may institute proceedings for infringement in his own name as though he were the patentee or the proprietor of the registered design, as the case may be, so, however, that any person other than an enemy who, whether alone or jointly with any other person, is the patentee or the registered proprietor of the registered design, as the case may be, shall, unless the Court in which the proceedings are taken thinks fit to direct otherwise, be made a party to the proceedings, either—

(a) if he consents in writing thereto, as a plaintiff, or

(b) if he does not so consent, as a defendant.

Where any person is made defendant to any proceedings by virtue of this sub-rule, he shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(6) An order granting a licence under this rule shall give directions as to the person to whom or the manner in which the licensee is to pay or deal with any royalties or other payments to be paid in respect of the licence.

(7) An order under this rule and a licence granted by such an order may be varied by a subsequent order made by the Central Government either:—

(a) where the licensee makes application to the Central Government for the variation thereof, or

(b) where the Central Government is of opinion that circumstances have arisen which make it just and equitable, or that it is expedient for the purposes specified in clause (b) of sub-rule (1), that it should be varied.

8. An order under this rule and a licence granted by such an order may be revoked by a subsequent order made by the Central Government in any of the following cases, that is to say:—

(a) where the licensee makes application to the Central Government for the revocation thereof;

(b) where it appears to the Central Government that it was obtained by any misrepresentation, whether intentional or not, or was made or granted without the Central Government's having full knowledge of the material facts;

(c) where the licensee has failed to comply with any term on which the licence was granted or with a direction given under sub-rule (6), or has failed to exercise the licence in such a manner as to satisfy the reasonable requirements of the public in relation to the invention or registered design, as the case may be, or has charged unreasonable or excessive prices in respect of anything made or done in the exercise of the licence; or

(d) where the Central Government is of opinion that circumstances have arisen which make it just and equitable, or that it is expedient for the purposes specified in clause (b) of sub-rule (1), that it should be revoked.

(9) Any licence granted under this rule may provide that the licensee may, subject to such conditions as may be imposed by the Central Government, adopt the name used by the patentee for describing or denoting the article or substance manufactured under the patent.

(10) The fee to be paid on an application under this rule for an order—

(a) granting a licence,

(b) revoking any licence,

(c) revoking or [*] varying any conditions subject to which any licence has effect, or

(d) revoking or varying any of the provisions of a contract relating to any licence in so far as they relate thereto,

P[(e) granting a certificate of approval of a licence,] shall be rupees twenty in respect of each patent or registered design.

84-C. No order made by the Central Government under rule 84-B shall be held to be invalid by reason only that any decision as to enemy character. made for the purposes of the order that a particular person is an enemy or an enemy subject is wrong.]

PART XIII.

TRANSPORT.

85. [Cf. Eng. Def. R. 69.] (1) The Central Government may, with a view to facilitating any operations of His Majesty's forces to facilitate any operations of His Majesty's forces or the movement of persons or supplies in connexion with such operations, by general or special order—

(a) require any railway administration to give special facilities for the transport of such forces, persons or supplies as aforesaid;

(b) prohibit or restrict the use of any railway, port or aerodrome for such period as may be specified in the order.

(2) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to three years [or with fine or with both].

r[85-A. [Cf. Eng. Def. R. 69.] The Central Government may, by gene-

LEG. REF.

(o) The word "or" omitted by No. 5-DO (26)/43, dated the 8th May, 1943.

(p) Added by No. 5-DO (26)/43, dated the 8th May, 1943.

(q) Substituted by D. C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(r) Inserted by D. C. Dept. Notification

Control of carriage of goods by railways. ral or special order, direct any Railway Administration—

(a) to give special facilities or preference for the transport of specified goods or specified classes of goods, or

(b) to refuse to carry specified goods or specified classes of goods, either entirely or between specified points; and notwithstanding anything to the contrary contained in the Indian Railways Act, 1890, a Railway Administration shall be bound to comply with any directions given to it under this rule.]

Control of persons of carriage by railways. [85-B. [Eng. Def. R. 69.] (1) The Central Government or the Provincial Government may by order—

(a) require that any specified person or class of person, or persons proposing to travel to specified destinations shall not be carried on a railway; and

(b) prohibit the travelling by railway of any specified person or class of persons.

(2) Notwithstanding anything to the contrary contained in the Indian Railways Act, 1890, a railway administration shall be bound to comply with any order made under clause (a) of sub-rule (1).

(3) If any person contravenes any order made under clause (b) of sub-rule (1), he shall be punishable with imprisonment for a term which may extend to three years [†][or with fine or with both].]

Prohibition of improper travelling on trains. 85-C. (1) No passenger shall travel on the roof, steps or foot-board of any carriage or an engine or in any other part of a train not intended for the use of passengers.

(2) If any person contravenes the provisions of sub-rule (1) he may be removed from the railway by any railway servant or police officer and shall also be punishable with imprisonment for a term which may extend to six months or with fine or with both.] (Inserted by 5 DC. (80) [44.])

36. [Cf. Eng. Def. R. 74.] (1) Without prejudice to any order made under sub-rule (1) of rule 60 or to the provisions of any other of these Rules, the Central Government may by order make provision—

Control of traffic at ports and aerodromes. (a) for prohibiting, restricting or otherwise controlling the shipping or unshipping of persons, animals or goods or any specified class of persons, animals or goods [* * * *];^u

(b) for prohibiting, restricting or otherwise controlling the embarking on or putting on board aircraft, or the disembarking or unloading from aircraft, of persons, animals or goods, or any specified class of persons, animals or goods, [* * * *];^u

(c) generally for regulating, facilitating, or expediting any form of traffic at or in ^u[or in the vicinity of], any port or aerodrome.

(2) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to three years [†][or with fine or with both].

37. (1) The appropriate authority may, for the purpose of preventing or avoiding any undue congestion at any port or aerodrome or on any railway premises, cause to be removed therefrom, and kept at such places as that authority thinks proper, any goods which are not re-

LEG. REF.
No. 290-OR/39, dated the 27th November, 1939.

(s) Inserted by D. C. Dept. Notification No. 378-OR/40, dated the 6th April, 1940.

(t) Substituted by D. C. Dept. Notification No. 701-OR/41, dated the 15th Febru-

ary, 1941, for the words "and shall also be liable to fine."

(u) Omitted and inserted and substituted by D. D. No. 5 D. C. (64) [44] dated 29th April, 1944, *Gazette of India*, Pt. I, Sec. I, p. 562.

moved with reasonable despatch by or on behalf of the consignee.

(2) The cost of the removal and custody of any goods under sub-rule (1) shall be recoverable from the consignee as an arrear of land revenue by the appropriate authority, which for the purposes of such recovery shall be deemed to be a public officer within the meaning of section 5 of the Revenue Recovery Act, 1890.

(3) For the purposes of this rule, the expression "appropriate authority" means—

(a) in respect of a port, the port authority of the port, or any person authorised by that authority ^{u.1}[or by the Central Government] in this behalf;

(b) in respect of an aerodrome, the Director of Civil Aviation;

(c) in respect of any railway premises, the officer authorised in this behalf by the railway administration concerned.

^{u.2}[87-A. (1) Where any goods have been landed at a port and are not removed therefrom by the consignee or other person entitled to the goods within such time as may be specified in this behalf by the authority, that authority may, if it considers necessary so to do for relieving congestion ^v[at the port,—

(a) where the consignee or other person entitled to the goods is in India and his address is known to the ^{u.1}[appropriate authority] cause the goods to be forwarded to him at his risk and expense without waiting for his instructions;

(b) sell by public auction] or otherwise the whole or any parts of the goods.

(2) The proceeds of every sale under sub-rule (1) shall be applied and the surplus, if any, disposed of, by the ^{u.1}[appropriate authority] as if the goods had been sold for the recovery of charges ^{u.1}[payable to the port authority] in respect thereof].

[(3) For the purposes of this rule, the expression 'appropriate authority' means the port authority or any persons authorised by the Central Government in this behalf.] (D. D. No. 5-D.C. (64)44, dated the 29th April, 1944, Gazette of India, Pt. I, S. 1, p. 562).

88. [Cf. Eng. Def. R. 76.] ^w[(1) If it appears to the Central Government to be necessary or expedient so to do for securing the defence of British India or the efficient prosecution of war, or for maintaining supplies essential to the life of the community, the Central Government may by notified order declare that such restrictions imposed by or under any law for the time being in force as may be specified in the order shall not apply to the loading, unloading, handling, storage, conveyance ^x[or importation] of ammunition, explosives or inflammable substances in the service of His Majesty, or under instructions given on behalf of Government, or for purposes of defence, or in such other circumstances, as may be specified in the order.]

(2) When a declaration has been made under sub-rule (1), the Central Government may by order make such provision as appears to it to be required in the interests of safety for regulating the loading, unloading, handling, storage, and conveyance of ammunition, explosives and inflammable substances to which the declaration applies.

LEG. REF.

(u.1) Vide footnote (u), p. 418.

(u.2) Inserted by D.C. Dept. Notification No. 1268-OR/42, dated the 5th March, 1942.

(v) Substituted by D. Dept. Notification No. 1561-OR/42, dated by 5th September 1942, for the words "at the port, sell by public auction".

(w) Substituted by D.C. Dept. Notification No. 863 OR/41, dated the 2nd August 1941, for sub-rule (1) which substituted the original sub-rule by D.C. Dept. Notification No. 496 OR/40, dated the 20th June, 1942.

(x) Substituted by No. 5-DG (18)43, dated the 3rd April, 1942.

γ[(3) The Chief Inspector of Explosives in India may, if it appears to him necessary or expedient so to do for any of the purposes mentioned in sub-rule (1), authorise in special cases the relaxation or modification of any restrictions imposed by or under any law on the loading, unloading, handling, storage or conveyance of ammunition, explosives or inflammable substances.]

[(4) If any person contravenes any order made under sub-rule (2) he shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.] (*Gazette of India*, Pt. I, S. 1, p. 238).

z[88-A. (1) It it appears to the Central Government to be necessary or expedient so to do for securing the defence of British India or the efficient prosecution of war, the Central Government may by notified order declare that nothing in any restriction imposed by or under any law for the time being in force shall apply to, or to the driver or person in charge of, any vehicle or class of vehicles which is the property of the Central Government in the Defence Department or which is otherwise in the service of His Majesty for purposes of defence a[or which is engaged in any such work as may be specified by the Central Government].

(2) When a declaration has been made under sub-rule (1), the Central Government may by order make such provision as appears to it to be required in the interests of safety for regulating the use of the vehicle or class of vehicles to which, or the qualifications or conduct of the driver or person in charge to whom, the declaration applies.]

Control of b[road and water transport].

89. [Cf. Eng. Def. R. 70.] (1) In this rule—

(a) “vehicle” means any vehicle used, or capable of being used, for the purpose of road transport, whether propelled by mechanical power or otherwise, and whether used for drawing other vehicles or otherwise, and includes a tramcar and a trolley-vehicle;

(b) “animal” means any animal used, or capable of being used, for the transport of persons or goods;

c[(c) ‘water transport’ means transport on inland waterways d[or tidal waters or along the coast].]

(2) Without prejudice to any other provision of these Rules, the Central Government or the Provincial Government may [by general or special order]*

(a) regulate, restrict or give directions with respect to, the use of any animal or vehicle for the purpose of road transport, or the sale or purchase of any animal or vehicle;

(b) require any person owning, or having in his possession or under his control, any animal or vehicle to make to any person specified in this behalf a return giving such particulars as may be specified in the order with regard to such animal or vehicle and require such return to be verified in such manner as may be specified in the order;

(c) require any person owning, or having in his possession or under his control, any animal or vehicle to give notice in such manner as may be speci-

LEG. REF.

(y) Added by D. Dept. Notification No. 1506 OR/42, dated the 3rd October, 1942. Original sub-rule (3) of rule 88 was omitted by D. C. Dept. Notification No. 496-OR/40, dated the 19th April, 1941.

(z) Inserted by D.C. Dept. Notification No. 262-OR/39, dated the 28th. September 1940.

(a) Inserted by D.C. Dept. Notification No. 817-OR/41, dated the 7th June 1941.

(b) Substituted by D. C. Dept. Notification No. 409-OR/40, dated the 12th April 1941, for the words “road transport”.

(c) Inserted by *ibid*.

(d) Inserted by D.C. Dept. Notification No. 1331-OR/42, dated the 11th April 1942.

* Substituted by S.D.C. (78)/44, dated 26th August 1944.

R. 89 (2) (i): DELEGATION.—Under S. 2 (5) which is independent of S. 2 (3) and is not governed by any of its provisions, the Provincial Government has power to delegate the powers conferred upon it by R. 89 (2) (i) to the Provincial and Regional Transport authorities constituted under the Motor Vehicles Act, 1939. (1943) 2 M.L.J. 429 =1944 Mad. 135=56 L.W. 621.

fied in the order before disposing thereof or allowing it to pass out of his possession or control;

(d) require any person owning, ^{d.1}[or employed in connexion with], or having in his possession or under his control, any animal or vehicle to comply with any directions given by any person specified in, or duly authorised in pursuance of, the order; and such directions may require the person owning ^{d.1}[or employed in connexion with], or having in his possession or under his control, any animal or vehicle to use such animal or vehicle for the conveyance of such persons or goods at such time and by such routes as may be set forth in the directions;

(e) prescribe the conditions subject to which, and the rates at which, any animal or vehicle may be hired for the purpose of road transport and persons or goods may be carried by road, and the conditions subject to which goods so carried or to be carried may be discharged or loaded;

(f) provide for prohibiting or restricting the carriage of persons or goods of any class by road and for prescribing the radius or distance within which persons or goods of any class may be carried by road;

^e[(ff) provide for prohibiting any person or class of persons from travelling by any vehicle or class of vehicles;]

(g) provide for the giving of directions with respect to the carriage of persons or goods on any particular vehicle, or by any particular route, or to any particular clearing house or depot;

^f[(gg) provide for prohibiting or restricting the carriage of persons or goods by any vehicle or class of vehicles, either generally, or between any particular places or on any particular route;]

(h) provide for the regulation of the priority in which persons and goods are to be carried by road and vehicles are to be used for the purpose of road transport;

(i) make such other provisions in relation to road transport as appear to that Government to be necessary or expedient for ^g[securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community].

^h[(3) If any police officer or any other person authorised by the Central Government or the Provincial Government in this behalf has reason to believe that any animal or vehicle is, or is kept, in or upon any building, land or other premises, or is being used by any person in contravention of an order made under sub-rule (2), such officer or person may—

(i) enter and search such building, land or other premises, and seize any animal or vehicle found therein or thereon which he suspects to be therein or thereon in contravention of the order;

(ii) stop such person and seize any animal or vehicle which is being used in contravention of the order.

(4) The Central Government or the Provincial Government may declare any animal or vehicle seized in pursuance of sub-rule (3) to be forfeited to His Majesty and thereupon such animal or vehicle shall be disposed of in such manner as may be ordered by that Government.]

¹[j (5) The provisions of ^k[sub-rules (2), (3) and (4)] shall also apply

LEG. REF.

(d.1) Inserted by D.C. Dept. Notification No. 409-OR/40, dated the 12th April 1941.

(e) Inserted by D. C. Dept. Notification No. 409-OR/40, dated the 12th April 1941.

(f) Inserted by D. C. Dept. Notification No. 1174-OR/41, dated the 23rd December, 1941.

(g) Substituted by D. C. Dept. Notification No. 409-OR/40, dated the 12th April

1941, for the words "the regulation of traffic on highways".

(h) Inserted by D. C. Dept. Notification No. 1389-OR/42, dated the 8th May 1942.

(i) Inserted by D. C. Dept. Notification No. 409-OR/40, dated the 12th April 1941.

(j) Re-numbered for sub-rules (2.A) and (3) by D.C. Dept. Notification No. 1389-OR/42, dated the 8th May 1942.

(k) Substituted by D. C. Dept. Notification No. 1389-OR/42, dated the 8th May

in relation to water transport and vessels used or capable of being used for the purpose of water transport as they apply in relation to road transport and vehicles.]

k-1[(6)] If any person contravenes any order made in pursuance of this rule, he shall be punishable with imprisonment for a term which may extend to six months [or with fine or with both].

89-A. (1) The provisions of this rule shall apply only in such localities as the Provincial Government may by notified order specify in this behalf.

(2) In any locality where this rule applies, the driver of any vehicle—

(a) shall comply with all directions given him by any member of the military police in uniform who is for the time being engaged in the regulation of traffic in any public place, and belongs to His Majesty's Forces;

(b) shall cause the vehicle to stop and remain stationary so long as may reasonably be necessary when required to do so by any such member as aforesaid;

(c) shall give his name and address, and the name and address of the owner of the vehicle, when required to do so by any such member as aforesaid.

Explanation.—References in this sub-rule to His Majesty's forces shall not be deemed to include any of the Allied forces.

(3) If any person contravenes the provisions of sub-rule (2) he shall be punishable with fine which may extend to two hundred rupees. (*Gazette of India*, Pt. I, Sec. 1, dated 28th April, 1945, p. 520).

PART XIV.

FINANCIAL PROVISIONS. [Cf. ENGLISH DEFENCE FINANCE REGULATIONS.]

Prohibitions regarding coin and notes.

90. m[(1) in this rule,—

(i) the expression "coin" means coin which is legal tender under the Indian Coinage Act, 1906;

(ii) the expression "note" means a Reserve Bank of India note, a currency note of the Government of India, or a Government of India one rupee note issued under the Currency Ordinance, 1940.]

(iii) n[the expression "small coin" means any coin other than a rupee.]

(2) No person shall—

(a) buy or sell, or offer to buy or sell, for an amount other than its face value, any coin or o[note];

(b) accept or offer to accept, in payment of a debt or otherwise, any p[*] coin or note for an amount other than its face value;

q[or;

(c) refuse to accept, in payment of a debt or otherwise, any p[*]coin or

LEG. REF.

1942, for the word, brackets and figure "sub-rule (2)".

(k-1) *Vide* footnote (j) on page 421.

(l) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(m) Substituted by D.C. Dept. Notification No. 494-OR/40, dated the 31st August 1940, for the original sub-rule (1) as amended by D.C. Dept. Notification No. 494-OR/40, dated the 25th July, 1940.

(n) Inserted by D.C. Dept. Notification No. 5-DC (21)/43, dated the 17th April 1943.

(o) Substituted by *ibid.*, for the words Reserve Bank of India note or currency note of the Government of India.

(p) The word "such" omitted by D. C.

Dept. Notification No. 494-OR/40, dated the 31st August 1940.

(q) Inserted by D.C. Dept. Notification No. 494-OR/40, dated the 10th June 1940.

R. 90 (2) (a): INTERPRETATION—PRINCIPLES.—The requirements of each individual will vary according to a variety of circumstances. The Court would have to take note of all these and then decide whether the coins recovered is out of proportion to the "personal or business requirements" of the accused "for the time being" as necessarily to lead to the inference that he was defying the law. While this aims to protect society, it makes a serious inroad upon individual liberty and as such has to be construed strictly. 1944 A.L.W. 257.

R. 90 (2) (c).—R. 90 (2) (c) cannot be

note];

[or;

(d) acquire coin to an amount in excess of his personal or business requirements for the time being which, in the case of an acquisition of coin from any Currency Office, Treasury, Sub-Treasury or branch of the Imperial Bank of India doing treasury business, shall be determined by the officer in charge of such Currency Office, Treasury, Sub-Treasury or branch whose determination shall be final and shall not be called in question in any legal proceeding;] or

LEG. REF.

(r) Inserted by D. C. Dept. Notification No. 494-OR/40, dated the 25th June 1940.

interpreted literally. The drafting of the rule leaves much to be desired and if strictly enforced it might become an engine of great oppression. 1944 A.M.L.J. 9.

R. 90 (2) (c) is, on the face of it hastily and inappropriately drafted and could not under any circumstances be given effect to literally without causing very serious miscarriages of justice. The adverb "unreasonably" must be understood between the words "shall" and "refuse" in the expression "shall refuse to accept" in that rule. 1943 A.M.L.J. 65.

REFUSAL TO ACCEPT A RUPEE NOTE IN PAYMENT FOR GOODS WORTH THREE ANNAS.—Cl. (c) of R. 90 (2) does not penalise a shop-keeper who refuses to accept a rupee note in payment for goods worth three annas. He is not obliged to part with his goods unless there is a tender of the price. A tender of a rupee note for goods worth three annas is not a tender or offer of the price of the goods, and there is no obligation on his part to give change. 1944 N. L.J. 98.

GOODS WORTH LESS THAN ONE RUPEE PURCHASED AND ONE RUPEE NOTE OFFERED.—SHOP-KEEPER REFUSING TO ACCEPT NOTE ON GROUND THAT HE HAD NO CHANGE IS NO OFFENCE.—R. 90 (2) (c) makes it an offence for a person to refuse to accept that whole of a rupee or a note or other coin as legal tender. It implies that a person may refuse to accept a legal tender on the ground that he does not consider it as valuable as its face value indicates, and it is to avoid such consequence that the act has been made punishable. Where goods worth less than one rupee are purchased and one rupee note is offered and the shop-keeper refuses to accept the note not on the ground that he thought that the note was not worth the price which it was supposed normally to fetch but on the ground that he had no change he does not commit any offence. There is no law by which a shop-keeper is bound to keep enough change to give to the customer in exchange for rupee notes and a shop-keeper would be perfectly within his rights to say to a customer that he should bring small coins if he wishes to buy stuff worth less than Re. 1. A tender of a rupee note for goods worth less than a rupee is not a tender or offer of the price of the goods, and there is

no obligation on the part of a shop-keeper to give change. A.I.R. 1944 Pesh. 41.

R. 90 (2) (d): SCOPE—ACQUIRING OF COINS BEFORE DATE OF RULE AND KEEPING SAME AFTER THAT DATE.—There is no indication in R. 90 (2) (d), which forbids a person from acquiring coins in excess of his requirements, from which the Court can infer that it is intended to strike at past acquisitions. The rule only forbids acquisitions from the date on which it came into force. What the rule strikes at is the acquisition from and after the date of the rule and not the continuing to keep or retain possession of coins already acquired. 22 Pat. 423=1943 Pat. 361.

MERE HOARDING OF COINS—FACTS TO BE PROVED TO SUSTAIN CHARGE.—Mere hoarding of coins is not an offence under sub-cl. (d) of sub-rule (2). It is only those who acquired coins in contravention of the sub-cl. (d) that are liable to punishment. In order to prove a charge under the sub-clause the prosecution must prove by direct or circumstantial evidence that the accused had acquired coins in excess of his personal or business requirements. The word 'acquire' in the sub-clause is obviously intended to mean 'to get actively into one's possession' and has not been used in the sense of hoarding. 1943 All. 329=43 I.L.R. (1943) A. 786; see also 56 L. W. 646=(1943) 2 M.L.J. 500=1944 M. 125.

R. 90 (2).—Under S. 12 (1), Coinage Act III of 1906, read with S. 2 of Ordinance IV of 1940, a rupee note is legal tender in payment or on account. But a tender of a rupee note for goods worth three annas is not a tender or offer of the price of the goods, and there is no obligation on the part of a shop-keeper to give change. If a shop-keeper acquires or possesses small coin in excess of his personal or business requirements he may be prosecuted under cl. (d) or cl. (e) of R. 90 (2). A.I.R. 1944 Nag. 131 at p. 136.

R. 90 (2) (d) AND (3): GIST OF OFFENCE ACQUIRING OF COINS.—The acquiring of coins by a merchant by vending his articles is not prohibited, but what is prohibited is the acquiring of coins beyond a particular limit. If a merchant has been acquiring from his customers more coins than what are reasonably required for his purpose and keeps them without giving change to his customers or changing them into notes, that amounts to acquiring more coins than what he can do under the law in force punishable under the Defence

(e) ^s[possess small coin to an amount in excess of his personal or business requirements for the time being].

(3) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to five years ^t[or with fine or with both].

^u[90-A. (1) The Central Government may, if it is of opinion that it is expedient so to do for the purpose of controlling the price of ^{*}[gold or silver] in British India, impose on any person authorised to import ^{*}[gold or silver] into British India such conditions as it thinks fit regarding the use or disposal of, or dealings in, ^{*}[gold or silver] imported in pursuance of such authorisation.

(2) If any person contravenes any of the conditions imposed under sub-rule (1) he shall, without prejudice to any other action that may be taken against him, be punishable with imprisonment for a term which may extend to five years ^{u.1}[or with fine or with both].

^v[90-B. [Cf. Eng. Def. Fin. R. 3.] (1) In this rule "money" means any coin ^w[other than a gold coin], or currency note which is legal tender in British India or elsewhere, and includes bills of exchange; ^w[and "gold"]

LEG. REF.

(s) Added by D. C. Dept. No. 5-DC (21)|43, dated the 17th April, 1943.

(t) Substituted by D.C. Dept. Notification No. 701-OR|41, dated the 15th February, 1941, for the words "and shall also be liable to fine".

(u) Inserted by Finance Dept. Notification No. 7773-F., dated the 18th December 1939.

^{*} Substituted by No. 5 D.C. (81)|44, dated 16th November, 1944.

(w-1) Substituted by D. C. Dept. Notification No. 701-OR|41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(u) Inserted by D. C. Dept. Notification No. 1268-OR|42, dated the 5th March, 1942.

(v) Inserted by D.C. Dept. Notification No. 591-OR|40, dated the 2nd November, 1940.

(w) No. 860-OR|41, dated the 4th December, 1943.

of India Rules. It is the duty of every person to see that he does not retain with him more change than what is necessary for his requirements, and if he does it, he does so at his peril. (1943) 2 M.L.J. 280=56 L. W. 488.

R. 90 (2) (d): INTENTION OF.—The intention of R. 90 (2) (d) is that the currency officer is entitled to determine how much money he should pay to any person and if the sum is a large one no other person shall thereafter be in a position to say that it was in fact in excess of the need of the person acquiring it. The Rule cannot be interpreted to mean that no one can take small change from the Currency Office unless he had personally obtained the authority of the Currency Officer. 1944 A.L.J. 320=1944 A. W.B. (H.C.) 180 (2).

"ACQUIRE"—MEANING OF—PRESUMPTION

FROM POSSESSION—INGREDIENTS OF OFFENCE.

—The word "acquire" in R. 90 (2) (d) is not equivalent of "being in possession" but means "to seek". If a person makes an effort to get or obtain anything, he may be said to have acquired it, but if he gets it without any effort, physical or mental on his part, he cannot be said to have acquired that particular thing. There must therefore be a conscious effort to acquire "coins" as such. In order to find a man guilty of an offence under this Rule, it is the duty of the prosecution to show not only that the accused was on a particular date in possession of coins but also that he had made an effort to seek or get them as coins. No presumption can be raised against the accused from the fact that they were found in his possession. The prosecution must further show that the accused had acquired coins to an amount in excess of his personal or business requirements and that he had done so after these rules had come into force. The rules cannot be held to be retrospective in effect. 212 I.C. 279=A.I.R. 1944 Lah. 113.

RR. 90 (2) (d) AND 90 (3): STATIONERY SHOP-OWNER ACQUIRING SMALL CHANGE AMOUNTING TO RS. 17 AND ODD.—It is not the acquisition of small change that is made an offence under the Defence of India Rules, but the acquisition beyond a particular limit, namely, beyond what is required for the daily needs of the business. Where most of the purchases made at a stationery shop were by litigants, school boys and sundry persons who may pay in rupee coins and expect to receive small coins as change, the possession in small coins by the shop-keeper amounting to Rs. 17 and odd, cannot be deemed to be in excess of his requirements. (1943) 2 M. L.J. 280 and A.I.R. 1943 All. 329, (Foll.). (1944) 1 M.L.J. 139=57 L.W. 106.

R. 90 (2) (e): IF *ultra vires*.—R. 90 (2)

means gold in the form of coin, whether legal tender or not, or bullion or ingot whether refined or not].

(2) No person shall, except with the permission of the Reserve Bank of India or of a person authorised in this behalf by the said Bank, take or send out of British India w[any money] in excess of such amount as may be specified in this behalf by the said Bank, w[or any gold].

*[(3) The restrictions imposed by sub-rule (2) on the export of money or gold shall be deemed to have been imposed under section 19 of the Sea Customs Act, 1878, and all the provisions of that Act shall have effect accordingly:

Provided that where in respect of any contravention of this rule the Customs-collector is of opinion that the penalties provided by the said Act are inadequate, he may make a complaint to a magistrate having jurisdiction; and the accused person shall, upon conviction, be punishable with imprisonment for a term which may extend to five years or with fine or with both, and the money or gold in respect of which the offence has been committed shall be confiscated to the Central Government and delivered to the Customs-collector for disposal.]

Control of dealings in
bullion.

¶[90-C. (1) In this rule—

LEG. REF.

(w) No. 860-OR/44, dated the 4th December, 1943.

(x) Substituted by D.C. Dept. Notification No. 860-OR/41, dated the 14th June 1941, for the original sub-rules (3), (4), (5), (6) and (7) of rule 90-B, as amended by D.C. Dept. Notification Nos. 701-OR/41 and 591-OR/40, dated the 15th February and 1st March 1941, respectively.

(y) Inserted by No. 5-DC (30)/43, dated the 29th May 1943, and amended by No. 5-D.C. (40)/43, dated the 5th August 1943; No. 5-DC (40)/43, dated the 24th September 1943 and No. 5-DC (40)/43, dated the 24th January 1944.

(e) is fully covered by the rule making power conferred by sec. 2 (xxix) of the Defence of India Act, and is not therefore *ultra vires*. 1944 N.L.J. 393. The Defence of India Act only permits the Central Government to make Rules controlling the use or disposal of, or dealings in coin. R. 90 (2) (e) provides for an offence for possession of small coin in excess of one's use. The latter rule cannot be said to be *ultra vires* because the "use" of coin was different from the "possession" of them. The use of current coin includes the possession of it. Possession of current coin is tantamount to the use of such coin. 1944 A.M.L.J. 15. See also 47 Bom.L.R. 644.

R. 90 (3): CONFISCATION OF COINS.—Magistrate has power to order confiscation of the hoarded coins in respect of which the accused is found guilty under sec. 30 (2). 1941 Bom. 412, Dist; 1944 Mad. 125=(1943) 2 M.L.J. 500=56 L.W. 646.

The requirements of each individual will vary according to a variety of circumstances. The Court would have to take note of all these and then decide whether the coins recovered is out of proportion to the 'personal or business requirements' of the accused 'for the time being' as necessarily to lead to the inference that he was defying the law. While this aims to protect society, it makes a seri-

ous inroad upon individual liberty and as such has to be construed strictly. 1944 A. L.W. 257.

CONFISCATION.—There is no provision in the Defence of India Rules authorising the Courts on a conviction (for fishing in the vicinity of the Madras harbour in contravention of the notification under the Defence of India Rules) to order the confiscation of the catamarans, nets, etc., used by the accused. (1944) 1 M. L.J. Notes of cases) p. 22.

R. 90-B (2) (3): OFFENCE—MONEY FOUND ON PERSON ON SEARCH IN EXCESS OF LIMIT PRESCRIBED—PERSON NOT ORDERED OR ASKED TO DECLARE DETAILS OF MONEY—CONVICTION—SUSTAINABILITY.—It is a condition precedent to liability under R. 90-B (3) (a), that the officer of Customs should order a person (such as traveller) to "declare with full details the money and gold which he had with him. Where there is no evidence of such an order having been made or even a request to the person concerned to make a declaration, he cannot be convicted under R. 90-B (3) (a) on the mere ground that on a search money in excess of the limit prescribed was found on his person. 43 Bom.L.R. 872=A.I.R. 1941 Bom. 412.

SEARCH—MONEY FOUND IN EXCESS OF LIMIT ALLOWED.—Where a person is properly searched by a Customs Officer under sub-R. (4) of R. 90-B, and such person is found to have in his possession money in contravention of R. 90-B (2) read with R. 121, the Customs Officer is entitled to seize the money in excess of that amount which is permitted to be carried. Money up to the limit permitted cannot be seized but must be refunded to the searched person. The excess found has, under R. 90-B (6), to be disposed of in such manner as the Central Government may direct. The money properly seized never becomes subject to the jurisdiction of the Court by which the person searched is tried for his offence, and the Court has no jurisdiction to make any order as to the disposal of such money. R. 90-B (6) prevails

- (a) 'bullion' means gold or silver bullion;
- (b) 'contract' means a contract made, or to be performed in whole or in part, in British India relating to the sale or purchase of bullion, and includes an option in bullion;
- (c) 'forward contract' means a contract for the delivery of bullion at a future date, such date being later than [seven] days from the date of the contract;
- (d) 'option in bullion' means a contract made, or to be performed in whole or in part, in British India for the purchase or sale of a right to buy, or a right to sell, or a right to buy or sell, bullion in future, and includes a *teji*, a *mandi* or *teji-mandi* in bullion.
- (2) No person shall enter into any forward contract or option in bullion.
- (3) If any person contravenes the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to five years or with fine or with both.]

Restriction on purchases of foreign exchange.

91. [Cf. Eng. Def. Fin. R. 2.] (1) For the purposes of this rule and of rule 92 the expression "foreign exchange" means—

- (a) any currency other than currency which is legal tender in British India ^a[* *] ^a[or in any Indian state],
- (b) any bill or promissory note, payable otherwise than in rupees, and
- (c) any credit or balance otherwise than in rupees.

(2) No person resident in British India shall acquire any foreign exchange, or transfer rupees, gold coin or bullion, or securities with a view, directly or indirectly, to the acquisition of any foreign exchange,

[except from a person authorised under sub-rule (4) by the Reserve Bank of India to deal in Foreign Exchange.] (5 D. C. (67) 44, *Gazette of India*, dated 10th June 1944, p. 775.).

(3) No person shall buy or borrow from, or sell or lend to, any person not authorised by the ^b[Reserve Bank of India] in this behalf, any foreign exchange, ^c[other than gold sovereign];

(4) The provisions of this rule shall not restrict the doing of anything, within the scope of his authority, by a person authorised ^d[by the Reserve Bank of India] to deal in foreign exchange, and shall not restrict the doing of anything which is authorised ^d[by the Reserve Bank of India] to be necessary for the purposes—

(a) of meeting the reasonable requirements of a trade or business carried on in India, or

(b) of performing a contract made before the 3rd September 1939, or

(c) of defraying reasonable travelling or other personal expenses.

(5) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term, which may extend to five years, ^e[or with fine or with both].

L.F.G. R.F.F.

(e) Omitted by No. 1427-OR/42, dated the 6th June 1942.

(a) Inserted by No. 5-DC (53) 43, dated the 1st January, 1944.

(b) Substituted by Finance Department Notification No. 123-S.R.B., dated the 4th September 1939, for the words "Central Government".

(c) Substituted by D.C. Dept. Notification No. 634-OR/41, dated the 4th January 1941, for the words "gold coin or bullion".

(d) Substituted by Finance Department, Notification No. 123-S.R.B., dated the 4th September 1939, for the words "by or on

behalf of the Central Government".

(e) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

over S. 517, Cr.P. Code. The Court has only jurisdiction to determine whether property has been rightly seized under R. 90-B

(4); but if it comes to the conclusion that the property was rightly seized, it has no jurisdiction to make any order as to its disposal. That is entirely a matter for the Central Government. 43 Bom. L.R. 872= A.I.R. 1941 Bom. 412.

92. [Cf. Eng. Def. Fin. R. 5.] f[(1) The Central Government may by notified order direct the owners of any such foreign exchange as is specified in the order to make a return to the Reserve Bank of India within such period, and giving such particulars as to the foreign exchange, as may be specified in the order.]

g[(2)] On the issue of a notification by the Central Government in this behalf, every person who owns any such foreign exchange as may be specified in that notification shall offer it, or cause it to be offered, for sale to the Reserve Bank of India on behalf of the Central Government at such price as the Central Government may from time to time fix:

Provided that—

(a) any person may be exempted from the operation of this rule by order of the Central Government, and

(b) any person, who satisfies the Reserve Bank of India that he requires the foreign exchange in question for any of the purposes specified in sub-rule (4) of rule 91 shall be exempt from the operation of this rule.

h[(3)] If any person contravenes the provisions of this rule, i[or any order made thereunder] he shall be punishable with imprisonment for a term which may extend to five years i-1[or with fine or with both].

Restrictions on payments, etc.

j[92-A. (1) For the purposes of this rule,—

(i) "sterling area" means His Majesty's dominions, excluding Canada, Newfoundland and Hongkong, the British protectorates and protected States, and such other territories as may be declared by the Reserve Bank of India to be included for the time being in the sterling area;

(ii) "security" includes shares, stock bonds, debentures, debenture stock, deposit receipts in respect of the deposit of securities, units or sub-units of a unit trust, coupons representing dividends or interest, and life or endowment assurance policies, but does not include bills of exchange and promissory notes;

(iii) "transfer" includes, in relation to any security, transfer by way of loan or security.

(2) Subject to any exemptions which may be granted by the Reserve Bank of India, no person resident in British India shall, except with the permission of the Reserve Bank of India,—

(a) draw, issue or negotiate any bill of exchange or promissory note, or acknowledge any debt, so that a right (whether actual or contingent) to receive a payment in India is created or transferred in favour of a person who is resident outside the sterling area; k* *

(b) make any payment to, or by the order or on behalf of, any such person;

l[(c) transfer any security, or create or transfer any interest in a security, to or in favour of any such person;

(d) transfer any security from a register in British India to a register outside the sterling area, or do any act which is calculated to secure or forms part of a series of acts which together are calculated to secure, the substitution for any security which is either in, or registered in, British India of any security which is either outside, or registered outside, the sterling area.]

LEG. REF.

(f) Inserted by D.C. Dept. Notification No. 510-OR/40, dated the 29th June, 1940.

(g) Original sub-rule (1) re-numbered as sub-rule (2) by *ibid.*

(h) Original sub-rule (2) re-numbered as sub-rule (3) by *ibid.*

(i) Inserted by D.C. Dept. Notification No. 1500-OR/42, dated the 18th July, 1942.

(i-1) Substituted by D. C. Dept. Notifi-

cation No. 701-OR/41, dated the 15th February, 1941, for the words "and shall also be liable to fine".

(j) Rules 92-A and 92-B inserted by D. C. Dept. Notification No. 931-OR/41, dated the 12th July, 1941.

(k) The word "or" omitted by D. Dept. Notification No. 1510-OR/42, dated the 25th July, 1942.

(l) Inserted by *ibid.*

(3) Subject to any exemptions which may be granted by the Reserve Bank of India, no person resident in British India shall, except with the permission of the Reserve Bank of India,—

(a) draw, issue or negotiate any bill of exchange or promissory note, transfer any security or acknowledge any debt, so that a right (whether actual or contingent) to receive a payment in India is created or transferred in favour of a person not resident outside the sterling area as consideration for, or in association with,—

(i) the receipt by any person of a payment, or the acquisition by any person of property, outside the sterling area, or

(ii) the creation or transfer, in favour of any person of a right (whether actual or contingent) to receive a payment, or acquire property, outside the sterling area; or

(b) make any payment to a person not resident outside the sterling area as such consideration or in such association as aforesaid.

m[(3-A) Where at any time the following conditions are fulfilled in the case of any individual, namely, that he is outside the sterling area and that either—

(a) he was on the third day of September, 1939, a British subject resident in British India and has not since that day been in India, or

(b) he is, by virtue of a direction given by the Reserve Bank of India under sub-rule (4) or under sub-rule (5), to be treated for the purpose of this rule as resident outside the sterling area, the Reserve Bank of India may give a direction to any bank that, until the direction is revoked, any sum from time to time standing to the credit of an account of that individual at any office or branch of that bank in British India specified in the direction shall not be dealt with except with permission granted by the Reserve Bank of India.]

(4) Where an individual has at any time since the third day of September, 1939, n[been] in British India,—

(a) until the Reserve Bank of India otherwise direct, he shall be treated for the purposes of this rule and of any order providing for exemptions from any of the provisions thereof, as having been, and as still being resident in British India and not resident outside the sterling area, and

(b) if any such direction is given, the Reserve Bank of India may, by the same or a subsequent direction, declare the territory in which, for those purposes, he is to be treated as being resident.

(5) In the case of any persons to whom sub-rule (4) does not apply, the Reserve Bank of India may give directions declaring the territories in which, for the purposes of this rule and of any order providing for exemptions from any of the provisions thereof, they are to be treated as being resident.

(6) Any direction given under o[sub-rule (3-A),] sub-rule (4) or sub-rule (5) may be either general or special, and may be revoked or varied by a subsequent direction thereunder.

(7) If any person contravenes the provisions of this rule he shall be punishable with imprisonment for a term which may extend to five years or with fine or with both.

(8) Nothing in this rule shall restrict the doing by a person authorised by or on behalf of the Reserve Bank of India of anything within the scope of his authority.

Blocked accounts.

92-B. (1) For the purpose of this rule,—

(i) the expression "blocked account" means an account blocked by an order of the Reserve Bank of India, or an account opened as a blocked account,

LEG. REF.

(m) Inserted by D. Dept. Notification No. 1510-OR/42, dated the 25th July, 1942.

(n) Substituted by D. Dept. Notification

No. 1510-OR/42, dated the 25th July, 1942, for the word "resided".

(o) Inserted by D. Dept. Notification No. 1510-OR/42, dated the 5th July, 1942.

at an office or branch in British India of a bank authorised by the Reserve Bank of India to open blocked accounts; and

(ii) the expression "the banker" means, in relation to any person, a banker who opens or keeps a blocked account in favour of that person.

(2) Where permission is granted by the Reserve Bank of India for the payment of any sum to any person resident outside the sterling area, but the permission is granted subject to the condition that the payment is made to a blocked account,—

(a) the manner in which the payment may be made shall be either—

(i) to the banker with a direction that it is to be credited to a blocked account of that person [which direction may, in the case of a payment by means of a cheque or warrant, be made by marking the cheque or warrant with the words 'blocked account of' (naming the person in question) or words to the same effect]; or

(ii) by a crossed cheque or warrant drawn in favour of that person, marked with the words, 'payable only to blocked account of payee' or words to the same effect;

(b) the sum collected shall be credited by the banker to a blocked account of that person; and

(c) the crediting of that sum to that account shall, to the extent of the sum credited, be a good discharge to the person making the payment.

(3) Subject to any exemptions which may be granted by order of the Reserve Bank of India, any sum standing to the credit of a blocked account shall not be dealt with except and in accordance with permission granted by the Reserve Bank of India.]

P[92-C. (1) If the Central Government is of opinion that it is necessary or expedient so to do for securing the defence of

Power to prohibit action on certain orders as to gold, etc.

British India or the efficient prosecution of war, the Central Government may give general or special

directions prohibiting, either absolutely or to such extent as may be specified in the directions, the carrying out of any order given by or on behalf of—

(a) any State which may be specified in the directions, the Sovereign thereof, or any person resident therein, or

(b) any body corporate which is incorporated under the laws of that State or is under the control of that State or the Sovereign thereof or any person resident therein, in so far as the order—

(i) requires the person to whom the order is given to make any payment or to part with any gold or securities, or

(ii) requires any change to be made in the persons to whose credit any sum is to stand or to whose order any gold or securities are to be held.

(2) If any person contravenes any direction given under this rule, he shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.]

92-D. [Cf. Eng. Def. Fin. R. 5-B] a[(1) Where any goods have been exported from British India to any territory in respect

Requirements as to payment for goods exported to certain territories.

of which an order has been issued by the Central Government under sub-rule (3) of rule 84 prohibiting the export of any goods to that territory unless

a declaration is furnished to the Collector of Customs by the exporter that foreign exchange representing the fair market value of the goods at the port of embarkation has been or will be disposed of in a manner and within a period approved by the Reserve Bank of India, no person entitled to sell, or to procure the sale of,

LEG. REF.

(q) Inserted by D. Dept. Notification No.

(p) Inserted by D. C. Dept. Notification No. 958-OR/41, dated the 28th July, 1941.

1510-OR/42, dated the 25th July, 1942.

the said goods, shall, except with the permission of the Reserve Bank of India, do or refrain from doing, any act with intent to secure that—

(a) the sale of the goods is delayed to an extent which is unreasonable having regard to the ordinary course of trade; or

(b) payment for the goods is not made to a person resident in the sterling area as defined in rule 92-A, or is made in a manner other than that approved by the Reserve Bank, or does not represent the full value of the goods, subject to such deductions, if any, as may be allowed by the Reserve Bank, or is delayed to such an extent as aforesaid.

(2) Where in relation to any such goods the said period has elapsed and the goods have not been sold and payment therefor has not been made as aforesaid, the Reserve Bank of India, may give to any person entitled to sell the goods, or to procure the sale thereof, such directions as appear to the Reserve Bank to be expedient for the purpose of securing the sale of the goods and payment therefor as aforesaid, and, without prejudice to the generality of the foregoing provisions of this paragraph, may direct that the goods shall be assigned to the Central Government or to a person specified in the directions.

(3) Where any goods are assigned in accordance with sub-rule (2), the Central Government shall pay to the person assigning them such sum in consideration of the net sum recovered by or on behalf of the Central Government in respect of the goods as may be determined by or on behalf of the Central Government.

(4) If any person contravenes any of the provisions of this rule or any directions given thereunder he shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.]

Restriction on purchases and export of securities. 93. (1) For the purposes of this rule and rule 94—

(i) the expression "securities" includes shares, stock, bonds, debentures and debenture stock but does not include bills of exchange, and

(ii) the expression "export", in relation to securities, includes the transfer thereof from a register in India to a register outside India or Burma.

(2) No person shall, except with the permission of the Reserve Bank of India or in the performance of a contract made before the 3rd September 1939 acquire any securities from a person not resident in India or Burma.

(3) No person shall, except with the permission of the Reserve Bank of India, export securities to any place outside India [* *].

(4) If any person contravenes the provisions of this rule, he shall be punishable with imprisonment for a term, which may extend to five years, or with fine or with both].

93-A. (1) No person shall buy or sell, or offer to buy or sell, whether on behalf of himself or of any other person, any Government security as defined in section 2 of the Indian Securities Act, 1920, at less than such price as the Central Government may notify in this behalf.

(2) If any person contravenes the provisions of this rule he shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.]

Acquisition by the Central Government of foreign securities.

94. (1) For the purposes of this rule—

LEG. REF.

(r) Substituted by Finance Department Notification No. 123-S.R.B. dated the 4th Sept., 1939, for the words "Central Government."

(s) Omitted by order dated 31st August 1943.

(t) Substituted by D. C. Dept. Notification No. 701-OR/41, dated the 15th February, 1941, for the words "and shall also be liable to fine".

(u) Inserted by D. C. Dept. Notification No. 1257-OR/42, dated the 2nd March, 1942.

(i) "foreign security" means a security issued in any country other than India u-1[* *];

(ii) "owner", in relation to any security, includes any person who has power to sell or transfer a security, or who has the custody thereof, or who receives, whether on his own behalf or on behalf of any other person, dividends or interest thereon, or who has any interest therein.

(2) The Central Government may, by notified order, direct the owners of any foreign securities specified in the v[order] to make a return to the Reserve Bank of India, within such period and giving such particulars as to those securities, as may be specified in the order.

(3) The Central Government may, if it is of the opinion that it is expedient so to do for the purpose of strengthening its financial position, w[by notified order transfer to itself any foreign securities], specified in the order at a price so specified being a price which in the opinion of the Central Government, is not less than the market value of the securities on the date of the order.

(4) On the making of an order under sub-rule (3)—

(a) the securities to which the order relates shall forthwith vest in the Central Government free from any mortgage, pledge or charge, and the Central Government may deal with them in such manner as it thinks fit;

(b) the owner of any of the securities to which the order relates and any person who is responsible for keeping any registers or books in which any of those securities are registered or inscribed, or who is otherwise concerned with the registration or inscription of any of those securities, shall do all such things as are necessary, or as the Central Government or the Reserve Bank of India, on behalf of the Central Government, may order to be done, for the purpose of securing that the securities and any documents of title relating thereto are delivered to the Central Government and, in the case of registered and inscribed securities, that the securities are registered or inscribed in the name of the Central Government.

(5) A certificate signed by any person authorised in this behalf by the Central Government that any specified securities are securities transferred to the Central Government under this rule, shall be treated by all persons concerned as conclusive evidence that the securities have been so transferred.

(6) The provisions of this rule shall not apply to any security in respect of which the Central Government is satisfied that at all times since the 3rd September, 1939, all persons interested in the security, other than persons interested therein merely as trustees or merely by virtue of any mortgage, pledge or charge, but including any persons beneficially interested therein under the trust, were not resident in British India.

(7) If any person contravenes any of the provisions of this rule x[or any order made thereunder] he shall be punishable with imprisonment for a term which may extend to five years y[or with fine or with both].

Control of capital issues.

[94-A. (1) For the purpose of this rule—

(a) securities shall mean the following instruments issued or to be issued by or for the benefit of a company, viz., (i) shares, stocks and bonds, (ii) debentures, (iii) other instruments creating a charge or lien on the assets of the company, and (iv) instruments acknowledging loan to or indebtedness of the company and guaranteed by a third party or entered into jointly with a third party;

LEG. REF.

(u-1) Omitted by order, dated 31st August 1943.

(v) Substituted by D. C. Dept. Notification No. 664-OR/41, dated the 25th January, 1941, for the word "notification".

(w) Substituted by *ibid.* for the words "by order transfer to itself any such foreign securities as aforesaid".

(x) Inserted by D. C. Dept. Notification No. 1500-OR/42, dated the 18th July, 1942.

(y) Substituted by D. C. Dept. Notification No. 701-OR/41, dated the 15th February, 1941, for the words "and shall also be liable to fine".

(z) D.D. Notification No. 5-DC (27)/43, dated 17th May, 1943.

(b) a person shall be deemed to make an issue of capital who issues any securities whether for cash or otherwise.

(2) (a) No company whether incorporated in British India or not, shall except with the consent of the Central Government—

(i) make an issue of capital in British India;

(ii) make in British India any public offer of securities for sale;

(iii) renew or postpone the date of maturity or repayment of any security maturing for payment in British India;

(b) the Central Government may on application make an order according recognition to an issue of capital made or to be made outside British India by a company not incorporated in British India.

(3) The Central Government may qualify any consent or recognition accorded by it under sub-rule (2) with such conditions whether for immediate or future fulfilment, as it may think fit to impose; and where a company acts in pursuance of such consent or recognition, it shall comply with the terms of any condition so imposed.

(4) No company incorporated in British India shall, except with the consent of the Central Government, make an issue of capital outside British India.

(5) No person shall issue in British India any prospectus or other documents offering for subscription or publicly offering for sale any security, which does not include a statement that the consent or recognition, as the case may be, of the Central Government has been obtained to the issue or the offer of the securities;

[And no person shall without the consent of the Central Government issue in British India any document publicly offering for sale any security issued with the consent or recognition of the Central Government if such issue was made by a private company or if the order according it consent or recognition, contained a condition that the securities should be privately subscribed.] [*Fort St. Geo. Gaz. Rules Supplement to Part I, dated 13th Feb., 1945, pp. 1-2; also Gaz. of India, Pt. I, S. 1, 27th January, 1945, p. 112.*]

(6) The Central Government may by order condone a contravention of sub-rule (2), sub-rule (4) or sub-rule (5) and on the making of such order the provisions of this rule shall have effect as if an exemption had been granted under this rule from the operation of sub-rule (2), sub-rule (4) or sub-rule (5) as the case may be, in favour of the thing done in contravention of such sub-rule.

(7) No person shall accept or give any consideration for any securities in respect of an issue of capital made or proposed to be made in British India or elsewhere unless the consent or recognition of the Central Government has been accorded to such issue of capital.

(8) No person shall sell or purchase or otherwise transfer or accept transfer of any securities issued by a company in respect of any issue of capital made after the 17th May, 1943, in British India or elsewhere unless such issue has been made with the consent or recognition of the Central Government.

[(8-A) Any person authorised in this behalf by the Central Government may, for the purpose of enquiring into the correctness of any statement made in an application for consent or recognition to an issue of capital or of ascertaining whether or not the requirements of any condition attached to an order according such consent or recognition have been complied with—

(a) require any company or any officer of a company which has made such application or obtained such order to submit to him such accounts, books or other documents or to furnish to him such information as he may reasonably think necessary, or

(b) at any reasonable time enter any office, factory, land or other premises occupied by such company and inspect the office, factory, land or other premises and require any person found therein who is for the time being in charge thereof to produce to him and allow him to examine such accounts, books, or other documents as may relate to the business of the company or to furnish to him such

information as he may reasonably think necessary".] (*Gazette of India*, Pt. I, Sec. 1, dated 31—3—1945, p. 380.)

(9) The Central Government may, by special or general order, grant exemption from all or any of the provisions of this rule.

(10) If any person contravenes the provisions of this rule he shall be punishable with imprisonment for a term which may extend to five years or with fine or with both.] (Rule 94-A, substituted by 5 D.C. (68) 44, *Gazette of India*, Extraordinary, dated 9th June, 1944, at page 1087-88.)

d[94-B. (1) The Central Government may, if it appears to it to be necessary or expedient for securing the efficient prosecution of war or for maintaining supplies and services essential to the life of the community, by notified order,

Power to prohibit advances against specified commodities.

(i) prohibit or restrict, either generally or in respect of any specified class of persons or any specified class of transactions, the making of advances of money on the security of such commodities (including bullion) as may be specified in the order, and

(ii) require the repayment of any such advances outstanding on the date of the order within a specified period.

(2) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.]

Prohibition of budla.

e[94-C. (1) In this rule—

(a) budla includes a contango and a backwardation and any other arrangement whereby the performance of any obligation under a contract to take or give delivery of securities within a stipulated period is postponed to some future date in consideration of the payment or receipt of interest or other charges;

(b) 'contract' means a contract made, or to be performed in whole or in part, in British India relating to the sale or purchase of securities;

(c) 'ready-delivery contract' means a contract which must be performed by the actual delivery of, or payment for, the securities specified therein on a date not later than the seventh day (or, if the seventh day happens to be a holiday, the business day next following) from the date of the contract;

(d) 'securities' include stocks, shares, bonds, debentures and debenture stock and any other instrument of a like nature;

(e) 'Stock Exchange' means any association, organization or body of individuals, whether incorporated or not, established for the purpose of assisting, regulating and controlling business in buying, selling and dealing in securities;

(2) No stock exchange shall, after the 24th September, 1943, permit or afford facilities for—

(a) the transaction of budla;

(b) the making of any contract other than a ready-delivery contract;

or
(c) the carrying out or settlement of any budla transaction or any contract other than a ready-delivery contract.

(3) Any Director, Manager, Secretary or other officer of a Stock Exchange who contravenes any of the provisions of this rule shall be punishable with imprisonment for a term which may extend to five years or with fine or with both.]^d

e-1[(4) The Central Government may, by order, authorise, subject to such conditions, if any, as it may impose, any Director, Manager, Secretary or other officer of a Stock Exchange to extend, in any particular case, for reasons to be recorded in writing, the time for the performance of a 'ready-delivery contract' specified in clause (c) of sub-rule (1).]

LEG. REF.

(d) Inserted by D.D. Notification No. 5-DC(37)43, dated the 17th July, 1943.

(e) Inserted by No. 5-DC(47)43, dated

CR. C. M.-I—55

the 11th September, 1943.

(e-1) Sub-rule (4) of R. 94-C added by Notification, dated 9th October, 1943.

95. Before making any payment or transfer of funds at the request of any

Banks to satisfy themselves that provisions are not contravened.

person, a bank shall require any declarations and information which may be reasonably necessary to satisfy it that the payment or transfer will not involve, and is not with a view to, the contravention of any of the provisions of these Rules by that or any other person.

96. (1) Whenever in pursuance of any rules 49, 66, 72, 78, f[g * * and 80], any property is removed, destroyed, rendered

Compensations.

useless, h[used, requisitioned or acquired] by, or otherwise placed at the disposal or under the control of, the Central Government or a Provincial Government i[and the circumstances are not such as to render the provisions of j[section 19 of the Defence of India Act, 1939,] applicable], the owner of such property shall be paid such compensation for any loss he may have sustained as a result of such removal, destruction, rendering useless, use, requisitioning, k[acquisition] disposal or control, as may be fixed in accordance with the provisions of this rule.

(2) l[In default of agreement between Government and the owner of the property, the Central Government] or the Provincial Government, as the case may be, shall by general or special order specify the authority or person through which or whom any claim for compensation under m[sub-rule (1)] shall be submitted and the authority or person by which or whom any such claim shall be adjudged and awarded.

(3) The Central Government or the Provincial Government, as the case may be, may further by general or special order prescribe the conditions to which the authority or person responsible for adjudging or awarding claims for compensation shall have regard when determining the amount of compensation payable, and may give such supplementary orders as to the assessment and payment of compensation as may appear to it to be necessary or expedient.

PART XV.

CONTROL OF TRADING WITH ENEMY.

Definition.

97. For the purposes of this Part the expression "enemy" means—

- (a) any State, or Sovereign of a State, at war with His Majesty, or
- (b) any individual resident in enemy territory, or
- (c) any body of persons constituted or incorporated n[in enemy territory, or in, or under the laws of, a State at war with His Majesty], or
- (d) any other person or body of persons declared by the Central Government to be an enemy, or
- (e) any body of persons o[whether incorporated or not] carrying on business in any place, if and so long as the body is controlled by a person who, under this rule, is an enemy,

LEG. REF.

(f) The figures "76 and 79" omitted by D.C. Dept. Notification No. 1336-OR/42, dated the 25th April, 1942.

(g) Substituted by *ibid.* No. 734-OR/41, dated the 9th August 1941, for the figures, word and brackets "79, 80 and 81 (3)".

(h) Substituted by *ibid.*, No. 900-SM/41, dated the 11th October, 1941, for the words "used or requisitioned".

(i) Inserted by *ibid.*, No. 209-OR/39, dated the 6th October, 1939.

(j) Substituted by *ibid.*, No. 261-OR/39, dated the 14th November 1939, for the words and figures "section 18 of the Ordinance".

(k) Inserted by *ibid.* No. 900-SM/41, dated the 11th October, 1941.

(l) Substituted by D.C. Dept. Notifi-

cation No. 209-OR/39, dated the 4th November 1939, for the words "The Central Government".

(m) Substituted by D. C. Dept. Notification No. 209-OR/39, dated the 4th November 1939, for the words "the preceding sub-rules".

(n) Substituted by *ibid.*, No. 408-OR/40, dated the 23rd April 1940, for the words "in or under the laws of, a State at war with His Majesty".

(o) Substituted by No. 5-DC. (39)/43, dated 7th August, 1943.

R. 97: "ENEMY SUBJECT".—Resident of Penang after the occupation of that country by the enemy is "enemy subject". See 57 L.W. 554=(1944) 2 M.L.J. 293.

p[or

(f) as respects any business carried on in enemy territory, any individual or body of persons p-1[whether incorporated or not] carrying on that business.]

98. (1) For the purposes of this Part a person shall be deemed to have traded with the enemy if he has had any commercial, financial or other intercourse or dealings with, or for the benefit of, an enemy, and, in particular, but without prejudice to the generality of the foregoing provision, if he has—

(i) supplied any goods to or for the benefit of an enemy, or obtained any goods from an enemy, or traded in, or carried, any goods consigned to or from an enemy or destined for or coming from enemy territory, or

(ii) paid or transmitted any money, negotiable instrument or security for money, to or for the benefit of an enemy or to a place in enemy territory, or

(iii) performed any obligation to, or discharged any obligation of, an enemy, whether the obligation was undertaken before or after the commencement of the Ordinance:

Provided that a person shall not be deemed to have traded with the enemy by reason only that he has—

(a) done anything under an authority given generally or specially by, or by any person authorised in that behalf by, the Central Government, or

(b) received payment from an enemy of a sum of money due in respect of a transaction under which all obligations on the part of the person receiving payment q[had already been performed when payment was received and had been performed at a time when the person from whom the payment was received was not an enemy].

(2) Any reference in this rule to an enemy shall be construed as including a reference to a person acting on behalf of an enemy.

(3) Any person who trades with the enemy shall be punishable with imprisonment for a term which may extend to seven years r[or with fine or with both].

s[(4) In any proceedings for an offence of trading with the enemy, the fact that any document has been despatched addressed to a person in enemy territory shall, unless the contrary is proved, be evidence, as against any person who was a party to the despatch of the document, that the person to whom the document was despatched was an enemy.]

99. No transaction which constitutes an offence of trading with the enemy shall, except to such extent as the Central Government may by general or special order regulate, be effective so as to confer any rights or remedies on the parties to such transaction or on any persons claiming under them.

t[100. The Central Government may, either generally or for any particular area, appoint one or more Controllers, Deputy Controllers and Inspectors, of Enemy Trading, for securing compliance with the provisions of this Part, and may, by general or special order, provide for the distribution and allocation of the work to be performed by them under these Rules.

LEG. REF.

(p) Inserted by *ibid.* No. 795-OR/41, dated the 31st May, 1941.

(p-1) See footnote (o) in page 434.

(q) Substituted by D. C. Dept. Notification No. 1431-OR/42, dated the 6th June 1942, for the words "had been performed before the commencement of the Ordinance".

(r) Substituted by D. C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be

liable to fine".

(s) Inserted by *ibid.* No. 795-OR/41, dated the 3rd May 1941.

(t) Rules 100 and 100-A were substituted by D. C. Dept. Notification No. 486-OR/40, dated the 1st June 1940, for the original rule 100.

Rules 98, 99, 104 and 114 (4) are all dependant upon the applicability of R. 97. A.I.R. 1944 Mad. 239.

100-A. (1) If a Controller, or Deputy Controller, of Enemy Trading has reasonable cause to believe that an offence punishable under rule 98 has been, or is likely to be, committed, he may—

(a) inspect or cause to be inspected any books or documents belonging to, or under the control of, any person,

(b) order any person to give such information in his possession with respect to any business carried on by that or any other person as the Controller or Deputy Controller, as the case may be, may demand, and for the purposes aforesaid, may—

(i) enter and search, or authorise a police officer not below the rank of Sub-Inspector to enter and search, any premises used for the purposes of the said business,

(ii) summon any person, examine him on oath, reduce his answers to writing and require him to sign the writing, and

(iii) if any person so summoned fails to appear at the time appointed, cause him to be apprehended by a police officer and brought before him for examination.

(2) A Controller, or Deputy Controller, of Enemy Trading may by order in writing delegate his powers in any particular case to an Inspector of Enemy Trading.]

u[101. If in order to secure compliance with the provisions of this Part the Central Government considers it expedient so to do, it may by order direct that the business of any person (hereinafter referred to as the suspected person) shall be subject to supervision; and, thereupon a Controller of Enemy Trading and any person authorised by a Controller in this behalf shall have in relation to that business—

(a) all the powers mentioned in rule 100-A,

(b) the power to prohibit or regulate by means of written instructions to the suspected person or his agents or employees any transactions or class of transactions of that person, and

(c) such other powers as may from time to time be conferred on him by the Central Government.

101-A. If any person contravenes any order lawfully given by any Controller, Deputy Controller, or Inspector, of Enemy Trading, or any person authorised by a Controller under rule 101, that person shall be punishable with imprisonment for a term which may extend to six months ^{Penalty or failure to comply with orders of Controllers, etc.} or with fine or with both].

102. If any person with intent to evade the provisions of this Part conceals, destroys, mutilates, or defaces any book or other document, that person shall be punishable with imprisonment for a term which may extend to five years ^{Penalty for concealment, destruction, etc., of books or documents.} or with fine or with both].

PART XVI.

CONTROL OF ENEMY FIRMS.

Definitions.

Enemy subject.

103. In this Part—

(1) "enemy subject" means—

(a) any individual who possesses the nationality of a State at war with

LEG. REF.

(u) Rules 101 and 101-A were substituted by *ibid.*, No. 486-OR/40, dated the 1st June 1940, for rule 101 which had been substituted by D. C. Dept. Notification No. 239-OR/39, dated the 29th September 1939, for the

original rule 101.

(v) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

His Majesty, or having possessed such nationality at any time has lost it without acquiring another nationality, or

(b) any body of persons constituted or incorporated in or under the laws of such State;

"Enemy firm."

(2) "enemy firm" means—

(a) any enemy subject who is, or at any time subsequent to the 2nd September 1939, was carrying on any business in British India, or

(b) any firm, whether constituted in British India or not, of which any member or officer is, or at any time subsequent to the 2nd September 1939, was an enemy subject, and which is, or at any time subsequent to the 2nd September 1939, was carrying on business in British India, or

(c) any company, whether incorporated in British India or not, of which any officer is, or at any time subsequent to the 2nd September, 1939, was an enemy subject, and which is, or at any time subsequent to the 2nd September 1939, was carrying on business in British India, or

(d) any person or body of persons, whether incorporated, or not, who or which in the opinion of the Central Government is, or at any time subsequent to the 2nd September 1939, was carrying on business in British India—

(i) under the control whether direct or indirect of any enemy subject, or

(ii) wholly or mainly for the benefit of enemy subjects generally or any class of enemy subjects or any individual enemy subject:

W[Provided that in relation to subjects of a State which became, or becomes, a State at war with His Majesty later than the 3rd September 1939, all references to the 2nd September, 1939, in the above definition shall be read as referring to the date immediately preceding the date on which the said State became, or becomes, a State at war with His Majesty;]

(3) "enemy currency" means any such notes or coins as circulate as currency in any enemy territory or any such other notes or coins as are for the time being declared by an order of the Central Government to be enemy currency;

(4) "enemy property" means any property for the time being belonging to or held or managed on behalf of an [enemy as defined in rule 97, an enemy subject] or an enemy

firm:

Y[Provided that where an individual enemy subject dies in British India any property which, immediately before his death belonged to or was held by him, or was managed on his behalf, may notwithstanding his death continue to be regarded as enemy property for the purposes of rule 114;]

(5) "securities" includes shares, stock, bonds, debentures and debenture stock, but does not include bills of exchange.

"Securities."

Prohibition of trade with enemy firms and purchase of enemy currency.

104. (1) No person shall, directly or indirectly—

(a) advance money to, or enter into any contract with, an enemy firm; or

(b) pay any sum of money to, or for the benefit of, an enemy firm; or

(c) give any security for the payment of any debt or any other sum of money for the benefit of an enemy firm; or

LEG. REF.

(w) Inserted by D. C. Dept. Notification No. 498-OR/40, dated the 27th July 1940.

(x) Substituted by *ibid.*, No. 485-OR/40, dated the 1st June, 1940, for the words "enemy subject".

(y) Proviso added by No. 5 D.C. (49) 43, dated 25th September, 1943.

R. 103, PROVISIO: OUTBREAK OF WAR WITH JAPAN—SPECIAL VESTING ORDER.—The proviso to R. 103 makes it unnecessary to make any further order declaring the state of war with Japan and the inclusion of Japanese property within the meaning of "enemy firm" as defined in R. 103. 48 C. W. N. 163; see also I.L.R. (1943) Kar. 438=1944 S. 51.

(d) act on behalf of an enemy firm in drawing, accepting, paying, presenting for acceptance or payment, negotiating or otherwise dealing with, any negotiable instrument; or

(e) accept, pay, or otherwise deal with, any negotiable instrument which is held by, or on behalf of, an enemy firm; or

(f) enter into any new transaction, or complete any transaction already entered into, with an enemy firm in respect of any stocks, shares or other securities; or

(g) make or enter into any new policy or contract of insurance (including re-insurance) or accept or give effect to any insurance of any risk arising under a policy or contract of insurance (including re-insurance) made or entered into with, or for the benefit of, an enemy firm; or

(h) supply to, or for the use or benefit of, or obtain from, an enemy firm, any goods, wares or merchandise, or trade in or carry any goods, wares or merchandise destined for an enemy firm; or

z[* * *].

a[(i)] enter into any other commercial or financial obligation or contract with, or for the benefit of, an enemy firm.

(2) In any proceeding arising out of a contravention of b[clause (e)] of sub-rule (1) it shall be a defence for the accused to prove that at the date of the contravention he had no reasonable ground for believing that the negotiable instrument was held by or on behalf of an enemy firm.

c[(2-A) No person shall, directly or indirectly, purchase enemy currency.]

(3) Nothing in this rule shall be deemed to prohibit anything expressly permitted by or under the authority of His Majesty or the Central Government.

(4) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to seven years d[or with fine or with both].

105. The Central Government may, either generally or for any particular

Power to appoint Controllers, etc., of enemy firms.

area, appoint one or more e[Controllers], Deputy Controllers and Inspectors, of Enemy Firms, for securing compliance with the provisions of this part, and may, by general or special order, provide for the

distribution and allocation of the work to be performed by them under these Rules.

106. If a Controller, Deputy Controller or Inspector, of Enemy Firms has

Powers of Controllers, etc., of enemy firms.

reasonable cause to believe that an offence punishable under rule 104 has been, or is likely to be, committed, he may—

(a) inspect or cause to be inspected any books or documents belonging to, or under the control of, any person,

(b) order any person to give such information in his possession with respect to any business carried on by that or any other person as the Controller, Deputy Controller or Inspector, as the case may be, may demand, and for the purposes aforesaid, may

(i) enter on any premises used for the purposes of the business,

(ii) summon any person, examine him on oath, reduce his answers to writing and require him to sign the writing,

LEG. REF.

(s) Clause (i) omitted by D. C. Dept. Notification No. 566-OR/40, dated the 14th September, 1940.

(a) Clause (j) re-lettered as clause (i), by *ibid.*

(b) Substituted by *ibid.*, for the word; let-ter and brackets "clause (f)".

(c) Inserted by D. C. Dept. Notification

No. 566-OR/40, dated the 14th September 1940.

(d) Substituted by D. C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(e) Substituted by *ibid.*, No. 361-OR/40, dated the 4th March 1940, for the word "Controller".

(iii) if any person so summoned fails to appear at the time appointed, cause him to be apprehended by a police officer and brought before him for examination.

f[107. If it appears to a Controller of Enemy Firms that it is expedient for securing compliance with the provisions of this Part that any business should be subject to supervision, he may by order in writing direct that the business shall be subject to supervision, and thereupon any Controller, Deputy Controller or Inspector of Enemy Firms may for the purposes of such supervision exercise all or any of the powers mentioned in rule 106, and such other powers as may from time to time be conferred on him by the Central Government.

107-A. (1) If it appears to a Controller of Enemy Firms that it is expedient for securing compliance with the provisions of this Part that the business of a person or body of persons suspected by him to be an enemy firm should be subject to supervision, he may, pending a decision by the Central Government in the matter, by order in writing direct that the business shall be subject to supervision for a period which shall not, without the previous sanction of the Central Government, exceed one month; and, thereupon, any Controller, Deputy Controller or Inspector, of Enemy Firms may—

(a) exercise, for the purposes of such supervision, all or any of the powers mentioned in rule 106;

(b) by order in writing cancel any transaction of the firm which, in his opinion, is injurious to the public interest or is intended to evade the provisions of this Part;

(c) authorise the business of the firm to be carried on under such management as may be approved by him or subject to such conditions as he may deem fit to impose;

(d) himself carry on the business of the firm, if, in his opinion, no suitable management is available.

(2) Where a business is subjected to supervision under sub-rule (1), the Central Government may direct the Controller to recover from the assets of the firm concerned such fee, not exceeding the cost of supervision, as the Central Government may deem fit to impose.]

108. If any person contravenes any order lawfully given by any Controller, Deputy Controller, or Inspector, of Enemy Firms, that person shall be punishable with imprisonment for a term which may extend to six months g[or with fine or with both].

109. If any person with intent to evade the provisions of this Part conceals, destroys, mutilates or defaces any book or other document which a Controller, Deputy Controller, or Inspector, of Enemy Firms is empowered under rule 106 or rule 107 to inspect, that person shall be punishable with imprisonment for a term which may extend to five years h[or with fine or with both].

110. Where it appears to the Central Government that a contract i[entered

LEG. REF.

(f) Rules 107 and 107-A substituted by D. C. Dept. Notification No. 541-OR/40, dated the 10th August 1940, for the original rule 107.

(g) Substituted by *ibid.*, No. 701-OR/41, dated the 15th February, 1941, for the words "and shall also be liable to fine".

(h) Substituted by D.C. Dept. Notifica-

tion No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(i) Substituted by *ibid.*, No. 765-OR/41, dated the 17th May, 1941, for the words "entered into with an enemy firm, whether before or after the commencement of the Ordinance".

Contracts with enemy firms. into, whether before or after the commencement of the Ordinance, with a person or body of persons who at the time of such contract was, or subsequent to such contract became, an enemy as defined in rule 97 or an enemy subject or an enemy firm], is injurious to the public interest, or was entered into with a view to evade the provisions of this Part, the Central Government may by order cancel or determine such contract either unconditionally or upon such conditions as it thinks fit.

111. (1) Where it appears to the Central Government that a transfer of property movable or immovable [made, whether before or after the commencement of the Ordinance, to or by a person or body of persons who at the time of such transfer was, or subsequent to such transfer became, an enemy as defined in rule 97 or an enemy subject or an enemy firm], is injurious to the public interest or was made with a view to evade the provisions of this Part, the Central Government may, by order, declare such transfer, and any subsequent transfer or sub-transfer of the same property or part thereof, to be void, either in whole or in part, or may impose such conditions on the transferee as it thinks fit.

(2) On the making of an order under sub-rule (1) declaring any transfer, subsequent transfer or sub-transfer of any property to be void, that property shall, with effect from the date of the order, be deemed to be revested in the original transferor.

112. (1) If any securities are transferred by, or allotted or transferred to, an enemy firm, then, except with the sanction of the Central Government, the transferee or allottee shall not by virtue of the transfer or allotment have any rights or remedies in respect of the securities; and no body corporate by which the securities were issued, or are managed, shall take cognisance of, or otherwise act upon, any such transfer except under the written authority of the Central Government.

(2) No share warrants, stock certificates or bonds shall be issued, payable to bearer, in respect of securities registered or inscribed in the name of an enemy firm or of a person acting on behalf, or for the benefit, of an enemy firm.

(3) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to six months [or with fine or with both].

113. (1) No transfer of a negotiable instrument or an actionable claim by or on behalf of an enemy firm nor any subsequent transfer thereof shall, except with the sanction of the Central Government, be effective so as to confer any rights or remedies in respect of the negotiable instrument or, as the case may be, the actionable claim.

(2) If any person by payment or otherwise purports to discharge any liability from which he is relieved by sub-rule (1), knowing the facts by virtue of which he is so relieved, he shall be punishable with imprisonment for a term which may extend to six months [or with fine or with both]:

Provided that in any proceedings in pursuance of this sub-rule it shall be a defence for the accused to prove that at the time when he purported to discharge the liability in question he had reasonable grounds for believing that the liability was enforceable against him by order of a competent court, not being a court in India or in a State at war with His Majesty, and would be enforced against him by such an order.

LEG. REF.

(j) Substituted by *ibid.*, No. 765-OR/41, dated the 5th April, 1941, for the words "made to, or by, an enemy firm, whether before or after the commencement of the

Ordinance".

(k) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(3) Where a claim in respect of a negotiable instrument or an actionable claim is made against any person who has reasonable cause to believe that, if he satisfied the claim, he would thereby be committing an offence punishable under sub-rule (2), that person may pay into a competent civil court any sum which but for the provisions of sub-rule (1) would be due in respect of the claim and thereupon the payment shall for all purposes be a good discharge to that person.

1[113-A. (1) Where it appears to the Central Government that the control or management of an enemy firm has been, or is likely to be, so affected by the state of war as to prejudice the effective continuance of its trade or business, and that it is in the public interest that the trade or business should continue to be carried on, the Central Government may by order authorise a person to carry on the trade or business in such manner and to such extent as may be prescribed.

(2) While a person authorised under sub-rule (1) is carrying on the trade or business of an enemy firm,—

(a) such person shall be deemed to be acting as the agent of the firm [and, subject only to such restrictions as the Central Government may impose, shall have in relation to the management of the affairs of the firm all such powers and authority as the firm itself would have if it were not an enemy firm,] [provided that any person having any commercial, financial or other intercourse or dealings with such person while so acting, shall not, merely by reason of such intercourse or dealings, be deemed to have contravened the provisions of rule 98 or rule 104;]

(b) such person shall be entitled to the management of the affairs of the firm to the exclusion of any other person acting or purporting to act on behalf of the firm, and for the purposes of such management shall be entitled to employ such staff or other agency as he thinks fit;

(c) such person shall not, in respect of such matters relating to the said management as may be specified by order of the Central Government, be bound by any obligation or limitation imposed on him as agent of the firm by or under any law, instrument or contract;

(d) such person shall be entitled to retain out of the assets of the firm all costs, charges and expenses of, or incidental to, the said management, and such remuneration as may be prescribed; and

(e) the firm shall not have the right to control the carrying on of the trade or business.

(3) No person authorised under sub-rule (1) to carry on the trade or business of an enemy firm shall be personally liable for acts done by him in good faith in the course of management of such trade or business.]

o[(4) The provisions of this rule shall apply also in relation to a body of persons, whether incorporate or unincorporate, which is an enemy as defined in rule 97 and which is, or at any time subsequent to the 2nd September 1939, was, carrying on business in British India, as they apply in relation to an enemy firm.]

114. (1) With a view to preventing the payment of moneys to an enemy

LEG. REF.

(l) Inserted by D.C. Dept. Notification No. 288-OR/39, dated the 25th November 1939.

(m) Inserted by D.C. Dept. Notification No. 569-OR/40, dated the 21st September, 1940.

(n) Inserted by D.C. Dept. Notification No. 288-OR/39, dated the 5th January, 1940.

(o) Inserted by D.C. Dept. Notification No. 569-OR/40, dated the 21st September, 1940.

R. 114: "PROPERTY"—MEANING OF—IF IN-
CR. C. M.-1—56

CLUDES RIGHT TO USE FOR DAMAGES—RULE IF *ultra vires*.—The word "property" in R. 114 is wide enough to include not merely debts but every beneficial matter which an enemy is capable of holding, including the right to sue for damages for breach of contract. Although R. 114, vests in the custodian a mere right to sue for damages, it is not *ultra vires* but is validly framed under the rule-making powers. 48 C.W.N. 163.

R. 114 (1): SCOPE—ENEMY PROPERTY (CUSTODY AND REGISTRATION) ORDER (1939).
PARA. 4—PROPERTY OF JAPANESE FIRMS IN

Collection of debts of enemy firms and custody of property.

firm p[* * *], and preserving enemy property in contemplation of arrangements to be made at the conclusion of peace, the Central Government may appoint q[a Custodian of Enemy Property for British India and one or more Deputy Custodians and Assistant Custodians of Enemy Property for such local areas as may be prescribed] and may by order—

(a) require the payment to the prescribed custodian of money which would but for these rules be payable to or for the benefit of an enemy firm p[* * *] or which would but for the provisions of rule 110 and rule 113 be payable to any other person; [and upon such payment the said money shall be deemed to be property vested in the prescribed Custodian;] (*Gazette of India*, Pt. I, Sec. 1, dated 17—3—1945, p. 323.)

(b) vest, or provide for and regulate the vesting, in the prescribed custodian such enemy property as may be prescribed;

(c) vest in the prescribed custodian the right to transfer such other enemy property as may be prescribed, being enemy property which has not been, and is not required by the order to be, vested in the custodian;

(d) confer and impose on the r[custodian] and on any other person such rights, powers, duties and liabilities as may be prescribed as respects—

(i) property which has been, or is required to be, vested in a custodian by or under the order,

(ii) property of which the right of transfer has been, or is required to be, so vested,

(iii) any other enemy property which has not been, and is not required to be, so vested,

(iv) money which has been, or is by the order required to be, paid to a custodian;

(e) require the payment of the prescribed fees to the s[custodian] in respect of such matters as may be prescribed and regulate the collection of and accounting for such fees;

(f) require any person to furnish to the custodian such returns, accounts and other information and to produce such documents, as the custodian considers necessary for the discharge of his functions under the order; and any such order may contain such incidental and supplementary provisions as appear to the Central Government to be necessary or expedient for the purposes of the order.

(2) Where any order with respect to any money or property is addressed to any person by a custodian and accompanied by a certificate of the custodian that the money or property is money or property to which an order under sub-rule (1) applies, the certificate shall be evidence of the facts stated therein, and if that person complies with the order of the custodian, he shall not be liable to any suit or other legal proceeding by reason only of such compliance.

(3) Where, in pursuance of an order made under sub-rule (1)—

(a) any money is paid to a custodian, or

(b) any property, or the right to transfer any property, is vested in a custodian, or

LEG. REF.

(p) The words "or a person who is an enemy as defined in rule 97" which were inserted by D.C. Dept. Notification No. 485-OR/40, dated the 1st June, 1940 were omitted by D.C. Dept. Notification No. 845-OR/41, dated the 7th June, 1941.

(q) Substituted by D.C. Dept. Notification No. 241-OR/39, dated the 3rd October 1939 for the words "one or more Custodians of Enemy Property".

(r) Substituted by *ibid.*, for the word "Custodians".

(s) Substituted by D. C. Dept. Notification No. 241-OR/40, dated the 3rd October 1939, for the word "custodians".

INDIA.—On the outbreak of war with Japan on 7—12—1941, the property of Japanese firms in India became vested in the Custodian of Enemy Property who would have all the powers to deal with it conferred by the Enemy Property (Custody and Registration) Order, 1939. 1944 Sind 51=I.L.R., (1943) Kar. 438.

(c) an order is given to any person by a custodian in relation to any property which appears to the custodian to be property to which the order under sub-rule (1) applies

neither the payment, vesting nor order of the custodian nor any proceedings in consequence thereof, shall be invalidated or affected by reason only that at a material time—

(i) some person who was or might have been interested in the money or property, and who was an enemy firm, had died or had ceased to be an enemy firm, or

(ii) some person who was so interested, and who was believed by the custodian to be an enemy firm, was not an enemy firm.

t[(3-A) In sub-rule (1), (2) and (3), the expression "custodian" includes a Deputy Custodian of Enemy Property and an Assistant Custodian of Enemy Property] u[and every reference to an enemy firm shall be construed as including a reference to a person who is an enemy as defined in rule 97].

v[(3-B) Where in pursuance of an order made under sub-rule (1) the assets of a company are vested in the custodian, no proceedings, civil or criminal, shall be instituted under the Indian Companies Act, 1913, against the company or any director, manager or other officer thereof except with the consent in writing of the custodian.]

(4) If any person pays any debt or deals with any property to which any order under sub-rule (1) applies otherwise than in accordance with the provisions of the order, he shall be punishable with imprisonment for a term which may extend to six months w[or with fine or with both]; and the payment or dealing shall be void.

(5) If any person without reasonable cause fails to produce or furnish in accordance with the requirements of an order under sub-rule (1) any document or information which he is required under the order to produce or furnish he shall be punishable with imprisonment for a term which may extend to six months w[or with fine or with both].

Power to control and wind up certain business. x[114-A. (1) In this rule "enemy" means any person or body of persons who is for the time being an enemy as defined in rule 97.

(2) Where any business is being carried on in British India by, or on behalf of or under the direction of persons all or any of whom are enemies or enemy subjects or appear to the Central Government to be associated with enemies, the Central Government may, if it thinks it expedient so to do, make—

(a) an order (hereafter in this rule referred to as a "restriction order") prohibiting the carrying on the business either absolutely or except for such purposes and subject to such conditions as may be specified in the order, or

(b) an order (hereafter in this rule referred to as a "winding up order") requiring the business to be wound up;

and the making of a restriction order as respects any business shall not prejudice the power of the Central Government, if it thinks it expedient so to do, at any subsequent date to make a winding up order as respects that business.

LEG. REF.

(t) Inserted by D.C. Dept. Notification No. 241-OR/39, dated the 3rd October, 1939.

(u) Inserted by D.C. Dept. Notification No. 845-OR/41, dated the 7th June, 1941.

(v) Inserted by D.C. Dept. Notification No. 838-OR/41, dated the 31st May, 1941.

(w) Substituted by D.C. Dept. Notification No. 701-OR/40, dated the 15th February 1941, for the words "and shall also be liable to fine".

(x) Substituted by D.C. Dept. Notification No. 797-OR/41, dated the 3rd May

1941, for the original rule 114-A, which was inserted by D.C. Dept. Notification No. 406-OR/40, dated the 11th April, 1940.

R. 114 (3-A): NOTIFICATION VESTING PROPERTY IN CUSTODIAN—VESTS PROPERTY IN DEPUTY CUSTODIAN.—By virtue of sub-R. (3-A) of R. 114, which provides that the expression "Custodian" includes a "Deputy Custodian", property vested in the Custodian by the notification of 25th June, 1940, is equally vested in the Deputy Custodian. 48 C.W.N. 163.

(3) Where an order under sub-rule (2) is made as respects any business, the Central Government may, by that or a subsequent order, appoint a Supervisor to control and supervise the carrying out of the order, and, in the case of a winding up order, to conduct the winding up of the business and may confer on the Supervisor any such powers in relation to the business as are exercisable by a liquidator in the voluntary winding up of a company in relation to the company (including power in the name of the person carrying on the business or in his own name, and by deed or otherwise, to convey or transfer any property, and power to apply to the court to determine any question arising in the carrying out of the order), and may by the order confer on the Supervisor such other powers as the Central Government thinks necessary or convenient for the purpose of giving full effect to the order.

(4) Where a restriction order or a winding up order is made as respects any business, the distribution of any assets of the business which are distributed while the order is in force shall be subject to the same rules as to preferential payments either applicable to the distribution of the assets of a company which is being wound up, and the said assets of the business shall, so far as they are available for discharging unsecured debts, be applied in discharging unsecured debts due to creditors of the business who are not enemies in priority to unsecured debts due to any other creditors, and any balance, after providing for the discharge of all liabilities of the business, shall be distributed among the persons interested in the business in such manner as the Central Government may direct:

Provided that the provisions of this sub-rule shall, in their application to the distribution of any money or other property which would, in accordance with those provisions, fall to be paid or transferred to an enemy, whether as a creditor or otherwise, have effect subject to the provisions of rule 114 and of any order made under that rule.

(5) Where any business for which a Supervisor has been appointed under this rule has assets in enemy territory, the Supervisor shall, if in his opinion it is practicable so to do, cause an estimate to be prepared—

(a) of the value of those assets;

(b) of the amount of any liabilities of the business to creditors, whether secured or unsecured, who are enemies;

(c) of the amount of the claims of persons who are enemies to participate, otherwise than as creditors of the business, in any distribution of assets of the business made while an order under sub-rule (2) is in force as respects the business and where such an estimate is made, the said liabilities and claims shall, for the purposes of this rule, be deemed to have been satisfied out of the said assets of the business in enemy territory, or to have been satisfied thereout so far as those assets will go, and only the balance (if any) shall rank for satisfaction out of the other assets of the business.

(6) Where an estimate has been prepared under sub-rule (5), a certificate of the Supervisor as to the value or amount of any assets, claims or liabilities to which the estimate relates shall be conclusive for the purpose of determining the amount of the assets of the business available for discharging the other liabilities of the business and for distribution amongst other persons claiming to be interested in the business:

Provided that nothing in this sub-rule shall affect the rights of creditors of, and other persons interested in, the business against the assets of the business in enemy territory.

(7) The Central Government may, on an application made by a Supervisor appointed under this rule, after considering the application and any objections which may be made by any person who appears to the Central Government to be interested, by order grant the Supervisor a release, and an order of the Central Government under this sub-rule shall discharge the Supervisor from all liability in respect of any act done or default made by him in the exercise and performance of his powers and duties as Supervisor, but any such order may be

revoked by the Central Government on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(8) Where an order under sub-rule (2) has been made as respects a business carried on by any individuals or by a company, no insolvency petition against the individuals, or petition for the winding up of the company, shall be presented, or resolution for the winding up of the company passed, or steps for the enforcement of the rights of any creditors of the individuals or company taken, without the consent of the Central Government, but where the business is carried on by a company, the Central Government may present a petition for the winding up of the company by the court, and the making of an order under sub-rule (2) shall be a ground on which the company may be wound up by the court.

(9) Where an order is made under this rule appointing a Supervisor, for any business, any remuneration of, and any costs, charges and expenses incurred by, the Supervisor, and any other costs, charges and expenses incurred in connection with the control and supervision of the carrying out of the order, shall, to such amount as may be certified by the Central Government, be defrayed out of the assets of the business, and as from the date of the certificate, be charged on those assets in priority to any other charges thereon.

(10) If any person contravenes the provisions of any order made under sub-rule (2), he shall be punishable with imprisonment for a term which may extend to 5 years or with fine or both.]

PART XVII.

MISCELLANEOUS PROVISIONS.

115. [Cf. Eng. Def. R. 70.] (1) If any person finds any article as to which he has reasonable cause to believe that it has been lost or abandoned, and that, prior to its loss or abandonment, it was used or intended to be used for the purposes of any armed force or was in the possession of a person who was serving with an armed force, the person so finding the article—

(a) shall report the nature and situation thereof, or, if the article is a document, cause it to be delivered, to some member of His Majesty's force on duty in the neighbourhood or to the officer in charge of a police station in the neighbourhood; or if the article is found outside British India, shall take such steps as are practicable to secure that the nature and situation thereof are reported, or, if the article is a document, that it is delivered as soon as may be, to some person in His Majesty's service; and

(b) shall not, save as aforesaid, remove or tamper with the article except with the permission of the Central Government.

(2) The Central Government may by notified order direct that the obligations and restrictions imposed by sub-rule (1) shall not apply in relation to any such description of articles as may be specified therein or as may be specified by a prescribed authority or person.

(3) If any person contravenes any of the provisions of sub-rule (1), he shall be punishable with imprisonment for a term which may extend to six months [or with fine or with both].

116. [Cf. Eng. Def. R. 80-A.] (1) Without prejudice to any special provisions contained in these Rules, the Central Government or the Provincial Government may by order require any person to furnish or produce to any specified authority or person any such information or article in his possession as may be

LEG. REF.

(y) *Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February, 1941, for the words "and shall also be liable to fine".

R. 116: BOMBAY NOTIFICATION—"EVERY PERSON IN THE CITY OF BOMBAY."—MEANING

OF.—The words of the notification issued by the Bombay Govt. under R. 116, requiring every person in the City of Bombay to make a declaration of rice stock exceeding 10 maunds are perfectly plain. They apply to "every person in the City of Bombay and Bombay Suburban Dt." A man who is not in Bombay on the date on which a declara-

specified in the order, being information or an article which that Government considers it necessary or expedient in the interests of the defence of British India, the efficient prosecution of the war or the public safety or interest to obtain or examine.

(2) If any person fails to furnish or produce any information or article in compliance with an order made under sub-rule (1), he shall be punishable with imprisonment for a term which may extend to three years ^y[or with fine or with both].

False statements.

117. [Cf. Eng. Def. R. 82.] If any person—

(i) when required by or under any of these Rules to make any statement or furnish any information, makes any statement or furnishes any information which he knows or has reasonable cause to believe to be false, or not true, in any material particular, or

(ii) makes any such statement as aforesaid in any account, declaration, estimate, return or other document which he is required by or under any of these Rules to furnish, he shall be punishable with imprisonment for a term which may extend to three years ^z[or with fine or with both].

a[117-A. (1) Where any person is required by or under any of these Rules

Power to require production of books, etc.

to make any statement or furnish any information to any authority, that authority may by order, with a view to verifying the statement made or the information furnished by such person, further require him to produce any books, accounts or other documents relating thereto which may be in his possession or under his control.

(2) If any person fails to produce any books, accounts or other documents in compliance with an order made under sub-rule (1), he shall be punishable with imprisonment for a term which may extend to three years ^z[or with fine or with both].

118. [Cf. Eng. Def. R. 84.] (1) No person who obtains any information

Prohibition against disclosing information.

by virtue of these Rules shall, otherwise than in connexion with the execution of the provisions of these Rules or of any order made in pursuance thereof, disclose that information to any other person except with permission granted by or on behalf of Government.

(2) If any person contravenes the provisions of sub-rule (1), he shall be punishable with imprisonment for a term which may extend to two years ^z[or with fine or with both].

119. [Cf. Eng. Def. R. 81.] (1) Save as otherwise expressly provided in

Publication, affixation and defacement of notices.

these Rules, every authority, officer or person who makes any order ^b[in writing] in pursuance of any of these Rules ^c[shall, in the case of an order of a general nature or affecting a class of persons, publish], notice

LEG. REF.

(*) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(a) Rule 117-A inserted by D.C. Dept. Notification No. 532-OR/40, dated the 21st September, 1940.

(b) Inserted by D.C. Dept. Notification No. 1020-OR/1/41, dated the 19th January 1942.

(c) Substituted by D.C. Dept. Notification No. 677-OR/41, dated the 1st February 1941, for the words "shall publish".

tion has to be made is not a person required

by the notification to make a declaration. He must be physically present in Bombay on the material date. 45 Bom.L.R. 890 = A.I.R. 1943 Bom. 403.

R. 117 (ii): APPLICABILITY.—If a person who is in possession of several motor cars and is required to give the registered number and horse power of all the motor cars in his possession, gives the registered number and horse power of only one of them he makes a statement which he knows or has reasonable cause to believe is false or not true, within the meaning of R. 117 (ii) of the Rules, and is liable to conviction under the rule. It makes no difference whether the falsity or untruthfulness of the

of such order in such manner as may, in the opinion of such authority, officer or person, be best adapted for informing persons whom the order concern, d[in the case of an order affecting an individual, corporation or firm serve or cause the order to be served in the manner provided for the service of a summons in rule 2 of Order XXIX or rule 3 of Order XXX as the case may be, in the First Schedule to the Code of Civil Procedure, 1908, and in the case of an order affecting an individual person (not being a corporation or firm)] serve, or cause the order to be e[served on that person—

(i) personally, by delivering or tendering to him the order, or

(ii) by post, or

(iii) where the person cannot be found, by leaving an authentic copy of the order with some adult male member of his family or by affixing such copy to some conspicuous part of the f[premises in which he is known to have last resided or carried on business or personally worked for gain] [* * *].g

[(1-A) Where any of these Rules empowers an authority, officer or person, to take action by notified order, the provision of sub-R. (1) shall not apply in relation to such order.] (D.D. No. 5-D.C. (35)|44, dated 6th May, 1944, *Gazette of India*, Pt. I, S. 1, p. 594). Also 5 D.C. (13)|45 dated 21st July, 1945.

LEG. REF.

(d) Substituted by No. 5-D.C. (36)|43, dated the 21st August 1943.

(e) Substituted by D.C. Dept. Notification No. 1020-OR|1|41, dated the 10th January 1942, for the words "served on that person in such manner as such authority, officer or person thinks fit."

(f) Substituted by D. C. Dept. Notification No. 1292-OR|42, dated the 28th March 1942, for the words "house where he ordinarily resides".

(g) Omitted by No. 5-DC (13)|45, dated the 21st July, 1945.

statement is due to a mis-statement of fact or to an omission. (1944) M.W.N. 709= (1945) 1 M.L.J. 6.

R. 117: LEGAL FICTION EMBODIED IN—WHEN CAN BE INVOKED.—R. 119 embodies a legal fiction in that it says that the persons concerned shall be deemed to have been duly informed of the order. This legal fiction can be applied only when it is proved that everything that was required to be done by the authority or officer was actually done. 1943 N.L.J. 605 =1944 Nag. 40. (Publication of order according to rules—Burden of proof on prosecution.) See 1945 A.L.J. 182 (Proof of Publication of Notice.)

R. 119 (BEFORE AMENDMENT)—SERVICE OF ORDER ON FIRM.—R. 119 of the Defence of India Rules, as it stood in November, 1941, provided a method for service on a firm of an order affecting it. The provision in respect of a firm and company is for publication to them as a "class of persons." 79 C.L.J. 189.

PUBLICATION — ADEQUACY — POWER OF COURT TO INQUIRE INTO.—Under R. 119 of the Defence of India Rules, the authority concerned is to decide the best method of publication and when that authority has adopted a particular method of publication, the Courts cannot enquire into the adequacy or otherwise of such publication of the noti-

fication in question. 1944 A.M.L.J. 59.

SCOPE—MANDATORY CHARACTER OF—NON-COMPLIANCE—EFFECT ON PROSECUTION.—R. 119 of the Defence of India Rules requires that the authority making an order should determine the manner in which notice of the order shall be given; and it further requires that notice of the order shall be published in the manner determined by that authority. These provisions of R. 119 are mandatory and must be complied with; in the absence of evidence proving compliance with these requirements, a prosecution must fail. 11 Cut.L.T. 9. See also 1945 Pat. 306.

R. 119 is mandatory and not directory. When a person is ordered to be detained under R. 26, it is essential that a copy of the order made against him should be served on him. If this is not done, his detention is illegal. 1945 N.L.J. 144.

ORDER UNDER—RULES—WHEN COMES INTO OPERATION—PUBLICATION OF NOTICE.—An order made under the Defence of India Rules comes into operation only when it is made known to the public or the persons whom it concerns. The legal fiction contained in R. 119, that when a notice has been published the persons concerned shall be deemed to have been duly informed of the order, is applicable only when it has been proved that everything that was required to be done by the authorities or officer was actually done. 214 I.C. 241=25 P. L. T. 144.

Where an order is addressed to a private individual, mere publication in the Government Gazette cannot be held to be sufficient notice to that individual of an order passed against him, unless there is reason to believe that he is in the habit of reading the Gazette or has read it in the particular instance. If, in fact, the individual concerned knew perfectly well that an order had been passed against him and acquired his knowledge by other means, it cannot be held that he had not received notice of the order

[(1-B) If in the course of any judicial proceedings, a question arises whether a person was duly informed of an order made in pursuance of these Rules, compliance with sub-rule (1), or, in a case to which sub-rule (1-A) applies, the notification of the order, shall be conclusive proof that he was so informed; but a failure to comply with sub-rule (1)—

(i) shall not preclude proof by other means that he was so informed; and
(ii) shall not affect the validity of the order.] (*Gazette of India*, Pt. I, Sec. 1, dated 21st July 1945, p. 966).]

h[(2) Any police officer, and any other person authorised by Government

LEG. REF.

(h) Substituted by D.C. Dept. Notification No. 1245-OR/42, dated the 21st February 1942, for the original sub-rules (2) and (3) of the Rule.

merely because notice was not given to him in the manner prescribed by R. 119. The consequences of failure to carry out the provisions of R. 119 are practical rather than legal. 46 Bom.L.R. 495.

In a prosecution for contravening a prohibitory order under the Defence of India Rules, the prosecution has to show that there was a publication or notification of the order in accordance with what the officer or person issuing the order considered was best for conveying information to the persons whom the order concerned. Once he exercises his discretion as to the manner of publication, the discretion cannot be interfered with. It is not the rule that before there can be a conviction for violation of a prohibitory order that knowledge on the part of the accused should be shown in any particular manner. 58 L.W. 138=(1945) 1 M.L.J. 273.

R. 119: PUBLICATION OF ORDER OR NOTIFICATION—PROPER MODE OF.—What is to be published under R. 119 is notice of the order. That does not mean merely the fact of the order, but the order itself. Publication of the order means publication of all its material particulars. The mere publication of a notification in the Government Gazette is not sufficient to charge a person with liability for infringement of its terms. In the case of notifications involving a very large number of agriculturists and traders and involving penal liability they should be properly brought to the knowledge of the public especially as such persons living in villages are not expected to read the Government Gazette. When there is a direction by the authority making the order that it should be published by beat of drum in all villages, the best course would be that the summary of the notification or order by beat of drum in every village and a translation of the notification in the language of the district should be put up in the *chavadi* or chora of the village, and it should be announced to the public while publishing its summary by beat of drum that a translation of the notification has been put up in the village *chavadi*. 47 Bom.L.R. 143.

The most important ingredient of R. 119 of the Defence of India Rules is that it is

for the authority passing the order under the Rules to exercise its mind and to decide upon some method of publication of the order. This power can be exercised only by the authority passing the order and by nobody else. Before a person can be charged with infringement of an order passed under the Defence India Rules, it is incumbent on the prosecution to establish that the authority passing that order had prescribed a certain method of publishing that order and that method had been carried out. 1945 O.W.N. (H.C.) 181. As to burden of proof, see 24 Pat. 29=1945 Pat. 307; 1945 P.W.N. 121; 1945 P.W.N. 243.

NOTICE OF ORDER UNDER RULES—NECESSITY FOR—MANNER OF GIVING NOTICE.—Before a person can be punished for breach of an order under the Defence of India Rules, notice as required by R. 119 should be given of the orders affecting individuals to the individual concerned. The manner in which notice is to be given is to be decided by the authority or officer making the order, and it is the opinion of that authority or officer that counts. The Court cannot substitute its own opinion for that of the officer, but the Court should be satisfied that the officer has decided on the manner in which notice of the order should be given, and that the notice has been given in accordance with the manner the officer has decided on. Where notice is to be given by publication in the Gazette, such publication means publication at the place where the offence is committed by breach of the rules and not publication at the place of issue of the Gazette. I.L.R. (1944) Kar. 107=A.I.R. 1944 Sind 142.

R. 119 (1) of the Defence of India Rules requires that the authority issuing a notification under the Rules should decide in what manner the notification should be published. Therefore unless the prosecution shows in what manner the publication was decided on, it would not be entitled to rely on the presumption regarding notice to the accused mentioned in last para. of R. 119 (1). Mere publication in the Government or Official Gazette is not sufficient to fix a person with knowledge of the rule or notification in the absence of evidence to show that the authority had decided about the manner of publication. III. (e) to S. 114, Evidence Act, cannot also be applied to such a case. The burden of proof is on the prosecution. 47 Bom.L.R. 431=A. I. R. 1945 Bom. 368.

in this behalf may, for any purpose connected with the defence of British India, the public safety, the maintenance of public order, the efficient prosecution of the war, maintaining supplies and services essential to the life of the community or the administration of these rules affix any notice to, or cause any notice to be displayed on, any premises, vehicle or vessel, and may for the purpose of exercising the power conferred by this rule enter any premises, vehicle or vessel at any time.

(3) Any person authorised by Government in this behalf may, for any purpose mentioned in sub-rule (2), by order direct the owner or other person in possession or control of any premises, vehicle or vessel to display, any notice on, or in, the premises, vehicle or vessel in such manner as may be specified in the order.

(4) If any person without lawful authority removes, alters, defaces, obliterates or in any way tampers with any notice affixed or displayed in pursuance of these Rules, or contravenes any order under sub-rule (3), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.]

Obstructing lawful authorities.

120. [Eng. Def. R. 83.] If any person voluntarily obstructs, or offers any resistance to, or impedes or otherwise interferes with,—

(a) any member of His Majesty's forces acting in the course of his duty as such, or

(b) any authority, officer or person exercising any powers, or performing any duties, conferred or imposed upon it or him by or in pursuance of these Rules, or otherwise discharging any lawful functions in connexion with the defence of British India and the efficient prosecution of the war, or

(c) any person who is carrying out the orders of any such authority, officer or person as aforesaid or who is otherwise acting in accordance with his duty in pursuance of these Rules, he shall be punishable with imprisonment for a term which may extend to two years [or with fine or with both].

j[120-A. (1) If the authority competent to make appointments to an office

Succession to offices under Central Government. in connection with the affairs of the Central Government considers it necessary or expedient to make provision under this rule for an automatic succession to that office, that authority may maintain at such place or places as it thinks fit a list (hereinafter referred to as 'the succession list') of persons authorised to assume the duties of the office under this rule.

(2) If the person holding an office in respect of which a succession list is maintained under sub-rule (1) dies or is for any reason unable to perform the duties of the office, the first of the persons named in the succession list who survives and is available shall assume the duties of the office and shall thereupon be deemed, for the purpose of any law for the time being in force including this rule, to have been duly appointed to the office.

120-B. (1) In this rule, 'District Magistrate' includes an officer exercising the powers, and performing the duties, of the District Magistrate by virtue of section 11 of the Code of Criminal Procedure, 1898.

(2) If in any district an officer serving in connection with the affairs of the Province dies or is for any reason unable to perform the duties of his office and the District Magistrate is satisfied that a reference to the authority competent to make appointments to the office is by reason of military operations or

LEG. REF.

(i) Substituted by D.C. Dept. Notification No. 701-OR/41, dated the 15th February 1941, for the words "and shall also be liable to fine".

(j) Rules 120-A and 120-B inserted by D. C. Dept. Notification No. 882-SM/41, dated the 23rd December, 1941.

other special circumstances affecting the Province likely to cause undue delay, the District Magistrate may appoint to the office any person who is already in the service of the Crown and such person shall be deemed, for the purpose of any law for the time being in force including this rule, to have been duly appointed to the office:

Provided that nothing in this rule shall apply to any office in respect of appointments to which special provision is made by or under any section of the Government of India Act, 1935, other than section 241.]

k[120-C. (1) The Central Government or the Provincial Government may, if it considers it necessary or expedient so to do for securing the defence of British India, the public safety or the maintenance of public order, or for maintaining supplies and services essential to the life of the community, by general or special order require any person or class of persons in the civil service of the Crown in India to perform such civil duties within the station in which such person or persons are for the time being serving as may be specified in the order.

(2) Any person to whom an order made under sub-rule (1) applies shall, notwithstanding that he subsequently ceased to be in the civil service of the Crown in India, continue to perform the duties imposed on him by the order until he is relieved therefrom by competent authority.

(3) If any person contravenes the provisions of any order made under this rule, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.]

PART XVIII.

SUPPLEMENTARY AND PROCEDURAL.

121. [Cf. Eng. Def. R. 90.] Any person who attempts to contravene, or abets, or attempts to abet, or does any act preparatory to, a contravention of, any of the provisions of these Rules ¹[or of any order made thereunder], shall be deemed to have contravened that provision ¹[or, as the case may be, that order].

LEG. REF.

(k) Inserted by No. 1284-SM/42, dated the 22nd May, 1943.

(l) Inserted by D. Dept. Notification No. 1612-OR/42, dated the 24th October, 1942.

APPLICABILITY—ACCUSED ORGANISING MEETINGS AT WHICH INTENDING *satyagrahis* MADE ANTI-WAR SPEECHES.—Where the charge against the petitioner was that he organised meetings at which intending *satyagrahis* made anti-war speeches, introduced them to the audience, made appreciative references to their speeches at the close of the meetings, and thereby abetted the *satyagrahis*, in infringing the Defence of India Act and Rules, it was contended that as the principal offender had determined to commit an offence the petitioner committed no offence in merely announcing to the public that the principal offender intended to commit an offence. *Held*, that the offence committed by the principal could not be committed in the absence of the public, and by bringing the principal who intended to commit an offence into contact with the public, the petitioner himself committed the offence of abetment within the meaning of R. 121. (1942) 1 M. L. J. 445=1942 Mad. 417. See also 1943 S.

87=I.L.R. 1942 Kar. 597 (Attempt to set fire to post box).

R. 121.—To buy above the controlled price is also an offence. 122 I.C. 104=1944 Cal. 121.

JOINDER OF CHARGES—RULE.—R. 121 makes punishable the abetment of a particular offence and a person cannot be punished for abetting in general. He has to be charged with the abetment of a particular offence, and the ordinary rules of joinder must apply to offences punishable under R. 121 read with the other provisions of the Rules. In re, (1912) 1 M.L.J. 445=1942 Mad. 417.

"PREPARATORY ACT"—WHAT AMOUNTS TO.—R. 121 does not make mere intention to contravene any of the provisions of the rules punishable. It makes attempt abetment, and acts preparatory to the contravention of the rules punishable, but not mere intention to contravene them. The act preparatory to the contravention of the rules is presumably one that prepares the way (i.e.) facilitates the contravention of the rules, in some manner or other and not merely an act which precedes the contravention of the rules, but does not facilitate the contravention in any way. The mere sending of a letter by a person to the District Magistrate intimating that he intended to shout

122. If the person contravening any of the provisions of these Rules, 1-1 [or of any order made thereunder], is a company or other body corporate, every director, manager, secretary or other officer or agent thereof shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

123. Any person who, knowing or having reasonable cause to believe that any other person has contravened any of the provisions of these Rules 1-1 [or of any order made thereunder], gives that other person any assistance with intent thereby to prevent, hinder or otherwise interfere with his arrest, trial or punishment for the said contravention, shall be deemed to have abetted that contravention.

[123-A. Where any person is prosecuted for contravening any of these rules or order made thereunder which prohibits him from doing an act or being in possession of a thing without lawful authority or excuse or without a permit, licence, certificate or permission, the burden of proving that he had such authority or excuse or, as the case may be, the requisite permit, licence, certificate or permission, shall be on him.] (*Gazette of India*, Pt. I, Sec. 1, dated 24th February, 1945, p. 235—No. 5 DC(7)45).

124. (1) If a District Magistrate, Sub-Divisional Magistrate, Presidency Magistrate or Magistrate of the first class has reason to believe that a contravention of any of these Rules or an offence prejudicial to the efficient prosecution of war, to the defence of British India or to the public safety, has been, is being or is about to be committed in any place, he may by warrant authorise any police officer above the rank of constable—

(a) to enter and search the place in the manner specified in the warrant, and

(b) to seize anything found in or on such place which the police officer has reason to believe [has been, is being or is intended to be used], for the purposes of or in connection with, any such contravention or offence as aforesaid; and the provisions of the Code of Criminal Procedure, 1898, shall, so far as they may be applicable, apply to any such search or seizure, as they apply to any search or seizure made under the authority of a warrant issued under section 98 of that Code.

(2) Any Magistrate before whom anything seized under sub-rule (1) is conveyed shall forthwith report the fact of such seizure to the Provincial Government and, pending the receipt of its orders, may detain in custody anything so seized or take such other order for its safe custody as he may think proper.

(3) Anything seized under sub-rule (1) shall be disposed of in such manner as the Provincial Government may direct.

n[(4) In this rule, and in rule 126, "place" includes a house, building, tent, vehicle and aircraft.]

LEG. REF.

(l-1) See footnote (l) on page 450.
(m) Substituted by D.C. Dept. Notification No. 753-OR/41, dated the 10th May 1941, for the words "is being used or is intended to be used".

(n) Inserted by *ibid*.

anti-war slogans does not constitute an act "preparatory to" the contravention of rules

framed under the Defence of India Act within the meaning of R. 121 and is not an offence punishable under that rule. 43 P. L.R. 396=A.I.R. 1941 Lah. 301=I.L.R. (1941) Lah. 796; see also 1941 A.L.J. 687=1942 All. 141.

S. 517, Cr. P. Code, applies to an offence under R. 90 (3) by reason of R. 124. (1943) 2 M.L.J. 500=1944 Mad. 125.

125. [Cf. Eng. Def. R. 88-A.] (1) Any officer of His Majesty's forces engaged in the defence of the coast or any person

authorised in this behalf by such officer may stop and search any vessel found within tidal waters or the territorial waters adjacent to British India and seize anything in such vessel which he has reason to believe has been, is being, or is about to be, used for any purpose prejudicial to the defence of British India or to the efficient prosecution of war.

(2) Any officer or person who makes or causes to be made any seizure in pursuance of the provisions of sub-rule (1) shall forthwith report the fact of such seizure to the Central Government and, pending the receipt of the orders of the Central Government, may detain in custody anything so seized or take such other order for its safe custody as he may think proper.

(3) Anything seized in pursuance of the provisions of sub-rule (1) shall be disposed of in such manner as the Central Government may direct.

(4) Nothing in this rule shall apply to any visit, search, detention for capture made in the exercise of any right under international law, or affect any law relating to Prize or Prize Courts.

126. [Eng. Def. R. 88 B. & C.] (1) The Central Government or the

Provincial Government may by general or special order empower any person to—

(a) stop and search any vessel found in inland waterways ^o[or any vehicle ^p(or animal as defined in) sub-rule (1) of rule 89];

(b) search any place, ^{p-1}[including any vessel wherever found], and seize anything, ^{p-1}[including a vessel, vehicle or animal found on search under this sub-rule], which he has reason to believe has been, is being or is about to be, used for any purpose prejudicial ^o[to the efficient prosecution of war,] to the defence of British India or to the public safety or interest.

(2) Any person empowered under sub-rule (1) shall forthwith report to the Provincial Government in detail any seizure made by him and, pending the receipt of its orders, may detain in custody anything so seized or take such other order for its safe custody as he may think proper.

(3) Anything seized by a person empowered under sub-rule (1) shall be disposed of in such manner as the Provincial Government may direct.

(4) A person empowered by the Central Government or the Provincial Government under sub-rule (1) may authorise any other person to exercise like powers to his own in the whole or any part of the area in respect of which that Government has empowered him.

127. [Eng. Def. R. 85.] Any member of His Majesty's forces acting in

the course of his duty as such, and any person authorised by the Central Government ^q[or the Provincial Government], to act under this rule,—

(a) may enter on any land for the purpose of exercising any of the powers conferred in relation to that land by any of these Rules;

(b) may enter and inspect any land for the purpose of determining

LEG. REF.

(o) Inserted by D. C. Dept. Notification No. 753-OR/41, dated the 10th May, 1941.

(p) Substituted by Notification No. 5 D.C. (16)/43, dated 29th January, 1944.

(p-1) Inserted by D.C. Dept. Notifica-

tion No. 5-D.C. (16)/43, dated 17th July, 1943; see also Notification No. 5-D.C. (16)/43, dated 21st January, 1944.

(q) Inserted by D. C. Dept. Notification No. 902-SM/41, dated the 5th July 1941.

whether, and, if so, in what manner, any of those powers are to be exercised in relation to that land;

(c) may, for any purpose connected with the defence of British India, the public safety, the efficient prosecution of war, or the maintenance of supplies and services essential to the life of the community, pass (with or without animals or vehicles) over any land.

[128. Any police officer may arrest without warrant any person who is reasonably suspected of having committed or of committing or of being about to commit a contravention of rule 12, 17, 27, 49, 51, 51-A, 51-B, 52, 53, 57, 59-A, 76-A, 78, 87-A, 80, 81-E, 89, 118, 119, and 120 or of any order or direction made or given under any of the said rules]. (*Gazette of India*, Pt. I, Sec. 1, dated 21st July, 1945, p. 966.)

r-u[128-A. (1) Any police officer may arrest without warrant any person whom he reasonably suspects of being an escaped prisoner of war.

(2) Where any person is arrested under sub-rule (1), the District Superintendent, or in a Presidency-town the Commissioner of Police shall, in consultation with the officer in charge of the nearest camp for the detention of the prisoners of war,—

(a) take such steps as may be necessary to establish the identity of the arrested person,

(b) upon his being found to be an escaped prisoner of war, arrange to hand him over to a military guard for being taken to the said camp, and

(c) pending such arrangement, detain him in such custody as may appear expedient.

(3) The provisions of the Code of Criminal Procedure, 1898, shall not apply in relation to any arrest made under sub-rule (1).]

129. (1) Any police officer, v[* *] or any other officer of Government empowered in this behalf by general or special order of the Central Government, w[or of the Provincial Government] may arrest without warrant any person whom he reasonably suspects of having acted, of acting, or of being about to act,—

LEG. REF.

(r-u) Inserted by D.C. Dept. Notification No. 1382-OR/42, dated the 2nd May 1942.

(v) The words "not below the rank of head constable" omitted by D. C. Dept. Notification No. 909-SM/41, dated the 16th May, 1942.

(w) Inserted by D.C. Dept. Notification No. 909-SM/41, dated the 11th October, 1941.

R. 129 (1): POWER TO ARREST AND DETAIN. —The power to arrest and detain on mere suspicion, which has been conferred on the executive under R. 129 (1) is not intended to be exercised in an arbitrary or capricious manner. In exercising this power the executive must act reasonably and in good faith, and in such a way that a Court of law cannot say that it was obviously not acting *bona fide* because it was acting so unreasonably that no honest man could say that it could possibly have so acted. 23 Pat. 252=1944-P.W.N. 245=A.I.R. 1944 Pat. 354.

ORDER DETAINING PERSON TO ENABLE POLICE TO INVESTIGATE OFFENCES COMMITTED BY HIM. —A person can be detained under R. 129,

only if he is a possible danger to the State or to the efficient prosecution of the war. An order detaining him in order to enable the police to carry on unhampered an investigation of offences alleged to have been committed by him is a misuse or an abuse of the powers given by that rule and therefore can be questioned in a Court in spite of S. 16 (1) of the Defence of India Act. A.I. R. 1944 Lah. 373.

OBJECT OF—PRESS REPORTER MISREPORTING REMARKS OF DEPUTY COMMISSIONER CONCERNING A.R.P.—LEGALITY OF HIS ARREST.—R. 129 was provided to enable police officers or other officers of Government to detain dangerous men immediately and to hold them in detention until the Provincial Government or the Central Government issued orders of detention under R. 26 of the rules. Rr. 26 and 129 give power to arrest and detain without specifying any charge and obviously confer powers which should be carefully exercised. A newspaper reporter who was present at a press conference convened by the Deputy Commissioner misreported in the newspaper the remarks made by the Deputy Commissioner concerning the A.R.P. Orga-

(a) with intent to assist any State at war with His Majesty, or in a manner prejudicial to the public safety or to the efficient prosecution of war;

(b) in any area in which the Provincial Government has, by notification, declared that this clause shall become operative, in a manner calculated to promote, or to assist the promotion of, rebellion against the authority of Government;

(c) in any prohibited place, * [protected place or protected area, or any other place or area as respects which an order has been made under rule 9] in a manner prejudicial—

(i) to the safety of any such place or area or of any industry, machinery or building in any such place or area;

(ii) to the output or effective control of any such industry or machinery.

(2) Any officer who makes an arrest in pursuance of sub-rule (1) shall forthwith report the fact of such arrest to the Provincial Government, and, pending the receipt of the orders of the Provincial Government, may, subject to the provisions of sub-rule (3), by order in writing, commit any person so arrested to such custody as the Provincial Government may by general or special order specify:

LEG. REF.

(*) Substituted by D. C. Dept. Notification No. 305-OR/39, dated the 15th February 1941, for the words, brackets, letter and figures "protected place, protected area or any such place or area, as is referred to in clause (c) of sub-rule (1) of rule 9".

nisation. The misreported passage was as follows: The Deputy Commissioner "quoted the instance of the A.R.P. Organisation and said that public-spirited men did not come forth to join the A.R.P. Organisation because it was treated as an official organisation. A journalist—Rightly of course". The reporter was, on publication of this passage in the newspaper, arrested under R. 129 as a punishment and as a warning to others. *Held*, that the misreporting of the Deputy Commissioner might amount to some offence but such conduct could not afford ground for arrest and detention under R. 129. A.I.R. 1943 Lah. 329 (F.B.).

DETENTION FOR FACILITATING INVESTIGATION IF ABUSE OF POWER.—If a police officer for facility of carrying on an investigation unhampered and unrestricted detains an accused person, or a witness supposed to be acquainted with the facts and circumstances of the case, under R. 129 that would be an abuse of the power conferred under R. 129. A.I.R. 1945 Nag. 8.

LEGAL INTERVIEWS.—So far as the Central Province is concerned interviews with counsel must be granted to detenues. A. I. R. 1945 Nag. 8.

PROCEDURE REGARDING INVESTIGATION.—Rule 129 gives the Provincial Government special power to regulate the place of detention and the nature of the custody but not to regulate the manner of an investigation. Therefore, the procedure regulating the manner of the investigation is the procedure set out in the Criminal Procedure Code, e.g., Ss. 61 and 167. None of the rights under S. 61 of S. 167 or of bail is taken away or touched by the Defence of India Act. Therefore all the old rights and privileges remain intact. A.I.R., 1945 Nag. 8.

REASONABLE GROUNDS FOR SUSPICION—DUTY OF POLICE OFFICER TO PROVE.—Under R. 129 all that the Provincial Government can do is to specify the place of detention and up to a limit of two months its duration. The power to arrest or detain under R. 129 is not conferred on the Provincial Government. The only authority we are concerned with under R. 129 is the police officer who made the detention, and it is for him to show that he had reasonable grounds for suspicion. He cannot discharge that onus by merely asserting that he had reasonable grounds because that is the very question the Courts have to decide. Under the law the Court is to be the judge of that and not the police officer. Therefore he must tell the High Court what those grounds were and leave the Court to decide whether they are reasonable. Where the order is couched in alternate terms it becomes patently apparent that no thought has been given to the requirements of the rule and that a rubber stamp order has been made. That will certainly not satisfy the condition of "reasonable suspicion" which R. 129 requires. Under R. 129 the Court has to determine whether the suspicions were reasonable and not the Provincial Government. A.I.R. 1945 Nag. 8.

REASONABLENESS—BURDEN OF PROOF.—Under R. 129, the Courts must decide the question of reasonableness and not the police. The burden of proof lies on the police. R. 129 gives the Provincial Government the right to determine the place of custody. But it gives no other right. It does not give the Provincial Government power to justify an unauthorised arrest or to make legal that which in the beginning was illegal. Nor does it confer any right to control or regulate the mode of any investigation which the police, or anyone else, may wish to make. Consequently, if the original order made by the police officer is defective the subsequent order of the Provincial Government specifying the place of detention and its duration will not serve to cure the original defect. (Difference between R. 26 and R. 129 indicated.) A.I.R. 1945 Nag. 8.

Provided—

(i) that no person shall be detained in custody under this sub-rule for a period exceeding fifteen days without the order of the Provincial Government; and

(ii) that no person shall be detained in custody under this sub-rule for a period exceeding two months.

(3) If any person arrested under clause (c) of sub-rule (1) is prepared to furnish security, the officer who has arrested him may, instead of committing him to custody, release him on his executing a bond with or without sureties that he will not, pending the receipt of the orders of the Provincial Government, enter, reside or remain in the areas in respect of which he became liable to arrest.

(4) On receipt of any report made under the provisions of sub-rule (2), the Provincial Government may, in addition to making such order, subject to the second proviso to sub-rule (2), as may appear to be necessary for the temporary custody of any person arrested under this rule, make, in exercise of any power conferred upon it by any law for the time being in force, such final order as to his detention, release, residence or any other matter concerning him as may appear to the said Government in the circumstances of the case to be reasonable or necessary.

(5) Subject to the condition that nothing in this sub-rule shall be deemed to extend the limits of detention prescribed in the first and second provisos to sub-rule (2), the Provincial Government may direct that any person arrested under clause (a) or clause (b) of sub-rule (1) shall be removed to any other province of which the Provincial Government (hereinafter described as the second Government) has given its consent in this behalf, and thereupon such person shall be removed and the second Government shall take in respect of such person such action as may be lawful in like manner as if such person had been arrested within its province.

(6) When security has been taken in pursuance of the provisions of sub-rule (3), the bond shall be deemed to be a bond taken under the Code of Criminal Procedure, 1898, by the Chief Presidency Magistrate or District Magistrate having jurisdiction in the area in respect of which the said security has been taken and the provisions of section 514 of the said Code shall apply accordingly.

130. (1) No Court or Tribunal shall take cognizance of any alleged contravention of these Rules, ^{Cognizance of Contraventions of the Rules, etc.} ~~or of any order made thereunder~~, except on a report in writing of the facts constituting such contravention, made by a public servant.

(2) Proceedings in respect of a contravention of the provisions of these Rules ^{or of any order made thereunder} alleged to have been committed by

LEG. REF.

(y) Inserted by No. 5-D.C. (52)43, dated the 11th December, 1943.

R. 130 (1).—"Public servant" includes clerk in Government Collectorate. See A. I.R. 1943 Pat. 315.

Under R. 130, it is a *sine qua non* for a valid prosecution that a public officer should make a report in writing of the facts which constitute the contravention of the rules. The absence of such report is fatal to the case. A.I.R. 1945 Pesh. 6.

REPORT—CHARGE-SHEET.—A charge-sheet sent by a Sub-Inspector of Police would be a report within the meaning of R. 130. But if the charge-sheet

makes no reference at all to the specific contravention of a rule which is the offence alleged, there can be no conviction on such charge-sheet. 46 Bom.L.R. 449=A. I. R. 1944 Bom. 247. See also 1945 P.W.N. 133.

R. 130 requires a report by a public servant containing the facts constituting the alleged contravention of the Rules. The main purpose of the rule is to prevent prosecution by private persons arising from malice and enmity, and to limit prosecutions by public servants. There is no need on the part of the public servant to state all the necessary facts on one and the same paper; there is nothing to prevent him by reference embodying in the police report details contained in a complaint which is appended to

any person may be taken before the appropriate Court having jurisdiction in the place where that person is for the time being.

(3) Notwithstanding anything contained in Schedule II to the Code of Criminal Procedure, 1898, a contravention of z[any of the following rules, namely, 8-A, 35, 98 and 104], shall be triable by a Court of Session, a Presidency Magistrate or a Magistrate of the first class, d[and a contravention of any order made under Rule 56 a(or under sub-rule 2 of rule 81), shall be triable by a Court of Session, a Presidency Magistrate or a Magistrate of first or second class].

b[(4) Any magistrate or bench of magistrates empowered for the time being to try in a summary way the offences specified in sub-section (1) of section 260 of the Code of Criminal Procedure, 1898, may, if such magistrate or bench of magistrates thinks fit, on application in this behalf being made by the prosecution, try a contravention of any such provisions of these rules d[or orders made thereunder] as the Central Government may by notified order specify in this behalf in accordance with the provisions contained in sections 262 to 265 of the said Code.]

c[130-A. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no person accused or convicted of a contravention of these Rules d[or orders made thereunder] shall, if in custody, be released on bail or on his own bond, unless—

e[(a) the prosecution has been given an opportunity to oppose the application for such release, and]

(b) where f[the prosecution opposes the application and] the contravention is of any such provision of these Rules d[or orders made thereunder] as the Central Government g[or the Provincial Government] may by notified order

(z) Substituted by D. C. Dept. Notification No. 944-OR/41, dated the 9th August 1941, for the words, figures and letters "rule 8-A or rule 35".

(a) Inserted by No. 5-D.C. (48)/43, dated the 4th March, 1944.

(b) Inserted by No. 5-D C. (3)/43, dated 11th January, 1943.

(c) Inserted by D.C. Dept. Notification No. 542-OR/40, dated the 15th February, 1941.

(d) Inserted by No. 5-DC. (52)/43, dated the 11th December, 1943.

(e) Substituted by D. C. Dept. Notification No. 542-OR/40, dated the 7th June 1941, for the original clause (a) of rule 130-A.

(f) Inserted by D.C. Dept. Notification No. 542-OR/40, dated the 2nd May, 1942.

(g) Inserted by D.C. Dept. Notification No. 542-OR/40, dated the 21st February, 1942.

his report. I.L.R. (1944) Kar. 107=A. I.R. 1944 Sind 142. See also 1945 P.W.N. 133.

CHARGE SHEET HELD REPORT WITHIN RULE 130.—The prosecution was started on a charge-sheet sent by the Police Inspector. In that charge-sheet, which was signed by him, he mentioned the names of

the three accused and alleged that "they at Bombay on the 2nd day of March, 1943, did interfere with the police officers performing their duties in maintaining peace and order at Chaupati and thereby committed an offence punishable under R. 120 (b), Defence of India Rules." Held, that the charge-sheet set out the facts constituting the contravention of the Defence of India Rules committed by the accused and could be regarded as the Police Inspector's report made to the Magistrate in writing. The charge-sheet need not specifically state what were the duties in performing which the police officers were then engaged. 1944 Bom. 125. See also 1945 P.W.N. 251.

Where there was no informant as such, the alleged offence having been committed in the presence of the investigating officer himself, the Inspector is not bound to take down in writing any information relating to the commission of the offence, since he has the information himself. 1944 Bom. 125 (140-141).

R. 130-A (b): SCOPE—If *ultra vires*—BAIL, PROVISIONS OF CR. P. CODE AS TO, IF APPLY.—R. 130-A, cl. (b) is *ultra vires* the Central Government. A power given to make rules with regard to arrest and trial by S. 2 (3) (1) of the Act, implies a power to make rules for the custody of persons

specify in this behalf, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such contravention].

h[130-B. Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any Magistrate of the first class specially empowered by the Provincial Government in this behalf and for any Presidency Magistrate to pass a sentence of fine exceeding one thousand rupees on any person convicted of contravening an order made under rule 56-A or rule 81.]

131. No proceedings for a contravention of clause (c) of sub-rule (1) of rule 38 in respect of a prejudicial report the publication of which is, or which is an incitement to the commission of, a prejudicial act of the nature des-

LEG. REF.

(h) Inserted by No. 5-D.C. (5) 44, dated the 22nd January, 1944.

pending trial even apart from the general power conferred by S. 2 (1). Hence no person accused of an offence under the Defence of India Act or the rules thereunder can be released on bail unless the Court is satisfied that there are reasonable grounds for believing that he is innocent. In respect of offences, under the Defence of India Act, that Act governs all other statutory provisions and therefore the provisions of the Criminal Procedure Code with regard to bail do not apply. The trial of such offences is governed by the special rules under the Act, though the offences are now tried in the ordinary Criminal Courts and not by special tribunals. (1941) 2 M.L.J. 1014—I.L.R. (1942) Mad. 414—55 L. W. 77—A.I.R. 1941 Mad. 221.

Rule 130-A of the Defence of India Rules embodies a valid and binding provision of law. 1944 A.L.J. 150. R. 130-A does not depart from the fundamental principle of accused being presumed to be innocent until proved guilty. 1944 A.L.J. 150—1944 All. 118 (F.B.).

The effect of R 130-A is to repeal the provisions of S. 496, Cr. P. Code in so far as it divests the Court of its discretion in the matter of refusing bail in cases of bailable offences. The legislature may impliedly repeal penal laws by a later enactment like any other statute even if the repeal introduces stringency of procedure or takes away a privilege. R. 130-A gives the Court a discretion in the matter, while under the imperative provisions of S. 496, Cr. P. Code, the accused in a bailable case would be entitled to be released on bail. 45 Bom.L.R. 72—I.L.R. (1943) Bom. 167—1943 Bom. 82.

VALIDITY.—R. 130-A embodies a valid and binding provision of law. 1944 A. L. W. 259—1944 O.W.N. (H.C.) 64—1944 A.L.J. 150 (F.B.).

R. 130-A is not *ultra vires* and inoperative, S. 2 (3) of the Act does confer powers to make a rule in terms of R. 130-A covering

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even the revisional stage of the case; and having regard to S. 3 of the Defence of India Act, any provisions of the Cr. P. Code, inconsistent with anything in the Defence of India Act or Rules must be regarded as repealed. 23 Pat. 22.

SCOPE AND EFFECT—IF BAR TO INHERENT POWERS OF HIGH COURT TO GRANT BAIL.—It is not correct to say that R. 130-A relates only to applications for bail by under-trial prisoners and not by convicted persons who have appealed. It cannot be said that since S. 2 (3) (i) of the Defence of India Act refers only to the trial, it can give no power to make rules governing the appellate stage of the proceedings. But an appeal is only a continuation of the trial and is a part of the trial. The accused is on his trial before the appellate Court just as much as before the Court of first instance. R. 130-A is in very wide terms and imposes a bar "Notwithstanding anything contained in the Code of Criminal Procedure." Therefore R. 130-A would operate to exclude even the inherent powers of the High Court to grant bail as even the inherent powers of the High Court as based upon the Cr. P. Code. 23 Pat. 22.

The notification of a Rule under R. 130-A (b) of the Defence of India Rules, does not annul the notification of an order made under it. Accordingly the specification by notified order under R. 130-A (b) of certain clauses of Defence of India Rule 81 (2) does not signify that orders made under that Rule, (e.g.) the Cotton Cloth and Yarn (Control) Order, 1943, have at the same time been notified. As the said order has not been duly notified, an offence against the provisions of that order must be dealt with according to the Code of Criminal Procedure subject to the requirement of Cl. (a) of R. 130-A of the D. I. Rules. 1945 N.L.J. 223. Notification (Bombay) of 5th October, 1942, has no retrospective effect. It cannot authorize complaint by unauthorized person before that date. 45 Bom.L.R. 572—1943 Bom. 314.

R. 130-A AND 38: BAIL IN CASE OF CONTRAVENTION OF R. 38.—Where a student is

cribed in clause (k) of sub-rule (6) of rule 34 shall be taken in respect of any document circulated by, or under the authority of, a candidate for election to a Chamber of the Central or of a Provincial Legislature, save with the written sanction of the Central Government or of the Provincial Government, as the case may be.

132. (1) Any authority, officer or person who is empowered by or in pursuance of i[the Defence of India Act, 1939, or] Power to give effect to rules, orders, etc. any of these Rules to make any order, or to exercise any other power may, in addition to any other action prescribed by or under these Rules, take, or cause to be taken, such steps and use, or cause to be used, such force as may, in the opinion of such authority, officer or person, be reasonably necessary for securing compliance with, or for preventing or rectifying any contravention of, such order, or for the effective exercise of such power.

(2) Where in respect of any of the provisions of these Rules there is no authority, officer or person empowered to take action under sub-rule (1), the Central or the Provincial Government may take, or cause to be taken, such steps and use, or cause to be used, such force as may in the opinion of that Government be reasonably necessary for securing compliance with, or preventing or rectifying any breach of, such provision.

(3) For the avoidance of doubt it is hereby declared that the power to take steps under sub-rule (1) or under sub-rule (2) includes the power to enter upon any land or other property whatsoever.

j[133. The Administrator-General (Eastern Frontier Communications) Administrator - General may, if in his opinion it is necessary or expedient for (Eastern Frontier Communications) carrying out his duties as such, exercise any power conferred on any authority by any of these Rules.]

N.B.—Validity of certain of the defence of India Rules.—For the removal of doubts it is hereby enacted—

(a) that rules 22, 84, 90-B and 93 of the Defence of India Rules shall be deemed to have been made under section 2 of the Defence of India Act, 1939 (XXXV of 1939), as amended by this Ordinance, and

(b) that no order made under, and no action taken in, exercise of any power conferred by or under, any of the said rules 22, 84, 90-B and 93 shall be called in question merely on the ground that the rule conferred or purported to confer powers in excess of the powers that might at the time the rule was made be lawfully conferred by or under a rule made or deemed to have been made under the said section 2.—(Ord. 35 of 1944.)

LEG. REF.

(i) Inserted by D. C. Dept. Notification No. 285-OR/39, dated the 24th November, 1939.

(j) Inserted by D. C. Dept. Notification No. 1269-OR/42, dated the 5th March, 1942.

charged with having contravened R. 38, he cannot be released on bail unless the Court

has reason to suppose that he is not guilty of the offence with which he is charged. Where the fact of making the speech is admitted and in the absence of any evidence to the contrary the contents of the speech as given in the short-hand report tend to show that it was intended to promote feelings of hatred between various subjects of the Crown, bail could not be granted. 1943 A.M.L.J. 43. See also 1944 N.L.J. 75.

THE DESTRUCTIVE INSECTS AND PESTS ACT (II OF 1914).¹

Year.	No.	Short title.	Amendments.
1914	II	Destructive Insects and Pests Act.	Amended by Acts XX of 1930; VI of 1938; III of 1939.

[3rd February, 1914.

An Act to prevent the introduction into British India of any insect, fungus or other pest, which is or may be destructive to crops.

WHEREAS it is expedient to make provision for preventing the introduction into 1-a[and the transport from one province to another in] British India of any insect, fungus or other pest, which is or may be destructive to crops; It is hereby enacted as follows:—

Short title.

1. This Act may be called THE DESTRUCTIVE INSECTS AND PESTS ACT, 1914.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "crops" includes all agricultural or horticultural crops, and ²[all trees, bushes or plants];

(b) "import" means the bringing or taking by sea ³[land or air ⁴(across any customs frontier as defined by the Central Government)];

(c) "infection" means infection by any insect, fungus or other pest injurious to a crop; ⁵[and

(d) a reference to British India shall be construed as a reference to British India and Berar].

3. (1) The Central Government may, by ⁶notification in the Official

Power of Central Government to regulate or prohibit the import of articles likely to infect.

Gazette, prohibit or regulate, subject to such restrictions and conditions as it may impose, the import into British India, or any part thereof, or any specified place therein, of any article or class of articles likely to cause infection to any crop 1-a[or of insects generally or any class of insects].

(2) A notification under this section may specify any article or class of articles 1-a[or any insects or class of insects] either generally or in any particular manner, whether with reference to the country of origin, or the route by which imported or otherwise.

4. A notification under section 3 shall operate as if it had been issued under

Operation of notification under S. 3.

section 19 of the Sea Customs Act, 1878, and the officers of Customs at every port shall have the same powers in respect of any article with regard to the importation of which such a notification has been issued as they have for the time being in respect of any article the importation of which is regulated, restricted or prohibited by the law relating to Sea Customs, and the law, for the time being in force relating to Sea Customs or any such article shall apply accordingly.

⁷[4-A. The Central Government may, by notification in the Official

LEG. REF.

¹ For statement of Objects and Reasons, see Gazette of India, 1913, Pt. V, p. 166; for Report of Select Committee, see *ibid.*, 1914, Pt. V, p. 7; and for Proceedings in Council, see *ibid.*, 1914, Pt. VI, p. 518; *ibid.*, 1914, Pt. VI, pp. 64 and 188.

^{1a} Inserted by Act VI of 1938.

² Substituted by Act VI of 1938.

³ Substituted by Act XX of 1930.

⁴ Inserted by A.O., 1937.

⁵ Inserted by Act III of 1939.

⁶ For notification under sec. 3, see Gen. R. and O., Vol. IV, p. 474.

⁷ Secs. 4-A to 4-D inserted by Act VI of 1938.

Power of Central Government to regulate or prohibit transport from province to province of insects or articles likely to infect.

Gazette, prohibit or regulate, subject to such conditions as the Central Government may impose, the export from a province or the transport from one province to another province in British India of any article or class of articles likely to cause infection to any crop or of insects generally or any class of insects.

4-B. When a notification has been issued under section 4-A, then, notwithstanding any other law for the time being in force, the person responsible for the booking of goods or parcels at any railway station or inland steam vessel station,—

Refusal to carry article of which transport is prohibited.

(a) where the notification prohibits export or transport, shall refuse to receive for carriage at, or to forward or knowingly allow to be carried on, the railway or inland steam vessel from that station anything, of which import or transport is prohibited, consigned to any place in British India outside the province in which such station is situate; and

(b) where the notification imposes conditions upon export or transport, shall so refuse, unless the consignor produces, or the thing consigned is accompanied by, a document or documents of the prescribed nature showing that those conditions are satisfied.

4-C. Where, by or under any law in force in the territories of any Indian State, the import into that State of any article likely to

Application of S. 4-B to articles exported to Indian States.

cause infection to any crop or of any insect has been prohibited, the Central Government may, by notification in the Official Gazette, declare that the provisions

of section 4-B shall apply in respect of any such article or insect consigned from any place in British India to any place in that State:

Provided that such Indian State prohibits the export to British India of any article or insect or class of insects the import of which into British India has been prohibited by the Central Government.

4-D. The Central Government may, by notification in the Official Gazette,

Power of Central Government to make rules.

make rules prescribing the nature of the documents which shall accompany any article or insect the export or transport whereof is subject to conditions imposed

under section 4-A, or which shall be held by the consignor or consignee thereof, the authorities which may issue such documents and the manner in which the documents shall be employed:

Provided that the said notification shall be placed, as soon as may be, on the table of both Chambers of the Central Legislature].

5. (1) The Provincial Government may ¹[* * * * *]

Power of Provincial Government to make rules.

* * * * *] make rules for the detention, inspection, disinfection or destruction ²[of any insects or class of insects or]

of any article or class of articles in respect of which a notification has been issued under section 3 ²[or under section 4-A] or of any article which may have been in contact or proximity thereto, and for regulating the powers and duties of the officers whom it may appoint in this behalf.

(2) In making any rule under this section the Provincial Government may direct that a breach thereof shall be punishable with fine, which may extend to one thousand rupees.

²[5-A. Any person who knowingly exports any article or insect from a

LEG. REF.

¹ Words 'subject to the control of the Governor-General in Council' omitted by A.

O., 1937.

² Inserted by Act VI of 1938.

Penalties. province or transports any article or insect from one province to another in British India in contravention of a notification issued under section 4-A, or attempts so to export or transport any article or insect, or exports or attempts to export from British India to an Indian State any article or insect in respect of which a notification under section 4-C has been issued, and any person responsible for the booking of goods or parcels at a railway or inland steam vessel station who knowingly contravenes the provisions of section 4-B shall be punishable with fine which may extend to two hundred and fifty rupees, and upon any subsequent conviction, with fine which may extend to two thousand rupees.]

Protection to persons
acting under Act.

6. No suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act.

THE INDIAN DOCK LABOURERS ACT (XIX OF 1934).

[19th August, 1934.

An Act to give effect in British India to the Convention concerning the protection against accidents of workers employed in loading and unloading ships.

WHEREAS a Revised Draft Convention concerning the protection against accidents of workers employed in loading or unloading ships was adopted at Geneva on the twenty-seventh day of April, nineteen hundred and thirty-two;

AND WHEREAS it is expedient to give effect in British India to the said Convention;

It is hereby enacted as follows:—

Short title, extent, commencement and application.

1. (1) This Act may be called THE INDIAN DOCK LABOURERS ACT, 1934.

(2) It extends to the whole of British India.

(3) It shall come into force on such date as the Governor-General in Council may, by notification in the *Gazette of India*, appoint.

(4) It shall not apply to any ship of war of any nationality.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “the processes” includes all work which is required for or is incidental to the loading or unloading of cargo or fuel into or from ship and is done on board the ship or alongside it; and

(b) “worker” means any person employed in the processes.

3. (1) The ¹[Central Government], may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act within such local limits as it may assign to them respectively.

(2) All Principal Officers of the Merchantile Marine Department shall be Inspectors under this Act, *ex officio* within the limits of their charges.

(3) Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code and shall be officially subordinate to such authority as the ¹[Central Government] may direct.

4. Subject to any rules made in this behalf under section 6, an Inspector

Powers of Inspectors. may, within the local limits for which he is appointed,—

(a) enter, with such assistants (if any) as he thinks fit, any premises or ship where the processes are carried on;

(b) make such examination of the premises or ship and the machinery and gear, fixed or loose, used for the processes, and of any prescribed registers

and notices, and take on the spot or otherwise such evidence of any person as he may deem necessary for carrying out the purposes of this Act; and

(c) exercise any other powers which may be conferred upon him by the regulations made under section 5.

Power to Central Government to make regulations. 5. (1) The Central Government may make regulations—

(a) providing for the safety of working places on shore and of any regular approaches over a dock, wharf, quay or similar premises which workers have to use for going to or from a working place at which the processes are carried on, and for the lighting and fencing of such places and approaches;

(b) prescribing the nature of the means of access which shall be provided for the use of workers proceeding to or from a ship which is lying alongside a quay, hulk or other vessel;

(c) prescribing the measures to be taken to ensure the safe transport of workers proceeding to or from a ship by water and the conditions to be complied with by the vessels used for the purpose;

(d) prescribing the nature of the means of access to be provided for the use of the workers from the deck of a ship to a hold in which the processes are carried on;

(e) prescribing the measures to be taken to protect hatchways accessible to the workers and other openings in a deck which might be dangerous to them;

(f) providing for the efficient lighting of the means of access to ships on which the processes are carried on and of all places on board at which the workers are employed or to which they may be required to proceed;

(g) providing for the safety of the workers engaged in removing or replacing hatch coverings and beams used for hatch coverings;

(h) prescribing the measures to be taken to ensure that no hoisting machine, or gear, whether fixed or loose, used in connection therewith, is employed in the processes on shore or on board ship unless it is in a safe working condition;

(i) providing for the fencing of machinery, live electric conductors and steam pipes;

(j) regulating the provision of safety appliances on derricks, cranes and winches;

(k) prescribing the precautions to be observed in regard to exhaust and live steam;

(l) requiring the employment of competent and reliable persons to operate lifting or transporting machinery used in the processes, or to give signals to a driver of such machinery, or to attend to cargo falls on winch ends or winch drums, and providing for the employment of a signaller where this is necessary for the safety of the workers;

(m) prescribing the measures to be taken in order to prevent dangerous methods of working in the stacking, unstacking, stowing and unstowing of cargo or handling in connection therewith;

(n) prescribing the precautions to be taken to facilitate the escape of the workers when employed in a hold or between decks in dealing with coal or other bulk cargo;

(o) prescribing the precautions to be observed in the use of stages and trucks;

(p) prescribing the precautions to be observed when the workers have to work where dangerous or noxious goods are, or have been, stowed or have to deal with or work in proximity to such goods;

(q) providing for the rendering of first-aid to injured workers and removal to the nearest place of treatment;

(r) prescribing the provision to be made for the rescue of immersed workers from drowning;

(s) prescribing the abstracts of this Act and of the regulations required by section 8;

(t) providing for the submission of notices of accidents and dangerous occurrences and prescribing the forms of such notices, the persons and authorities to whom they are to be furnished, the particulars to be contained in them and the time within which they are to be submitted;

(u) specifying the persons and authorities who shall be responsible for compliance with regulations made under this Act;

(v) defining the circumstances in which and conditions subject to which exemptions from any of the regulations made under this section may be given, specifying the authorities who may grant such exemptions and regulating their procedure;

(w) defining the additional powers which Inspectors may exercise under clause (c) of section 4; and

(x) providing generally for the safety of workers.

(2) Regulations made under this section may make special provision to meet the special requirements of any particular port or ports.

(3) In making a regulation under this section, the Central Government may direct that a breach of it shall be punishable with fine which may extend to five hundred rupees and when the breach is a continuing breach with a further fine which may extend to twenty rupees for every day after the first during which the breach continues.

Power to Central Government to make rules. 6. ¹[* * * *]
 * [The Central Government] may make rules
 regulating—

(a) the inspection of premises or ships where the processes are carried on; and

(b) the manner in which Inspectors are to exercise the powers conferred on them by this Act.

General provisions relating to regulations and rules.

7. (1) The power to make regulations and rules conferred by sections 5 and 6 is subject to the condition of the regulations and rules being made after previous publication.

(2) Regulation and rules shall be published in ²[the Official Gazette].

8. There shall be affixed in some conspicuous place near the main entrance of every dock, wharf, quay or similar premises where the processes are carried on, in English and in the language of the majority of the workers, the abstracts of this Act and of the regulations made thereunder which may be prescribed by the regulations.

Abstracts of Act and regulations to be conspicuously posted.

Penalties.

9. Any person who—

(a) wilfully obstructs an Inspector in the exercise of any power under section 4, or fails to produce on demand by an Inspector any registers or other documents kept in pursuance of the regulations made under this Act, or any gear, fixed or loose, used for the processes, or conceals or attempts to prevent any person from appearing before, or being examined by, an Inspector, or

(b) unless duly authorised or, in case of necessity, removes any fencing, gangway, gear, ladder, life-saving means or appliance, light, mark, stage or other thing required to be provided by or under the regulations made under this Act, or

(c) having in case of necessity removed any such fencing, gangway, gear,

LEG. REF.

¹ The words "Subject to control of the Governor-General in Council" omitted by A. O., 1937.

² Substituted for "The Local Government"

by *ibid.*

³ Substituted for "the Gazette of India and the Local Official Gazette, respectively" by *ibid.*

ladder, life-saving means or appliance, light, mark, stage or other thing, omits to restore it at the end of the period for which its removal was necessary,

shall be punishable with fine which may extend to five hundred rupees.

10. (1) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act or the regulations made thereunder.

(2) No prosecution for any offence under this Act or the regulations made thereunder shall be instituted except by or with the previous sanction of an Inspector.

(3) No Court shall take cognizance of any offence under this Act or the regulations made thereunder, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

11. The Central Government may, by notification in the Official Gazette, exempt from all or any of the provisions of this Act and of the regulations made thereunder, on such conditions, if any, as he thinks fit,—

(a) any port or place, dock, wharf, quay or similar premises at which the processes are only occasionally carried on or the traffic is small and confined to small ships, or

(b) any specified ship or class of ship.

12. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

THE DOURINE ACT (V OF 1910)¹.

Year	No.	Short title.	Amendments.
1930	V	" Dourine Act, 1910.	Am. Act VIII of 1920.

[25th February, 1910.

An Act to provide for the prevention of the spread of Dourine.

WHEREAS it is expedient to provide for the prevention of the spread of dourine; it is hereby enacted as follows:—

1. (1) This Act may be called THE DOURINE ACT, 1910.

(2) This section extends to the whole of British India; the rest of this Act extends only to such areas as the Provincial Government may, by notification² in the Official Gazette, direct.

2. (1) In this Act, the expressions "inspector" and "veterinary practitioner" mean, respectively, the officers appointed as such under this Act, acting within the local limits for which they are so appointed.

LEG. REF

¹ For Statement of Objects and Reasons, see *Gazette of India*, 1909, Pt. V, p. 96; for Report of Select Committee, see *ibid.*, 1910, Pt. V, p. 96; and for Proceedings in Council, see *ibid.*, 1909, Pt. VI, p. 157, and *ibid.*, 1910, Pt. VI, pp. 13, 90 and 121, dated 5th February, 1910, 26th February, 1910 and 12th March, 1910, respectively.

This Act has been declared in force in the Angul District by the Angul Laws Regulation, 1913 (III of 1913) sec. 3.

² The Act has been extended to Coorg, see *Coorg Gazette*, 1919, Part I, p. 118; to Bombay, see *Bombay Gazette*, 1919, Part I, p. 3001; to Central Provinces, see *C. P. Gazette*, dated 11th Nov. 1922, Part I, p. 1151.

(2) The provisions of this Act in so far as they relate to entire horses shall, if the Provincial Government, by notification as aforesaid, so directs, apply also to entire asses used for mule-breeding purposes.

3. The Provincial Government may, by notification as aforesaid, make such orders as it thinks fit directing and regulating the registration of entire horses maintained for breeding purposes.

4. (1) The Provincial Government may, by notification as aforesaid, appoint any persons it thinks fit to be inspectors, and any qualified veterinary surgeons to be veterinary practitioners, under this Act, and to exercise and perform, within any area prescribed by the notification, the powers conferred and duties imposed by this Act upon such officers respectively.

(2) Every person so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code.

5. An Inspector may, subject, to such rules as the Provincial Government may make in this behalf,—

(a) enter and search any building, field or other place for the purpose of ascertaining whether there is therein any horse which is affected with dourine; [*]¹

(b) prohibit, by order in writing, the owner or keeper of any horse, which in his opinion is affected with dourine, from using such horse for breeding purposes, pending examination by the veterinary practitioner;

²[(c) direct, by order in writing, the owner or keeper of any horse which, in the opinion of the Inspectors, is affected with dourine to remove it or permit it to be removed for the purpose of segregation to a place specified in the order, and such direction shall be sufficient authority for the detention of the horse in that place for that purpose.]

6. An Inspector issuing an order under section 5, * * * shall forthwith forward a copy of such order to the veterinary practitioner.

7. A veterinary practitioner receiving a copy of an order forwarded under section 6 shall, as soon as possible after receipt of such copy, examine the horse mentioned therein, and may for such purpose enter any building, field or other place.

8. A veterinary practitioner may—

(a) cancel any order issued under section 5, * * * ; or

(b) if on microscopical examination ³[or by other scientific test] he finds that any horse is affected with dourine,—

(i) in the case of an entire horse, cause it to be castrated,

⁴[(ii) in the case of a mare, with the previous sanction of such authority, as the Provincial Government may appoint in this behalf, or, if so empowered by the Provincial Government, without such sanction, cause it to be destroyed.]

9. When any horse is castrated or destroyed under section 8, the market-value of such horse immediately before it became affected with dourine shall be ascertained; and the Provincial Government shall pay as compensation to the owner thereof—

LEG. REF.

¹ The word "and" was omitted by sec. 2 of the Dourine (Amendment) Act (VIII of 1920).

² This clause was added by *ibid.*

³ The word and letter "clause (b)" were omitted by *ibid.*, sec. 3.

⁴ The word and letter "clause (b)" were omitted by *ibid.*, sec. 4.

⁵ These words were inserted by *ibid.*

⁶ This sub-clause was substituted by the Dourine (Amendment) Act (VIII) of 1920, sec. 5.

(a) in the case of a mare which has been destroyed, or of an entire horse which has died in consequence of castration, such market-value, and,

(b) in the case of an entire horse which survives castration, half the amount by which such value has been diminished owing to infection with dourine and castration.

10. (1) A veterinary practitioner may award, as compensation to be paid under section 9 in respect of each horse castrated or destroyed under section 8, a sum not exceeding two hundred and fifty rupees.

Settlement of compensation.

(2) If, in the opinion of the veterinary practitioner, the amount which should be paid as such compensation exceeds two hundred and fifty rupees, he shall report accordingly to the Collector, who shall decide the amount to be so paid.

11. (1) The Provincial Government shall, by rules published in the Official Gazette, make provision for the constitution of a committee or committees for the hearing of appeals from decisions under section 10.

Committees for hearing appeals.

(2) Such rules shall provide that not less than one member of any committee constituted thereunder shall be a person not in the ¹[service of the Crown] or of a local authority.

12. Any owner may, within two months from the date of a decision under section 10, appeal against such decision to the committee constituted in that behalf by rules made under section 11, and the decision of such committee shall be final.

Appeals.

13. (1) Whoever, being an Inspector appointed under this Act, vexatiously and unnecessarily enters or searches any field, building or other place, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Vexatious entries and searches.

(2) No prosecution under this section shall be instituted after the expiry of three months from the date on which the offence has been committed.

14. (1) The Provincial Government may make rules for the purpose of carrying into effect the provisions of this Act.

Rules.

(2) In particular, and without prejudice to the generality of the foregoing power such rules as aforesaid may—

²[(a) regulate the exercise of the powers conferred on Inspectors under section 5;]

(b) regulate the action to be taken by veterinary practitioners under section 8;³

⁴[* * * *].

(3) All such rules shall be published in the Official Gazette, and, on such publication, shall have effect as if enacted in this Act.

(4) In making any rule under this section the Provincial Government may direct that a breach of it shall be punishable with fine which may extend to fifty rupees.

15. Whoever uses or permits to be used for breeding purposes—

(a) any horse which has not been registered in accordance with the requirements of a notification under section 3, or

⁵[(b) any horse in respect of which an order under clause (b) or clause (c) of section 5 is in force,]

I.E.G. REF.

¹ Substituted for 'employ of Government' by A.O., 1937.

² This clause was substituted by sec. 5 of the Dourine (Amendment) Act (VIII of 1920).

³ The word "and" was omitted by *ibid.*

⁴ Clause (c) was omitted by sec. 5 of the Dourine (Amendment) Act (VIII of 1920).

⁵ This clause was substituted for the original clauses (b) and (c) by sec. 6 of *ibid.*

shall be punishable with fine which may amount, in the case of a first conviction, to fifty rupees, or, in the case of a second or subsequent conviction, to one hundred rupees.

16. No suit, prosecution or other legal proceeding shall lie against any person for anything which is, in good faith done or intended to be done under this Act.

THE DRAMATIC PERFORMANCES ACT (XIX OF 1876.)¹

Year.	No.	Short title.	Repeals and Amendments.
1876	XIX	The Dramatic Performances Act, 1876.	Repealed in part X of 1914; Amended, IV of 1914.

[16th December, 1876.

An Act for the better control of public dramatic performances.

WHEREAS it is expedient to empower the Government to prohibit public dramatic performances which are scandalous, defamatory, seditious or obscene: It is hereby enacted as follows:

Short title. 1. This Act may be called THE DRAMATIC PERFORMANCES ACT, 1876.

Local Extent. It extends to the whole of British India; *

2. In this Act "Magistrate" means, in the Presidency-towns, a Magistrate of Police, and elsewhere the Magistrate of the district.

3. Whenever the Provincial Government is of opinion that any play, pantomime or other drama performed or about to be performed in a public place is—

(a) of a scandalous or defamatory nature, or

(b) likely to excite feelings of disaffection to the Government established by law in British India [or British Burma],³ or

(c) likely to deprave and corrupt persons present at the performance, the Provincial Government, or outside the Presidency-towns [* *]⁴ the Provincial Government or such Magistrate as it may empower in this behalf, may by order prohibit the performance.

Explanation.—Any building or enclosure to which the public are admitted to witness a performance on payment of money shall be deemed a "public place" within the meaning of this section.

LEG. REF.

¹ For the statement of Objects and Reasons, see Gazette of India, 1876, Pt. V, p. 347; for Proceedings in Council, see *ibid.*, Supplement, pp. 328, 343 and 1941.

This Act has been declared, by notification under sec. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts, namely:—

The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum. See *Gazette of India*, 1886, Pt. I, p. 504. The District of Lohardaga included at this time

the present District of Palamau, which was separated in 1894; Lohardaga is now called the Ranchi District, Calcutta Gazette, 1899, pt. I, p. 44.

It has, with modifications and with the exception of sec. 12, been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898), sec. 4 (1) and Sch. I.

² The words "And it shall come into force at once" were repealed by the Repealing and Amending Act, 1914 (X of 1914).

³ Inserted by A. O., 1937.

⁴ The words "and Rangoon" omitted by *ibid.*

4. A copy of any such order may be served on any person about to take part in the performance so prohibited, or on the owner

Power to serve order of prohibition. . . or occupier of any house, room or place in which such performance is intended to take place; and any person on whom such copy is served, and who does or willingly permits any act in disobedience to such order shall be punished on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine or with both.

5. Any such order may be notified by proclamation, and a written or printed

Power to notify order. . . notice thereof may be stuck up at any place or places adapted for giving information of the order to the persons intending to take part in or to witness the performance so prohibited.

Penalty for disobeying prohibition. . . 6. Whoever after the notification of any such order—

(a) takes part in the performance prohibited thereby or in any performance substantially the same as the performance so prohibited, or

(b) in any manner assists in conducting any such performance, or

(c) is in wilful disobedience to such order present as a spectator during the whole or any part of any such performance, or

(d) being the owner or occupier, or having the use of any house, room or place, opens, keeps or uses the same for any such performance, or permits the same to be opened, kept or used for any such performance,

shall be punishable on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both.

7. For the purpose of ascertaining the character of any intended public

Power to call for information. . . dramatic performance, the Provincial Government, or such officer as it may specially empower in this behalf, may apply to the author, proprietor or printer of the drama about to be performed, or to the owner or occupier of the place in which it is intended to be performed, for such information as the Provincial Government or such officer thinks necessary.

Every person so applied to shall be bound to furnish the same to the best of his ability, and whoever contravenes this section shall be deemed to have committed an offence under section 176 of the Indian Penal Code.

8. If any Magistrate has reason to believe that any house, room or place is

Power to grant warrant to Police to enter and arrest and seize. . . used, or is about to be used, for any performance prohibited under this Act, he may, by his warrant, authorize any officer of Police to enter with such assistance as may be requisite, by night or by day, and by force, if necessary, any such house, room or place, and to take into custody all persons whom he finds therein, and to seize all scenery, dresses and other articles found therein and reasonably suspected to have been used, or to be intended to be used, for the purpose of such performance.

Saving of prosecutions under Penal Code, sections 124-A and 294. . . 9. No conviction under this Act shall bar a prosecution under section 124-A or section 294 of the Indian Penal Code.

10. Whenever it appears to the Provincial Government that the provisions

Power to prohibit dramatic performance in any local area, except under license. . . of this section are required in any local area, it may ¹[* *] declare, by notification in the Official Gazette, that such provisions are applied to such area from a day to be fixed in the notification.

On and after that day, the Provincial Government may order that no dramatic performance shall take place in any place of public entertainment within such area, except under a license to be granted by such Provincial Government, or such officer as it may specially empower in this behalf.

The Provincial Government may also order that no dramatic performance shall take place in any place of public entertainment within such area, unless a copy of the piece, if and so far as it is written, or some sufficient account of its purport, if and so far as it is in pantomime, has been furnished, not less than three days before the performance, to the Provincial Government, or to such officer as it may appoint in this behalf.

A copy of any order under this section may be served on any keeper of a place of public entertainment; and if thereafter he does, or willingly permits any act in disobedience to such order, he shall be punishable on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both.

Powers exercisable by Governor-General.

11. ¹[* *].

Exclusion of performances at religious festivals.

²12. Nothing in this Act applies to any *jatras* or performances of a like kind at religious festivals.

THE DRUGS ACT, (XXIII OF 1940).

[10th April, 1940.

An Act to regulate the import, manufacture, distribution and sale of drugs.

WHEREAS it is expedient to regulate the import into, and the manufacture, distribution and sale in, British India of drugs;

AND WHEREAS the Legislatures of all the Provinces have passed resolutions in terms of section 103 of the Government of India Act, 1935, in relation to such of the above-mentioned matters and matters ancillary thereto as are enumerated in List II of the Seventh Schedule to the said Act; It is hereby enacted as follows:—

CHAPTER I.

INTRODUCTORY.

Short title, extent and commencement.

1. (1) This Act may be called **THE DRUGS ACT**, 1940.

(2) It extends to the whole of British India.

(3) It shall come into force at once; but Chapter III shall take effect only from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, and Chapter IV shall take effect in a particular Province only from such date as the Provincial Government may, by like notification, appoint in this behalf.

Application of other laws not barred.

2. The provisions of this Act shall be in addition to, and not in derogation of, the Dangerous Drugs Act, 1930, and any other law for the time being in force.

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

(a) “the Board” means the Drugs Technical Advisory Board constituted under section 5;

(b) “drug” includes all medicines for internal or external use of human beings or animals, and all substances intended to be used for or in the treatment,

LEG. REF.

¹Sec. 11 omitted by A.O. 1937.

²This section does not apply to Upper

Burma. See sec. 4 (1) & Sch. I of Burma Laws Act (XIII of 1898).

mitigation or prevention of disease in human beings or animals, other than medicines and substances exclusively used or prepared for use in accordance with the Ayurvedic or Unani systems of medicine ;

(c) "to import", with its grammatical variations and cognate expressions, means to bring into British India ;

(d) "patent or proprietary medicine" means a drug which is a remedy or prescription prepared for internal or external use of human beings or animals, and which is not for the time being recognised by the Permanent Commission on Biological Standardisation of the League of Nations or in the latest edition of the British Pharmacopoeia or the British Pharmaceutical Codex or any other Pharmacopoeia authorised in this behalf by the Central Government after consultation with the Board ;

(e) "prescribed" means prescribed by rules made under Chapter II or Chapter III by the Central Government, or under Chapter IV by the Provincial Government.

4. Any substance specified as poisonous by rule made under Chapter III or Chapter IV shall be deemed to be a poisonous

Presumption as to poisonous substances.

substance for the purposes of Chapter III or Chapter IV, as the case may be.

CHAPTER II.

THE DRUGS TECHNICAL ADVISORY BOARD, THE CENTRAL DRUGS LABORATORY AND THE DRUGS CONSULTATIVE COMMITTEE.

5. (1) The Central Government shall, as soon as may be, constitute a Board (to be called the Drugs Technical Advisory Board) to advise the Central Government and the Provincial Governments on technical matters arising out of the administration of this Act and to carry out the other functions assigned to it by this Act.

(2) The Board shall consist of the following members, namely :—

(i) the Director-General Indian Medical Service, *ex-officio*, who shall be Chairman ;

(ii) the Director of the Central Drugs Laboratory, *ex-officio* ;

(iii) the Director of the Central Research Institute, *ex-officio* ;

(iv) the Director of the Imperial Veterinary Research Institute, Muktesar, *ex-officio* ;

(v) the Chief Chemist, Central Revenues, *ex-officio* ;

(vi) two persons holding the appointment of Government Analyst under this Act, to be nominated by the Central Government ;

(vii) one pharmacologist and one pharmaceutical chemist to be elected by the Scientific Advisory Board of the Indian Research Fund Association ;

(viii) three persons to be elected by the Medical Council of India, two of whom shall be from among teachers of medicine or therapeutics on the staff of a university or college in British India providing a course of study which qualifies for admission to the examination for a degree which is a recognised qualification under the Indian Medical Council Act, 1933, and one shall be a registered medical practitioner not being a servant of the Crown ;

(ix) one member of the pharmaceutical profession to be nominated by the Central Government ;

(x) two persons to be elected by the Council of the Indian Chemical Society ;

(xi) one person to be elected by the Central Council of the Indian Medical Association and one person to be elected by the branches in India of the British Medical Association.

(3) The nominated and elected members of the Board shall hold office for three years, but shall be eligible for re-nomination and re-election.

(4) The Board may, subject to the previous approval of the Central Government, make by-laws fixing a quorum and regulating its own procedure and the conduct of all business to be transacted by it.

(5) The Board may constitute sub-committees and may appoint to such sub-committees for such periods, not exceeding three years, as it may decide, or temporarily for the consideration of particular matters, persons who are not members of the Board.

(6) The functions of the Board may be exercised notwithstanding any vacancy therein.

(7) The Central Government shall appoint a person to be secretary of the Board and shall provide the Board with such clerical and other staff as the Central Government considers necessary.

6. (1) The Central Government shall, as soon as may be, establish a Central Drugs Laboratory under the control of a Director to be appointed by the Central Government, to carry out the functions entrusted to it by this Act or any rules made under this Chapter :

Provided that, if the Central Government so prescribes, the functions of the Central Drugs Laboratory in respect of any drug or class of drugs shall be carried out at the Central Research Institute, Kasauli, or at any other prescribed Laboratory and the functions of the Director of the Central Drugs Laboratory in respect of such drug or class of drugs shall be exercised by the Director of that Institute or of that other Laboratory, as the case may be.

(2) The Central Government may, after consultation with the Board, make rules prescribing—

(a) the functions of the Central Drugs Laboratory ;

(b) the procedure for the grant of certificates of registration under this Act by the said Laboratory in respect of patent or proprietary medicines not having displayed on the label or container thereof the true formula or list of ingredients contained therein in a manner readily intelligible to members of the medical profession, the forms of such certificates and the fees payable therefor ;

(c) the procedure for preserving the secrecy of the formulae of patent or proprietary medicines when disclosed to the said Laboratory under this Act ;

(d) the procedure for the submission to the said Laboratory under Chapter IV of samples of drugs for analysis or test, the forms of the Laboratory's reports thereon and the fees payable in respect of such reports ;

(e) such other matters as may be necessary or expedient to enable the said Laboratory to carry out its functions ;

(f) the matters necessary to be prescribed for the purposes of the proviso to sub-section (1).

7. (1) The Central Government may constitute an advisory committee to be called "the Drugs Consultative Committee" to advise the Central Government, the Provincial Governments and the Drugs Technical Advisory Board on any matter tending to secure uniformity throughout the Provinces in the administration of this Act.

(2) The Drugs Consultative Committee shall consist of two representatives of the Central Government to be nominated by that Government and one representative of each Provincial Government to be nominated by the Provincial Government concerned.

(3) The Drugs Consultative Committee shall meet when required to do so by the Central Government and shall have power to regulate its own procedure.

CHAPTER III.

IMPORT OF DRUGS.

8. (1) For the purposes of this Chapter the expression "standard quality" when applied to a drug means that the drug complies with the standard set out in the Schedule.

Standards of quality.

(2) The Central Government, after consultation with the Board and after giving by notification in the official Gazette not less than three months' notice of its intention so to do, may by a like notification add to or otherwise amend the Schedule for the purposes of this Chapter, and thereupon the Schedule shall be deemed to be amended accordingly.

Misbranded drugs. 9. For the purposes of this Chapter a drug shall be deemed to be misbranded—

(a) if it is an imitation of, or substitute for, or resembles in a manner likely to deceive, another drug, or bears upon it or upon its label or container the name of another drug, unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug ; or

(b) if it purports to be the product of a place or country of which it is not truly a product; or

(c) if it is imported under a name which belongs to another drug ; or

(d) if it is so coloured, coated, powdered or polished that damage is concealed, or if it is made to appear of better or greater therapeutic value than it really is ; or

(e) if it is not labelled in the prescribed manner ; or

(f) if its label or container or anything accompanying the drug bears any statement, design or device which makes any false claim for the drug or which is false or misleading in any particular ; or

(g) if the label or container bears the name of an individual or company purporting to be the manufacturer or producer of the drug, which individual or company is fictitious or does not exist.

Prohibition of import of certain drugs. 10. From such date as may be fixed by the Central Government by notification in the Official Gazette, in this behalf, no person shall import—

(a) any drug which is not of standard quality ;

(b) any misbranded drug ;

(c) any drug for the import of which a licence is prescribed, otherwise than under, and in accordance with, such licence ;

(d) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof either the true formula or list of ingredients contained in it in a manner readily intelligible to members of the medical profession, or the number of the certificate of registration granted in the prescribed manner in respect of such medicine by the Central Drugs Laboratory after being correctly informed of the formula of such medicine ;

(e) any drug which by means of any statement, design or device accompanying it or by any other means, purports or claims to cure or mitigate any such disease or ailment, or to have any such other effect, as may be prescribed ;

(f) any drug the import of which is prohibited by rule made under this Chapter :

Provided that nothing in this section shall apply to the import, subject to prescribed conditions, of small quantities of any drug for the purpose of examination test or analysis or for personal use :

Provided further that the Central Government may, after consultation with the Board, by notification in the official Gazette, permit, subject to any conditions specified in the notification, the import of any drug or class of drugs not being of standard quality.

Explanation.—The formula or list of ingredients mentioned in clause (d) shall be deemed to be true and a sufficient compliance with that sub-clause if, without disclosing a full and detailed recipe of the ingredients, it indicates correctly all potent or poisonous substances contained therein together with an approximate statement of the composition of the medicine.

11. (1) The law for the time being in force relating to sea customs and to goods, the import of which is prohibited by section 18 of the Sea Customs Act, 1878, shall, subject to the provisions of section 13 of this Act apply in respect of drugs the import of which is prohibited under this

Application of law relating to sea customs and powers of Customs officers.

Chapter, and officers of customs and officers empowered under that Act to perform the duties imposed thereby on a Customs Collector and other officers of Customs, shall have the same powers in respect of such drugs as they have for the time being in respect of such goods as aforesaid.

(2) Without prejudice to the provisions of sub-section (1), the Customs Collector, or any servant of the Crown authorised by the Provincial Government in this behalf, may detain any imported package which he suspects to contain any drug the import of which is prohibited under this Chapter, and shall forthwith report such detention to the Director of the Central Drugs Laboratory and, if required by him, forward the package or samples of any suspected drug found therein to the said Laboratory.

12. (1) The Central Government may, after consultation with the Board

Power of Central Government to make rules.

and after previous publication by notification in the Official Gazette, make rules for the purpose of giving effect to the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may—

(a) specify the drugs or classes of drugs for the import of which a licence is required, and prescribe the form and conditions of such licences, the authority empowered to issue the same, and the fees payable therefor ;

(b) prescribe the methods of test or analysis to be employed in determining whether a drug is of standard quality ;

(c) prescribe, in respect of biological and organometallic compounds, the units or methods of standardisation ;

(d) specify the diseases or ailments which an imported drug may not purport or claim to cure or mitigate and such other effects which such drug may not purport or claim to have ;

(e) prescribe the conditions subject to which small quantities of drugs, the import of which is otherwise prohibited under this Chapter, may be imported for the purpose of examination, test or analysis or for personal use ;

(f) prescribe the places at which drugs may be imported, and prohibit their import at any other place ;

(g) require the date of manufacture and the date of expiry of potency to be clearly and truly stated on the label or container of any specified imported drug or class of such drug, and prohibit the import of the said drug or class of drug after the expiry of a specified period from the date of manufacture ;

(h) regulate the submission by importers, and the securing, of samples of drugs for examination, test or analysis by the Central Drugs Laboratory, and prescribe the fees, if any, payable for such examination, test or analysis ;

(i) prescribe the evidence to be supplied, whether by accompanying documents or otherwise, of the quality of drugs sought to be imported, the procedure of officers of Customs in dealing with such evidence, and the manner of storage at places of import of drugs detained pending admission ;

(j) provide for the exemption, conditionally or otherwise, from all or any of the provisions of this Chapter and the rules made thereunder of drugs imported for the purpose only of transport through, and export from, British India ;

(k) prescribe the conditions to be observed in the packing in bottles, packages or other containers of imported drugs ;

(l) regulate the mode of labelling drugs imported for sale in packages, and prescribe the matters which shall or shall not be included in such labels ;

(m) prescribe the maximum proportion of any poisonous substance which may be added to or contained in any imported drug, prohibit the import of any drug in which that proportion is exceeded, and specify substances which shall be

deemed to be poisonous for the purposes of this Chapter and the rules made thereunder ;

(n) require that the accepted scientific name of any specified drug shall be displayed in the prescribed manner on the label or wrapper of any imported patent or proprietary medicine containing such drugs ;

(o) provide for the exemption, conditionally or otherwise, from all or any of the provisions of this Chapter or the rules made thereunder of any specified drug or class of drugs.

13. (1) Whoever contravenes any of the provisions of this Chapter or of any rule made thereunder shall, in addition to any penalty to which he may be liable under the provision of section 11, be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

(2) Whoever, having been convicted under sub-section (1), is again convicted under that sub-section shall, in addition to any penalty as aforesaid, be punishable with imprisonment which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

14. Where any offence punishable under section 13 has been committed, the consignment of the drug in respect of which the offence has been committed shall be liable to confiscation.

15. No Court inferior to that of a Presidency Magistrate or of a Magistrate of the first class shall try an offence punishable under section 13.

CHAPTER IV.

MANUFACTURE, SALE AND DISTRIBUTION OF DRUGS.

16. (1) For the purposes of this Chapter the expression "standard quality" when applied to a drug means that the drug complies with the standard set out in the Schedule.

(2) The Provincial Government, after consultation with the Board and after giving by notification in the Official Gazette not less than three months' notice of its intention so to do, may by a like notification add to or otherwise amend the Schedule for the purposes of this Chapter, and thereupon the Schedule shall be deemed to be amended accordingly.

17. For the purposes of this Chapter a drug shall be deemed to be misbranded—

(a) if it is an imitation of, or substitute for, or resembles in a manner likely to deceive, another drug, or bears upon it or upon its label or container the name of another drug, unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug ; or

(b) if it purports to be the product of a place or country of which it is not truly a product ; or

(c) if it is sold, or offered or exposed for sale, under a name which belongs to another drug ; or

(d) if it is so coloured, coated, powdered or polished that damage is concealed or if it is made to appear of better or greater therapeutic value than it really is ; or

(e) if it is not labelled in the prescribed manner ; or

(f) if its label or container or anything accompanying the drug bears any statement, design or device which makes any false claim for the drug or which is false or misleading in any particular ; or

(g) if the label or container bears the name of an individual or company purporting to be the manufacturer or producer of the drug, which individual or company is fictitious or does not exist.

18. From such date as may be fixed by the Provincial Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf—

Prohibition of manufacture and sale of certain drugs.

- (a) manufacture for sale or sell, or stock or exhibit for sale, or distribute—
- (i) any drug which is not of standard quality ;
 - (ii) any misbranded drug ;
 - (iii) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof either the true formula or list of ingredients contained in it in a manner readily intelligible to members of the medical profession, or the number of the certificate of registration granted, in the manner prescribed by the Central Government, in respect of such medicine by the Central Drugs Laboratory after being correctly informed of the formula of such medicine ;
 - (iv) any drug which by means of any statement, design or device accompanying it or by any other means, purports or claims to cure or mitigate any such disease or ailment, or to have any such other effect as may be prescribed ;
 - (v) any drug, in contravention of any of the provisions of this Chapter or any rule made thereunder ;
- (b) sell, or stock or exhibit for sale, or distribute any drug which has been imported or manufactured in contravention of any of the provisions of this Act or any rule made thereunder ;

(c) manufacture for sale, or sell, or stock or exhibit for sale, or distribute any drug, except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter :

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis :

Provided further that the Provincial Government may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the manufacture for sale, sale or distribution of any drug or class of drugs not being of standard quality.

Explanation.—The formula or list of ingredients mentioned in sub-clause (iii) of clause (a) shall be deemed to be true and a sufficient compliance with that sub-clause if, without disclosing a full and detailed recipe of the ingredients, it indicates correctly all the potent or poisonous substances contained therein together with an approximate statement of the composition of the medicine.

19. (1) Save as hereinafter provided in this section, it shall be no defence in a

Pleas. prosecution under this Chapter to prove merely that the accused was ignorant of the nature, substance or quality of the drug in respect of which the offence has been committed or of the circumstances of its manufacture or import, or that a purchaser, having bought only for the purpose of test or analysis, has not been prejudiced by the sale.

(2) For the purposes of section 18 a drug shall not be deemed to be misbranded or to be below standard quality only by reason of the fact that—

(a) there has been added thereto some innocuous substance or ingredient because the same is required for the manufacture or preparation of the drug as an article of commerce in a state fit for carriage or consumption, and not to increase the bulk, weight or measure of the drug or to conceal its inferior quality or other defects ; or

(b) in the process of manufacture, preparation or conveyance some extraneous substance has unavoidably become intermixed with it, provided that this clause shall not apply in relation to any sale or distribution of the drug occurring after the vendor or distributor became aware of such intermixture.

(3) A person, not being the manufacturer of a drug or his agent for the distribution thereof, shall not be liable for a contravention of section 18 if he proves—

(a) that he did not know, and could not with reasonable diligence have ascertained, that the drug in any way contravened the provisions of that section, and that the drug while in his possession remained in the same state as when he acquired it ; or

(b) that he acquired the drug from a person resident in British India under a written warranty in the prescribed form and signed by such person that the drug

does not in any way contravene the provisions of section 18, and that the drug while in his possession remained in the same state as when he acquired it :

Provided that a defence under clause (b) shall be open to a person only—

(i) if he has, within seven days of the service on him of the summons, sent to the Inspector a copy of the warranty with a written notice stating that he intends to rely upon it and giving the name and address of the warrantor, and

(ii) if he proves that he has, within the same period, sent written notice of such intention to the said warrantor.

20. The Provincial Government may, by notification in the Official Gazette,

Government Analysts.

appoint such persons as it thinks fit, having the prescribed qualifications, to be Government Analysts for such areas and in respect of such drugs or classes of drugs as may be specified in the notification :

Provided that a servant of the Crown serving under the Central Government or another Provincial Government shall not be so appointed without the previous consent of the Government under which he is serving.

21. (1) The Provincial Government may, by notification in the Official

Inspectors.

Gazette, appoint such persons as it thinks fit, having the prescribed qualifications, to be Inspectors for the purposes of this Chapter within such local limits as it may assign to them respectively:

Provided that no person who has any financial interest in the manufacture, import or sale of drugs shall be appointed to be an Inspector under this sub-section.

(2) Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code, and shall be officially subordinate to such authority as the Provincial Government may specify in this behalf.

22. Subject to the provisions of section 23 and of any rules made by the

Powers of Inspectors.

Provincial Government in this behalf, an Inspector may within the local limits for which he is appointed—

(a) inspect any premises wherein any drug is being manufactured and in the case of sera, vaccines and any other drug prescribed in this behalf the plant and process of manufacture and the means employed for standardising and testing the drug ;

(b) taking samples of any drug which is being manufactured, or being sold or stocked or exhibited for sale, or is being distributed ;

(c) where he has reason to believe that any drug which is being manufactured for sale, or being sold or is stocked or exhibited for sale, or is being distributed, contravenes any of the provisions of section 18, order in writing the person, in whose possession such drug may be, not to dispose of any stock of such drug for a specified period not exceeding ten days, or, unless the alleged contravention is such that the defect may be removed by the possessor of the drug, seize the stock of such drug :

Provided that the Inspector shall not take any action under this clause unless he has reported the facts to the District Magistrate or the Chief Presidency Magistrate and has been authorised by such Magistrate to take such action ;

(d) for any of the aforesaid purposes enter at all reasonable times, with such assistants, if any, as he considers necessary, any premises wherein any drug is being manufactured, or being sold, or is stocked or exhibited for sale, or is kept for distribution;

(e) exercise such other powers as may be necessary for carrying out the purposes of this Chapter or any rules made thereunder.

23. (1) Where an Inspector takes any sample of a drug under this Chapter,

Procedure of Inspectors.

he shall tender the fair price thereof and may require a written acknowledgment therefor.

(2) Where the price tendered under sub-section (1) is refused, or where the Inspector seizes the stock of any drug under clause (c) of section 22, he shall tender a receipt therefor in the prescribed form.

(3) Where an Inspector takes a sample of a drug for the purpose of test or analysis, he shall intimate such purpose in writing in the prescribed form to the person from whom he takes it and, in the presence of such person unless he wilfully absents himself, shall divide the sample into four portions and effectively seal and suitably mark the same and permit such person to add his own seal and mark to all or any of the portions so sealed and marked :

Provided that where the sample is taken from premises whereon the drug is being manufactured, it shall be necessary to divide the sample into three portions only :

Provided further that where the drug is made up in containers of small volume, instead of dividing a sample as aforesaid, the Inspector may, and if the drug be such that it is likely to deteriorate or be otherwise damaged by exposure shall, take three or four, as the case may be, of the said containers after suitably marking the same and, where necessary, sealing them.

(4) The Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it, and shall retain the remainder and dispose of the same as follows :—

(i) one portion or container he shall forthwith send to the Government Analyst for test or analysis ;

(ii) the second he shall produce to the Court before which proceedings, if any, are instituted in respect of the drug ; and

(iii) the third, where taken, he shall send to the warrantor, if any, named under the proviso to sub-section (3) of section 19.

(5) Where an Inspector takes any action under clause (c) of section 22,—

(a) he shall use all despatch in ascertaining whether or not the drug contravenes any of the provisions of section 18 and, if it is ascertained that the drug does not so contravene, forthwith revoke the order passed under the said clause or, as the case may be, take such action as may be necessary for the return of the stock seized ;

(b) if he seizes the stock of the drug, he shall as soon as may be inform a Magistrate and take his orders as to the custody thereof ;

(c) without prejudice to the institution of any prosecution, if the alleged contravention be such that the defect may be remedied by the possessor of the drug, he shall, on being satisfied that the defect has been so remedied, forthwith revoke his order under the said clause.

24. Every person for the time being in charge of any premises whereon any drug is being manufactured or is kept for sale or distribution shall, on being required by an Inspector so to do,

Persons bound to disclose place where drugs are manufactured or kept.

be legally bound to disclose to the Inspector the place where the drug is being manufactured or is kept, as the case may be.

25. (1) The Government Analyst to whom a sample of any drug has been submitted for test or analysis under sub-section (4) of section 23, shall deliver to the Inspector submitting it a signed report in triplicate in the prescribed form.

Reports of Government Analysts.

(2) The Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and another copy to the warrantor, if any, named under the proviso to sub-section (3) of section 19, and shall retain the third copy for use in any prosecution in respect of the sample.

(3) Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken or the said warrantor has, within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report.

(4) Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of a Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused, cause the sample of the drug produced before the Magistrate under sub-section (4) of section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

(5) The cost of a test or analysis made by the Central Drugs Laboratory under sub-section (4) shall be paid by the complainant or accused as the Court shall direct.

26. Any person shall, on application in the prescribed manner and on payment of the prescribed fee, be entitled to submit for test or analysis to a Government Analyst any drug purchased by him and to receive a report of such test or analysis signed by the Government Analyst.

Purchaser of drug enabled to obtain test or analysis.

27. Whoever himself or by any other person on his behalf manufactures for sale, sells, stocks or exhibits for sale, or distributes any drug in contravention of any of the provisions of this Chapter or any rule made thereunder shall be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter.

28. (1) Whoever, in respect of any drug sold by him whether as principal or agent, gives to the purchaser a false warranty that the drug does not in any way contravene the provisions of section 18 shall, unless he proves that when he gave the warranty he had good reason to believe the same to be true, be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

Penalties for giving false warranty or misuse of warranty.

(2) Whoever applies or permits to be applied to any drug sold, or stocked or exhibited for sale, by him, whether on the container or label or in any other manner, a warranty given in respect of any other drug, shall be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

29. Whoever uses any report of a test or analysis made by the Central Drugs Laboratory or by a Government Analyst, or any extract from such report, for the purpose of advertising any drug, shall be punishable with fine which may extend to five hundred rupees.

Penalty for use of Government Analyst's report for advertising.

30. Whoever having been convicted of any offence under section 27 or section 28 or section 29, is again convicted of an offence under the same section shall be punishable with imprisonment which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Penalty for subsequent offences.

31. Where any person has been convicted under this Chapter for contravening any such provision of this Chapter or any rule made thereunder as may be specified by rule made in this behalf, the stock of the drug in respect of which the contravention has been made shall be liable to confiscation.

Confiscation.

Cognizance of offences.

32. (1) No prosecution under this Chapter shall be instituted except by an Inspector.

(2) No Court inferior to that of a Presidency Magistrate or of a Magistrate of the first class shall try an offence punishable under this Chapter.

(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter.

33. (1) The Provincial Government may, after consultation with the Board and after previous publication by notification in the official Gazette, make rules for the purpose of giving effect to the provisions of this Chapter.

Power of Provincial Government to make rules.

(2) Without prejudice to the generality of the foregoing power, such rules may—

(a) provide for the establishment of laboratories for testing and analysing drugs ;

(b) prescribe the qualifications and duties of Government Analysts and the qualifications of Inspectors ;

(c) prescribe the methods of test or analysis to be employed in determining whether a drug is of standard quality ;

(d) prescribe, in respect of biological and organometallic compounds, the units or methods of standardisation ;

(e) prescribe the forms of licences for the manufacture for sale, for the sale and for the distribution of drugs or any specified drug or class of drugs, the form of application for such licences, the conditions subject to which such licences may be issued, the authority empowered to issue the same and the fees payable therefor ;

(f) specify the diseases or ailments which a drug may not purport or claim to cure or mitigate and such other effects which a drug may not purport or claim to have ;

(g) prescribe the conditions subject to which small quantities of drugs may be manufactured for the purpose of examination, test or analysis ;

(h) require the date of manufacture and the date of expiry of potency to be clearly and truly stated on the label or container of any specified drug or class of drugs, and prohibit the sale, stocking or exhibition for sale, or distribution of the said drug or class of drugs after the expiry of a specified period from the date of manufacture or after the expiry of the date of potency ;

(i) prescribe the conditions to be observed in the packing in bottles, packages and other containers of drugs, and prohibit the sale, stocking or exhibition for sale, or distribution of drugs packed in contravention of such conditions ;

(j) regulate the mode of labelling packed drugs, and prescribe the matters which shall or shall not be included in such labels ;

(k) prescribe the maximum proportion of any poisonous substance which may be added to or contained in any drug, prohibit the manufacture, sale or stocking or exhibition for sale, or distribution of any drug in which that proportion is exceeded and specify substances which shall be deemed to be poisonous for the purposes of this Chapter and the rules made thereunder ;

(l) require that the accepted scientific name of any specified drug shall be displayed in the prescribed manner on the label or wrapper of any patent or proprietary medicine containing such drug ;

(m) prescribe the form of warranty referred to in sub-section (1) of section 19 ;

(n) regulate the powers and duties of Inspectors ;

(o) prescribe the forms of report to be given by Government Analysts, and the manner of application for test or analysis under section 26 and the fees payable therefor ;

(p) specify the offences against this Chapter or any rule made thereunder in relation to which the stock of the drug shall be liable to confiscation under section 31 ;

(q) provide for the exemption, conditionally or otherwise, from all or any of the provisions of this Chapter or the rules made thereunder of any specified drug or class of drugs.

34. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Chapter.

Protection to persons acting under this Chapter.

THE SCHEDULE.

(See sections 8 and 16.)

Standards to be complied with by imported drugs and by drugs manufactured for sale, sold, stocked or exhibited for sale, or distributed.

Class of drug.	Standard to be complied with.
1. Patent or proprietary medicines ..	The formula or list of ingredients displayed in the prescribed manner on the label or container, or the formula disclosed to the Central Drugs Laboratory, as the case may be.
2. Substances commonly known as vaccines, sera, toxins, toxoids, antitoxins, and antigens and biological products of such nature.	The standards maintained at the National Institute for Medical Research, London, and such further standards of strength quality and purity as may be prescribed.
3. Vitamins, hormones and analogous products.	The standards maintained at the National Institute for Medical Research, London, and such further standards of strength quality and purity as may be prescribed.
4. Other drugs ..	The standards of identity, purity and strength specified in the latest edition of the British Pharmacopoeia or the British Pharmaceutical Codex or any other prescribed pharmacopoeia, or adopted by the Permanent Commission on Biological Standardisation of the League of Nations.

THE ELECTIONS OFFENCES AND INQUIRIES ACT (XXXIX OF 1920).¹

[Rep. in part by Act I of 1938.]

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[4th September, 1920.]

An Act to provide for the punishment of malpractices in connection with elections, and to make further provisions for the conduct of inquiries in regard to disputed elections to legislative bodies constituted under the Government of India Act² [or the Government of India Act, 1935].

WHEREAS it is expedient to provide for the punishment of malpractices in connection with elections, and to make further provision for the conduct of inquiries in regard to disputed elections to legislative bodies constituted under the Government of India Act² [or the Government of India Act, 1935]; It is hereby enacted as follows:—

LEG. REF.

¹ For Statement of Objects and Reasons, see Gazette of India, 1920, Pt. V, p. 134; for Report of Select Committee, see *ibid.*,

1920, Pt. V, p. 177 and for Proceedings in Council, see *ibid.*, 1920, Pt. VI, pp. 1004 and 1146.

² Inserted by A.O., 1937.

PRELIMINARY.

Short title and extent.

1. (1) This Act may be called THE INDIAN ELECTIONS OFFENCES AND INQUIRIES ACT, 1920; and
- (2) It extends to the whole of British India.

PART I.

AMENDMENT OF THE INDIAN PENAL CODE AND CODE OF CRIMINAL PROCEDURE.
[Rep. by Act I of 1938.]

PART II.

ELECTION INQUIRIES AND OTHER MATTERS.

Definitions.

4. In this Part, unless there is anything repugnant in the subject or context,—

(a) “costs” means all costs, charges and expenses of, or incidental to, an inquiry;

¹[(b) “election” means an election to a Chamber of any Legislature or Legislative Council constituted under the Government of India Act or the Government of India Act, 1935];

(c) “inquiry” means an inquiry in respect of an election by Commissioners appointed for that purpose by the Governor-General ²[or] Governor ²[* *];

(d) “pleader” means any person entitled to appear and plead for another in a Civil Court, and includes an advocate, a vakil, and an attorney of a High Court.

5. Commissioners appointed to hold an inquiry shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters:—

(a) discovery and inspection,

(b) enforcing the attendance of witnesses, and requiring the deposit of their expenses,

(c) compelling the production of documents,

(d) examining witnesses on oath,

(e) granting adjournments,

(f) reception of evidence taken on affidavit, and

(g) issuing commissions for the examination of witnesses,

and may summon and examine *suo motu* any person whose evidence appears

LEG. REF.

1 Cl. (b) of sec. 4 substituted by A.O., 1937.

2 In cl. (c) of sec. 4 word ‘or’ inserted and words ‘or Lieutenant-Governor’ omitted by A.O., 1937.

SEC. 1: ELECTION PETITION—NEW ACT COMING INTO FORCE—EFFECT ON PENDING PROCEEDING.—An election to the presidentship of a District Board was made in February, 1930. A petition was filed contesting the validity of the election on the ground that the person elected was disqualified to hold the office by virtue of his being a salaried officer within the meaning of sec. 13w. of the Madras Local Boards Act, 1920. During the pendency of the election petition, Madras Act XI of 1930, came into force, *Held*, (1) that sec. 54 (2) of the Act XI of 1930 is not a declaratory provision so as to apply to an election held under the old Act of 1920. Meaning of declaratory enactment discuss-

ed. (2) That even assuming sec. 54 is of a declaratory nature the jurisdiction of the Court to deal with pending proceeding remains unaffected and the procedure prescribed by the second proviso to sec. 54 (2) need not be pursued. 54 Mad. 627=130 I. C. 177=33 L.W. 168=1931 M. 83=60 M.L. J. 191. By the Government of India (Adaptation of Indian Laws) Order, 1937, the Election Offences and Inquiries Act XXXIX of 1920 has been amended so as to come into line with the new Government of India Act, 1935. The words “or Lieutenant-Governor” have been omitted in sec. 12 and an election has been defined as the election for the Legislative bodies contemplated by Government of India Act, 1935. The Election Offences and Inquiries Act therefore is still in force in the whole of British India and applies to the elections for the Legislative Assemblies under the Constitution Act of 1935. 201 I.C. 331=(1942) F.L.J. (H.C.) 154=A.I.B. 1942 Pesh. 53.

to them to be material; and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

Explanation.—For the purposes of enforcing the attendance of witnesses, the local limits of the Commissioners' jurisdiction shall be the limits of the Province in which the election was held.

Application of Act I of 1872 to inquiries. 6. The provisions of the Indian Evidence Act, 1872, shall, subject to the provisions of this Act, be deemed to apply in all respects to an inquiry.

7. Notwithstanding anything in any enactment to the contrary, no documentary evidence. document shall be inadmissible in evidence on the ground that it is not duly stamped or registered.

Obligation of witness to answer any certificate of indemnity. 8. (1) No witness shall be excused from answering any question as to any matter relevant to a matter in issue in an inquiry upon the ground that the answer to such question will criminate or may tend, directly or indirectly, to criminate him; or that it will expose, or tend, directly or indirectly, to expose him to a penalty or forfeiture of any kind:

Provided that—

(i) no person who has voted at an election shall be required to state for whom he has voted; and

(ii) a witness who, in the opinion of the Commissioners, has answered truly all questions which he has been required by them to answer shall be entitled to receive a certificate of indemnity, and such certificate may be pleaded by such person in any Court and shall be deemed to be a full and complete defence to or upon any charge under Chapter IX-A of the Indian Penal Code arising out of the matter to which such certificate relates, nor shall any such answer be admissible in evidence against him in any suit or other proceeding.

(2) Nothing in sub-section (1) shall be deemed to relieve a person receiving a certificate of indemnity from any disqualification in connection with an election imposed by any law or any rule having the force of law.

9. Any appearance, application or act before the Commissioners may be made or done by the party in person or by a pleader duly appointed to act on his behalf:

Appearance by pleader. Provided that any such appearance shall, if the Commissioners so direct, be made by the party in person.

10. The reasonable expenses incurred by any person in attending to give evidence may be allowed by the Commissioners to such person, and shall, unless the Commissioners otherwise direct, be deemed to be part of the costs.

Expenses of witnesses. 11. (1) Costs shall be in the discretion of the Commissioners, and the Commissioners shall have full power to determine by and to whom and to what extent such costs are to be paid and to include in their report all necessary recommendations for the purposes aforesaid. The Commissioners may allow interest on costs at a rate not exceeding six per cent. per annum, and such interest shall be added to the costs.

Costs and pleaders' fees, etc. (2) The fees payable by a party in respect of fees of his adversary's pleader shall be such fees as the Commissioners may allow.

12. Any order made by the Central Government or Provincial Government¹ [* *] on the report of the Commissioners regarding the costs of the inquiry may be produced before the principal Civil Court of original jurisdiction within

LEG. REF.
1 Words 'or Lieutenant-Governor' omitted by A.O., 1937.

SEC. 12.—An appeal lies against an order passed by a Civil Court in the course of the execution of an order for costs awarded by

the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or, where such place is within the local limits of the ordinary original civil jurisdiction of a chartered High Court, before the Court of Small Causes having jurisdiction there, and such Court shall execute such order or cause it to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.

13. Any person who has been convicted of an offence under section 171-E or 171-F of the Indian Penal Code or has been disqualified from exercising any electoral right, for a period of not less than five years, on account of malpractices in connection with an election shall be disqualified for five years from the date of such conviction or disqualification from—

(a) being appointed to, or acting in, any judicial office;
(b) being elected to any office of any local authority when the appointment to such office is by election, or holding or exercising any such office to which no salary is attached;

(c) being elected or sitting or voting as a member of any local authority; or
(d) being appointed or acting as a trustee of a public trust:

¹[Provided that the Governor-General, in the case of an election to a Chamber of the Federal Legislature or the Indian Legislature, and the Governor, in the case of an election to a Chamber of a Provincial Legislature, may, in his discretion, exempt any such person from such disqualification.]

14. (1) Every officer, clerk, agent or other person who performs any duties in connection with the recording or counting of votes at an election shall maintain and aid in maintaining the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy.

(2) Any person who wilfully acts in contravention of the provisions of this section shall be punished with imprisonment of either description for a term not exceeding three months or with fine, or with both.

²[15. As respects elections to a Chamber of a Legislature constituted under the Government of India Act, 1935, this Part of this Act shall have effect subject to any relevant provision of any Order in Council or rules made under that Act in relation to such elections.]

Special provision as to elections under Government of India Act, 1935.

LEG. REF.

¹ Proviso substituted by A.O., 1937.

² Sec. 15 inserted by A.O. 1937.

the Governor on an election petition. 41 C. W.N. 893=A.I.R. 1937 C. 425.

An order for costs passed by the Governor under sec. 12 in connection with an election is executable in the District Court as a decree for payment of money made by that Court itself in a suit. An appeal lies under sec. 47, C. P. Code, to the Chief Court from an order of the District Judge refusing to execute the order as to costs. (1942) F.L.J. (H.C.) 154=A.I.R. 1942 Pesh. 53.

Under sec. 12 an order as to costs passed by His Excellency the Governor in connection with an election petition is executable in the Court of the District Judge in the same way as if it were an order by that Judge for the payment of that amount in a suit. A separate suit for the recovery of costs does not lie. (1942) F.L.J. (H.C.) 157=A.I.R. 1942 Pesh. 54.

SEC. 13: ELECTION—BRIBERY—TEST—PAYMENT TO WORKERS.—A candidate may lawfully pay either an association of persons or an individual to work for him at an election, but he may only pay what is a done. Where that payment is to a voter it reasonable sum for the particular work may, however, amount to a bribe if the payment is out of all proportion to the work done or agreed to be done. Whether any particular payment by a candidate is or is not a bribe must always fall to be decided upon the particular facts of each case. Money paid to a club to pay off its debt and to repair its club premises with the object of inducing those of its members who are voters to record their votes in favour of a candidate is bribe. Whether that object was in fact achieved is immaterial. The motive of the briber, and not the effect on the bribed, is the test. 199 I.C. 110=A.I.R. 1942 Rang. 52. Corruption—Effect on election—Test. See 199 I.C. 274=A.I.R. 1942 Rang. 30=1941 Rang.L.B. 638.

THE INDIAN ELECTRICITY ACT (IX OF 1910).

Year.	No.	Short title.	Amendment.
1910	IX	The Indian Electricity Act, 1910.	Amended, X of 1914; XXXVIII of 1920; I of 1922; XL of 1923; XXXVII of 1925; X of 1937; XXXIV of 1937; X of 1940 and XXXII of 1940.

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THE INDIAN ELECTRICITY ACT (IX OF 1910).¹

[18th March, 1910.

N.B.—This Act has been amended by Act X of 1937 in its application to British India, including British Baluchistan and the Sonthal Parganas but excluding Burma (*vide* S. 2 of Act X of 1937). (The said amendments are noted under the respective sections.)

An Act to amend the law relating to the supply and use of electrical energy.

WHEREAS it is expedient to amend the law relating to the supply and use of electrical energy; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called THE INDIAN ELECTRICITY ACT, 1910.

(2) It extends to the whole of British India, inclusive of British Baluchistan and the Sonthal Parganas; and

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, direct in this behalf.

2. In this Act, expressions defined in the Indian Telegraph Act, 1885 have the meanings assigned to them in that Act, and, unless there is anything repugnant in the subject or context,—

Definitions.

(a) "aerial line" means any electric supply-line which is placed above ground and in the open air;

(b) "area of supply" means the area within which alone a licensee is for the time being authorized by his license to supply energy;

(c) "consumer" means any person who is supplied with energy by a licensee, or whose premises are for the time being connected for the purposes of a supply of energy with the works of a licensee;

LEG. REF.

¹For Statement of Objects and Reasons, see Gazette of India, 1909, Pt. V, p. 87; for Report of Select Committee, see *ibid.*, 1910, Pt. V, p. 39; and for Proceedings in Council, see *ibid.*, 1909, Pt. VI, p. 152 and *ibid.*, 1910, Pt. VI, pp. 12, 157 and 275, dated 5th February, 1910, 19th March, 1910, and 9th April, 1910, respectively.

The Act was brought into force on the 1st January, 1911, see Gazette of India, 1910, Pt. I, p. 1246.

SEC. 2 (c) 'CONSUMER,' MEANING OF.—In order to hold that a person is a "consumer" as defined by sec. 2 (c) of the Electricity Act, it would *prima facie* be enough to prove either

(d) "daily fine" means a fine for each day on which an offence is continued after conviction therefor ;

(e) "distributing main" means the portion of any main with which a service-line is, or is intended to be, immediately connected ;

(f) "electric supply line" means a wire, conductor or other means used for conveying, transmitting or distributing energy together with any casing, coating, covering, tube, pipe or insulator enclosing, surrounding or supporting the same or any part thereof, or any apparatus connected therewith for the purpose of so conveying, transmitting or distributing, such energy ;

(g) "energy" means electrical energy when generated, transmitted, supplied, or used for any purpose except the transmission of a message ;

(h) "licensee" means any person licensed under Part II to supply energy :

(i) "main" means any electric supply-line through which energy is, or is intended to be, supplied by a licensee to the public ;

(j) "prescribed" means prescribed by rules made under this Act ;

(k) "public lamp" means an electric lamp used for the lighting of any street ;

¹[(l) "service-line" means any electric supply-line through which energy is, or is intended to be, supplied by a licensee—

(i) to a single consumer either from a distributing main or immediately from the licensee's premises, or

(ii) from a distributing main to a group of consumers on the same premises or on adjoining premises supplied from the same point of the distributing main.]

(m) "street" includes any way, road, lane, square, court, alley, passage or open space, whether a thoroughfare or not, over which the public have a right of way, and also the roadway and footway over any public bridge or causeway : and

(n) "works" includes electric supply-lines and any buildings, machinery or apparatus required to supply energy and to carry into effect the objects of a license granted under Part II.

PART II.

SUPPLY OF ENERGY.

Licenses.

3. (1) The Provincial Government may, on application made in the prescribed form and on payment of the prescribed fee (if any), grant to any person a license to supply energy in any specified area, and also to lay down or place electric supply-lines for the conveyance and transmission of energy,—

LEG. REF.

¹ This clause was substituted by sec. 2 of the Indian Electricity (Amendment) Act (I of 1922).

that energy was supplied for the use of that person, or that that person was the owner or occupier of premises connected up with the licensee's electric system. If either of these is proved that person is a consumer under rule 106 of the rule. 172 I.C. 940=39 Cr.L.J. 206=18 P.L.T. 986=A.I.R. 1938 Pat. 15. Where the registered consumer and the person supplied with the energy is the proprietor of a company, the manager of the company cannot be held to be a 'consumer.' The premises of the company are not the premises of the manager. The fact that the manager receives the electric bills, signs them and pays the bills cannot make him a consumer. A.I.R. 1938 Pat. 243=1938 P.W.N. 182=19 P.L.T. 141. Where a consumer intended to substitute a motor of smaller horse power in the

place of one with a higher horse power and wrote to the U. P. Electricity Supply Co., about it and asked them to make the necessary examination, it was held that the company was not entitled, under either Para 9 (2) or Para 11 of the conditions of supply to demand a testing fee for that purpose. 1939 A.W.R. (H.C.) 417=A.I.R. 1939 All. 498.

SEC. 2 (n).—"Works" include electric supply lines. I.L.R. (1939) Bom. 496=41 Bom.L.R. 878=A.I.R. 1939 Bom. 480.

SEC. 3.—An assignment of a license can be made by word of mouth and form part performance and acting on and an inference may be raised of the assignment. A formal document of assignment need not necessarily exist. I.L.R. (1943) All. 907=1944 A.L.J. 43=A.I.R. 1944 A. 66.

SECS. 3, 21, 22 AND 23.—A licence given by the Local Government to a person under this Act confers the right on the licensee to supply

(a) where the energy to be supplied is to be generated outside such area, from a generating station situated outside such area to the boundary of such area, or

(b) where energy is to be conveyed or transmitted from any place in such area to any other place therein, across an intervening area not included therein, across such area.

(2) In respect of every such license and the grant thereof the following provisions shall have effect, namely :—

(a) any person applying for a license under this Part shall publish a notice of his application in the prescribed manner and with the prescribed particulars, and the license shall not be granted—

(i) until all objections received by the Provincial Government with reference thereto have been considered by it :

Provided that no objection shall be so considered unless it is received before the expiration of three months from the date of the first publication of such notice as aforesaid ; and

(ii) until, in the case of an application for a license for an area including the whole or any part of any cantonment, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for naval or military purposes, the Provincial Government has ascertained that there is no objection to the grant of the license on the part of the ¹[Engineer-in-Chief, Army Headquarters, India] ;

(b) where an objection is received from any local authority concerned, the Provincial Government shall, if in its opinion the objection is insufficient, record in writing and communicate to such local authority its reasons for such opinions ;

(c) no application for a license under this Part shall be made by any local authority except in pursuance of a resolution passed at a meeting of such authority held after one month's previous notice of the same and of the purpose thereof has been given in the manner in which notices of meetings of such local authority are usually given ;

(d) a license under this Part—

(i) may prescribe such terms as to the limits within which, and the conditions under which, the supply of energy is to be compulsory or permissive, and as to the limits of price to be charged in respect of the supply of energy, and generally as to such matters as the Provincial Government may think fit ; and

(ii) save in cases in which under section 10, clause (b) the provisions of sections 5 and 7, or either of them, have been declared not to apply, every such license shall declare whether any generating station to be used in connection with the undertaking shall or shall not form part of the undertaking for the purpose of purchase under section 5 or section 7 ;

(e) the grant of a license under this Part for any purpose shall not in any way hinder or restrict the grant of a license to another person within the same area of supply for a like purpose ;

(f) the provisions contained in the Schedule shall be deemed to be incorporated with, and to form part of, every license granted under this Part, save in so far as they are expressly added to, varied or excepted by the license, and shall, subject to any such additions, variations or exceptions which the Provincial Government is hereby empowered to make, apply to the undertaking authorised by the license :

Provided that, where a license is granted in accordance with the provisions of clause IX of the Schedule for the supply of energy to other licensees for distribution by them, then, in so far as such license relates to such supply, the provisions

LEG. REF.

¹ These words were substituted for the words "Director of Military Works" by S. 2 and Sch. I, of the Repealing and Amending Act (XXXVII of 1925).

electric energy in a specified area. Certain statutory powers and duties are conferred and imposed on the licensee. These powers are given for the purpose of enabling licensee, who

(d) "daily fine" means a fine for each day on which an offence is continued after conviction therefor ;

(e) "distributing main" means the portion of any main with which a service-line is, or is intended to be, immediately connected ;

(f) "electric supply line" means a wire, conductor or other means used for conveying, transmitting or distributing energy together with any casing, coating, covering, tube, pipe or insulator enclosing, surrounding or supporting the same or any part thereof, or any apparatus connected therewith for the purpose of so conveying, transmitting or distributing, such energy ;

(g) "energy" means electrical energy when generated, transmitted, supplied, or used for any purpose except the transmission of a message ;

(h) "licensee" means any person licensed under Part II to supply energy ;

(i) "main" means any electric supply-line through which energy is, or is intended to be, supplied by a licensee to the public ;

(j) "prescribed" means prescribed by rules made under this Act ;

(k) "public lamp" means an electric lamp used for the lighting of any street ;

¹[(l) "service-line" means any electric supply-line through which energy is, or is intended to be, supplied by a licensee—

(i) to a single consumer either from a distributing main or immediately from the licensee's premises, or

(ii) from a distributing main to a group of consumers on the same premises or on adjoining premises supplied from the same point of the distributing main.]

(m) "street" includes any way, road, lane, square, court, alley, passage or open space, whether a thoroughfare or not, over which the public have a right of way, and also the roadway and footway over any public bridge or causeway ; and

(n) "works" includes electric supply-lines and any buildings, machinery or apparatus required to supply energy and to carry into effect the objects of a licence granted under Part II.

PART II.

SUPPLY OF ENERGY.

Licenses.

3. (1) The Provincial Government may, on application made in the prescribed form and on payment of the prescribed fee (if any), grant to any person a license to supply energy in any specified area, and also to lay down or place electric supply-lines for the conveyance and transmission of energy,—

LEG. REF.

¹ This clause was substituted by sec. 2 of the Indian Electricity (Amendment) Act (I of 1922).

that energy was supplied for the use of that person, or that that person was the owner or occupier of premises connected up with the licensee's electric system. If either of these is proved that person is a consumer under rule 106 of the rule. 172 I.C. 940=39 Cr.L.J. 206=18 P.L.T. 986=A.I.R. 1938 Pat. 15. Where the registered consumer and the person supplied with the energy is the proprietor of a company, the manager of the company cannot be held to be a 'consumer.' The premises of the company are not the premises of the manager. The fact that the manager receives the electric bills, signs them and pays the bills cannot make him a consumer. A.I.R. 1938 Pat. 243=1938 P.W.N. 182=19 P.L.T. 141. Where a consumer intended to substitute a motor of smaller horse power in the

place of one with a higher horse power and wrote to the U. P. Electricity Supply Co., about it and asked them to make the necessary examination, it was held that the company was not entitled, under either Para 9 (2) or Para 11 of the conditions of supply to demand a testing fee for that purpose. 1939 A.W.R. (H.C.) 417=A.I.R. 1939 All. 408.

Sec. 2 (n).—"Works" include electric supply lines. I.L.R. (1939) Bom. 496=41 Bom.L.R. 878=A.I.R. 1939 Bom. 480.

Sec. 3.—An assignment of a license can be made by word of mouth and form part performance and acting on and an inference may be raised of the assignment. A formal document of assignment need not necessarily exist. I.L.R. (1943) All. 907=1944 A.L.J. 43=A.I.R. 1944 A. 66.

Secs. 3, 21, 22 AND 23.—A licence given by the Local Government to a person under this Act confers the right on the licensee to supply

(a) where the energy to be supplied is to be generated outside such area, from a generating station situated outside such area to the boundary of such area, or

(b) where energy is to be conveyed or transmitted from any place in such area to any other place therein, across an intervening area not included therein, across such area.

(2) In respect of every such license and the grant thereof the following provisions shall have effect, namely :—

(a) any person applying for a license under this Part shall publish a notice of his application in the prescribed manner and with the prescribed particulars, and the license shall not be granted—

(i) until all objections received by the Provincial Government with reference thereto have been considered by it :

Provided that no objection shall be so considered unless it is received before the expiration of three months from the date of the first publication of such notice as aforesaid ; and

(ii) until, in the case of an application for a license for an area including the whole or any part of any cantonment, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for naval or military purposes, the Provincial Government has ascertained that there is no objection to the grant of the license on the part of the ¹[Engineer-in-Chief, Army Headquarters, India] ;

(b) where an objection is received from any local authority concerned, the Provincial Government shall, if in its opinion the objection is insufficient, record in writing and communicate to such local authority its reasons for such opinions ;

(c) no application for a license under this Part shall be made by any local authority except in pursuance of a resolution passed at a meeting of such authority held after one month's previous notice of the same and of the purpose thereof has been given in the manner in which notices of meetings of such local authority are usually given ;

(d) a license under this Part—

(i) may prescribe such terms as to the limits within which, and the conditions under which, the supply of energy is to be compulsory or permissive, and as to the limits of price to be charged in respect of the supply of energy, and generally as to such matters as the Provincial Government may think fit ; and

(ii) save in cases in which under section 10, clause (b) the provisions of sections 5 and 7, or either of them, have been declared not to apply, every such license shall declare whether any generating station to be used in connection with the undertaking shall or shall not form part of the undertaking for the purpose of purchase under section 5 or section 7 ;

(e) the grant of a license under this Part for any purpose shall not in any way hinder or restrict the grant of a license to another person within the same area of supply for a like purpose ;

(f) the provisions contained in the Schedule shall be deemed to be incorporated with, and to form part of, every license granted under this Part, save in so far as they are expressly added to, varied or excepted by the license, and shall, subject to any such additions, variations or exceptions which the Provincial Government is hereby empowered to make, apply to the undertaking authorised by the license :

Provided that, where a license is granted in accordance with the provisions of clause IX of the Schedule for the supply of energy to other licensees for distribution by them, then, in so far as such license relates to such supply, the provisions

LEG. REF.

¹ These words were substituted for the words "Director of Military Works" by S. 2 and Sch. I, of the Repealing and Amending Act (XXXVII of 1925).

electric energy in a specified area. Certain statutory powers and duties are conferred and imposed on the licensee. These powers are given for the purpose of enabling licensee, who

of clauses IV, V, VI, VII, VIII and XII of the Schedule shall not be deemed to be incorporated with the license.

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Revocation or amendment of licenses.

4. (1) The Provincial Government may, if in its opinion the public interest so requires, revoke a license, in any of the following cases, namely:—

(a) where the licensee, in the opinion of the Provincial Government, makes wilful and unreasonably prolonged default in doing anything required of him by or under this Act;

(b) where the licensee breaks any of the terms or conditions of his license the breach of which is expressly declared by such license to render it liable to revocation;

(c) where the licensee fails, within the period fixed in this behalf by his license or any longer period which the Provincial Government may substitute therefor by order under sub-section (3), clause (b) and before exercising any of the powers conferred on him thereby in relation to the execution of works,—

(i) to show, to the satisfaction of the Provincial Government, that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his license, or

LEG. REF.

¹ Sub-sec. (3) was omitted by sec. 2 and Sch. I of the Devolution Act XXXVIII of 1920.

undertakes a public undertaking, to construct his work, his plant, service mains, etc., and to maintain them, and certain duties are also imposed on him for the safety of the public or individuals. 63 Cal. 1047=40 C.W.N. 789=A.I.R. 1936 Cal. 265. The undertaking being for public benefit, a duty is imposed on the licensee to supply energy to any person who wants to take a supply of energy subject to certain conditions laid down either in the Act or in the schedule which is incorporated in the licence, and subject to any addition or modification which the Local Government may make. (*Ibid.*) The licensee cannot show undue preference to any particular consumer in the matter of rates; subject to this he is empowered to regulate his relations by agreement with his consumers, but even here there are restrictions imposed. He cannot in his agreement with his consumers insert any condition whatever, but only such conditions as are consistent with the Act or his license and to which previous sanction of the Local Government had been obtained. Subject to these restrictions, the legislature has intended the rights between a licensee and a consumer to be regulated by contract. (*Ibid.*)

SEC. 4 (1) (c).—POWER OF GOVERNMENT TO REVOKE LICENSE.—TIME LIMIT.—SATISFACTION OF GOVERNMENT AS TO QUALIFICATION OF LICENSEE.—DECISION AS TO.—The conditions about satisfying the Government as to qualification and furnishing security in sec. 4 (1) (c) are subject to identical limitations; namely, that they have to be within a specified time and before the exercise of any of the powers conferred by the license. It is manifest that the licensee would be entitled to deposit his security up to the last hour of the last day fixed in the license and if the license is to be revoked on the ground of failure of deposit of the security, the revocation of necessity shall have to be made after the time for depositing the security had run out. It follows, therefore, that the time limit with regard to security operates only in favour of the licensee and against the licensee and it does not apply

to Government which can make the revocation after time had run out. For a similar reason, the condition that satisfaction as to his qualification by the licensee shall be given before any powers are exercised and within the time fixed in the license also operates in favour of and against the licensee and they do not apply to Government and it is open to Government to revoke the license even after powers had been exercised by the licensee and time fixed in the license had run out. 1944 A.L.J. 43=1944 All. 66.

The Act nowhere prescribes the manner in which the Government would be satisfied and the evidence which is required for this satisfaction. It is also obvious that if once the Government has finally come to the conclusion that the licensee was qualified to discharge his duties it cannot change its mind subsequently and act under section 4 (1) (c) of the Act. Ordinarily, it will be in the interest of all parties that this decision should be reached before any powers under the license are exercised. And after the supply had begun, or when the works had considerably advanced or when the power was exercised long after the time fixed for satisfaction in the license, a presumption might arise that satisfaction in fact was given by the licensee and it might not be open to Government to revoke the license on that ground. But it is also open under the Act to the Government to fix any period for, the satisfaction and to make the period of completion of works and of satisfaction as to qualification synchronise and to judge the qualification of the licensee with reference to the progress of his work. In such a case no presumption can arise by the mere exercise of powers under the license that the Government had, in fact, received satisfaction as to qualification of the licensee and it is for the licensee if he wants not to exercise the powers under the license before giving satisfaction to Government to insist on a condition in the license that the work shall not begin till the satisfaction is accepted and to insist on a short term for satisfaction of qualification and a long term for the completion of works. I.L.R. (1943) All. 907=1944 All. 66=1944 A.L.J. 43.

(ii) to make the deposit or furnish the security required by his license ;

(d) where the licensee is, in the opinion of the Provincial Government, unable by reason of his insolvency, fully and efficiently to discharge the duties and obligations imposed on him by his license.

(2) Where the Provincial Government might, under sub-section (1), revoke a license, it may, instead of revoking the license, permit it to remain in force subject to such further terms and conditions as it thinks fit to impose, and any further terms or conditions so imposed shall be binding upon and be observed by, the licensee, and shall be of like force and effect as if they were contained in the license.

(3) Where in its opinion the public interest so permits, the Provincial Government may, on the application or with the consent of the licensee, and if the licensee is not a local authority, after consulting the local authority (if any) concerned,—

(a) revoke a license as to the whole or any part of the area of supply upon such terms and conditions as it thinks fit, or

(b) make such alterations or amendments in the terms and conditions of a license, including the provisions specified in section 3, sub-section (2), clause (f) as it thinks fit.

Provisions where license of licensee, not being a local authority is revoked.

5. Where the Provincial Government revokes, under section 4, sub-section (1), the license of a licensee, not being a local authority, the following provisions shall have effect, namely :—

(a) the Provincial Government shall serve a notice of the revocation upon the licensee, and, where the whole of the area of supply is included in the area for which a single local authority is constituted, upon that local authority also, and shall in the notice fix a date on which the revocation shall take effect ; and on and with effect from that date all the powers and liabilities of the licensee under this Act shall absolutely cease and determine ;

(b) where a notice has been served on a local authority under clause (a), the local authority may, within three months after the service of the notice, and

SEC. 5 ORDER OF SALE OF UNDERTAKING—
SALE PRICE FIXED BY AWARD—LICENSEE WRONGFULLY REFUSING TO COMPLETE SALE—PURCHASER'S RIGHT OF SUIT—RELIEF.—If after an order of sale of an undertaking under sec. 5 of the Act, and determination of the sale price under sec. 5 read with sec. 52 of that Act and its tender by the purchaser, the licensee wrongfully refuses to complete the sale and to execute a conveyance or to give possession of the undertaking an action for declaration of title, for possession of the undertaking and for injunction restraining the defendant from interference will certainly lie. The relief of the execution of the sale cannot be refused if such a relief is also claimed in addition to or in substitution of the above reliefs simply because such a relief cannot be brought in within the four corners of Chap. II of the Act. The Specific Relief Act was enacted not to consolidate but only "to define and amend the law relating to certain kinds of specific relief" and though the Act may be exhaustive with regard to those matters which are specifically dealt with by it, there is no reason to hold that the entire law in relation to sec. 5 (b) of the Act was codified in Chap. II, and the relief for specific performance should be confined to contractual obligations or those arising under sec. 30 of the Act, and cannot be granted in relation to statutory obligations. Nor is there any valid reason for not following the English Law in this matter and holding in conformity with it that the direction of sale followed by an award by which the sale price has been determined brings into existence an obligation which though

ordinarily statutory, becomes also contractual and may be specifically enforced. I.L.R. (1943) All. 907=1944 A.L.J. 43=A.I.R. 1944 All. 66.

SEC. 5 (b) : LANDS, BUILDINGS, WORKS, MATERIALS AND PLANTS—IF MUST BE ALL ACQUIRED TOGETHER.—One possible construction of sec. 5 (b) of the Electricity Act is that lands, buildings, works, materials and plants must all co-exist and must all be acquired together. If so, the clause implies that an incomplete undertaking which has not substantially reached the stage of supplying electrical energy and comprises only of one or two or more of these things but not all of them, cannot be compulsorily ordered to be sold. But even if the other construction be accepted and it is possible to acquire one or more of them, provided it or they comprise the entire undertaking at the time, there must be evidence to show that the property which is sought to be ordered to be sold is suitable to, and is used for, the purpose of the undertaking. It is a question of fact in each case whether the particular property sought to be ordered to be sold does or does not answer the description. I.L.R. (1943) All. 907=1944 A.L.J. 43=A.I.R. 1944 All. 66.

SEC. 5 (b) AND (c) : UNDERTAKING AS IT EXISTS ON DATE OF SALE—IF CAN BE ORDERED TO BE SOLD.—Under sec. 5 (b) and (c) of the Act, the undertaking which can be compulsorily ordered to be sold is the undertaking which existed on the date when the revocation of the license took effect and not the undertaking which existed on the date of the order of sale. I.L.R. (1943) All. 907=1944 A.L.J. 43=A.I.R. 1944 All. 66.

with the written consent of the Provincial Government by notice in writing, require the licensee to sell, and thereupon the licensee shall sell, the undertaking to the local authority on payment of the value of all lands, buildings, works, materials and plant of the licensee suitable to, and used by him for, the purposes of the undertaking, other than a generating station declared by the license not to form part of the undertaking for the purpose of purchase, such value to be, in case of difference or dispute, determined by arbitration:

Provided that the value of such lands, buildings, works, materials and plant shall be deemed to be their fair market-value at the time of purchase, due regard being had to the nature and condition for the time being of such lands, buildings, works, materials and plant, and to the state of repair thereof, and to the circumstances that they are in such a position as to be ready for immediate working, and to the suitability of the same for the purposes of the undertaking, but without any addition in respect of compulsory purchase or of goodwill or of any profits which may be or might have been made from the undertaking, or of any similar considerations ;

(c) where no purchase has been effected by the local authority under clause (b), and any other person is willing to purchase the undertaking, the Provincial Government may, if it thinks fit, with the consent of the licensee or without the consent of the licensee in case the price is not less than that for which the local authority might have purchased the same, require the licensee to sell, and thereupon the licensee shall sell, the undertaking to such other person ;

(d) where no purchase has been effected under clause (b) or clause (c) within such time as the Provincial Government may consider reasonable, or where the whole of the area of supply is not included in the area for which a single local authority is constituted, the Provincial Government shall have the option of purchasing the undertaking and, if the Provincial Government elects to purchase, the licensee shall sell the undertaking to the Provincial Government upon terms and conditions similar to those set forth in clause (b) ;

(e) where a purchase has been effected under any of the preceding clauses,—

(i) the undertaking shall vest in the purchasers free from any debts, mortgages or similar obligations of the licensee or attaching to the undertaking :

Provided that any such debts, mortgages or similar obligations shall attach to the purchase-money in substitution for the undertaking ; and

(ii) the revocation of the license shall extend only to the revocation of the rights, powers, authorities, duties and obligations of the licensee from whom the undertaking is purchased, and, save as aforesaid, the license shall remain in full force, and the purchaser shall be deemed to be the licensee :

Provided that where the Provincial Government elects to purchase under clause (d), the license shall, after purchase, in so far as the Provincial Government is concerned, cease to have any further operation ;

(f) where no purchase has been effected under any of the foregoing clauses, the licensee shall have the option of disposing of all lands, buildings, works, materials and plant belonging to the undertaking in such manner as he may think fit :

SEC. 5 (c) : POWER OF GOVERNMENT TO ORDER LICENSEE TO SELL UNDERTAKING AFTER REVOCATION OF LICENSE.—Under sec. 5 (c), the Government has power to order the licensee to sell his undertaking to a particular person after the revocation of his license takes effect and his liabilities under the Act have ceased. 1944 A.L.J. 43=A.I.R. 1944 All. 66.

POWER OF GOVERNMENT TO ORDER SALE TO THIRD PERSON—FIXING OF PRICE—PROCEDURE.—Under sec. 5 (c), the Government can order the licensee to sell the undertaking to a third person although no price was fixed by mutual agreement or arbitration between the licensee and the local authority. Under this clause the Government can order an arbitration in case of difference or

dispute as to price between the licensee and the purchaser. 1944 All. 66=(1943) All. 907=1944 A.L.J. 43.

SEC. 5 (d) authorises the Government to purchase the undertaking "upon terms and conditions similar to those set forth in cl. (b)." These words are wide enough to bring in the arbitration clause which is to be found in cl. (b). I.L.R. (1943) All. 907=1943 A.L.J. 43=A.I.R. 1944 All. 66.

SEC. 5 (f) : ATTACHMENT OF PROPERTY OF LICENSEE WHOSE LICENSE HAS BEEN REVOKED.—Where the judgment-debtor is a licensee whose licence under the Electricity Act has been revoked, the Court when it has to consider whether under sec. 60, C. P. Code, his property

Provided that, if the licensee does not exercise such option within a period of six months from the date on which the same became exercisable, the Provincial Government may forthwith cause the works of the licensee in, under, over, along or across any street to be removed and every such street to be reinstated, and recover the cost of such removal and reinstatement from the licensee ;

(g) if the licensee has been required to sell the undertaking, and if the sale has not been completed by the date fixed in the notice issued under clause (a), the purchaser may, with the previous sanction of the Provincial Government, work the undertaking pending the completion of the sale.

6. (1) Where the Provincial Government revokes the license of a local authority under section 4, sub-section (1), and any person is willing to purchase the undertaking, the Provincial Government may, if it thinks fit, require the local authority to sell, and thereupon the local authority shall sell, the undertaking to such person on such terms as the Provincial Government thinks just.

(2) Where no purchase has been effected under sub-section (1), the licensee shall have the option of disposing of all lands, buildings, works, materials and plant belonging to the undertaking in such manner as he may think fit :

Provided that, if the licensee does not exercise such option within a period of six months from the date on which the same became exercisable, the Provincial Government may forthwith cause the works of the licensee in, under, over, along or across any street to be removed and every such street to be reinstated, and recover the cost of such removal and reinstatement from the licensee.

7. (1) Where a license has been granted to any person not being a local authority, and the whole of the area of supply is included in the area for which a single local authority is constituted, the local authority shall, on the expiration of such period, not exceeding fifty years, and of every such subsequent period not exceeding twenty years, as shall be specified in this behalf in the license, have the option of purchasing the undertaking, and, if the local authority, with the previous sanction of the Provincial Government, elects to purchase, the licensee shall sell the undertaking to the local authority on payment of the value of all lands, buildings, works, materials and plant of the licensee suitable to, and used by him for, the purposes of the undertaking, other than a generating station declared by the license not to form part of the undertaking for the purpose of purchase, such value to be, in case of difference or dispute determined by arbitration :

Provided that the value of such lands, buildings, works, materials and plant shall be deemed to be their fair market-value at the time of purchase, due regard being had to the nature and condition for the time being of such lands, buildings, works, materials and plant, and to the state of repair thereof, and to the circumstance that they are in such a position as to be ready for immediate working and to the suitability of the same for the purposes of the undertaking :

Provided also that there shall be added to such value as aforesaid such percentage, if any, not exceeding twenty per centum on that value as may be specified in the license, on account of compulsory purchase.

(2) Where—

is or is not liable to attachment and sale in execution of the decree, has to bear in mind sec. 4, C. P. Code. As the Electricity Act is a special law, the provisions under the C. P. Code, are subject to any conditions regulating that procedure by the provisions of the Electricity Act. When a licence is revoked certain provisions laid down by section 5 of the Act have an imperative effect and under those provisions the licensee has the option of disposing the property of the undertaking in such manner as he thinks fit under cl. (f) only. That clause is more or less

residuary and comes into operation only when the preceding provisions in the earlier clauses have been complied with. I.L.R. (1939) All. 901=1939 A.L.J. 983=1939 A.W.R. (H.C.) 848 =A.I.R. 1940 All. 24.

Sec. 5 (g) entitles the prospective transferee to take over charge at once and to 'work' the concern pending the completion of the sale as fully and completely as if the sale had been completed within the time fixed. 1943 N.L.J. 551=1944 Nag. 66.

(a) the local authority does not elect to purchase under sub-section (1), or
 (b) the whole of the area of supply is not included in the area for which a single local authority is constituted, or

(c) a licensee supplies energy from the same generating station to two or more areas of supply, each controlled by its own local authority, and has been granted a license in respect of each area of supply, the Provincial Government shall have the like option upon the like terms and conditions.

(3) Where a purchase has been effected under sub-section (1) or sub-section (2),—

(a) the undertaking shall vest in the purchasers free from any debts, mortgages or similar obligations of the licensee or attaching to the undertaking :

Provided that any such debts, mortgages or similar obligations shall attach to the purchase-money in substitution for the undertaking ; and

(b) save as aforesaid, the license shall remain in full force, and the purchaser shall be deemed to be the licensee :

Provided that where the Provincial Government elects to purchase under sub-section (2) the license shall, after purchase, in so far as the Provincial Government is concerned, cease to have any further operation.

(4) Not less than two years' notice in writing of any election to purchase under this section shall be served upon the licensee by the local authority or the Provincial Government as the case may be.

(5) Notwithstanding anything hereinbefore contained, a local authority may, with the previous sanction of the Provincial Government waive its option to purchase and enter into an agreement with the licensee for the working by him of the undertaking until the expiration of the next subsequent period referred to in sub-section (1), upon such terms and conditions as may be stated in such agreement.

8. Where, on the expiration of any of the periods referred to in section 7, sub-section (1) neither a local authority nor the Provincial Government purchases the undertaking and the licensee is, on the application or with the consent of the licensee, revoked, the licensee shall have the option

Provisions where no purchase and license revoked with consent of licensee.

of disposing of all lands, buildings, works, materials and plant belonging to the undertaking in such manner as he may think fit.

Provided that, if the licensee does not exercise such option within a period of six months, the Provincial Government may proceed to take action as provided in section 5, clause (f), proviso.

9. (1) The licensee shall not, at any time without the previous consent in writing of the Provincial Government, acquire by purchase or otherwise, the license or the undertaking of, or associate himself so far as the business of supplying energy is concerned with, any person supplying, or intending to supply, energy under any other license,

Licensee not to purchase, or associate himself with, other licensed undertakings or transfer his undertaking.

and, before applying for such consent, the licensee shall give not less than one month's notice of the application to every local authority, both in the licensee's area of supply, and also in the area or district in which such other person supplies, or intends to supply, energy :

Provided that nothing in this sub-section shall be construed to require the consent of the Provincial Government for the supply of energy by one licensee to another in accordance with the provisions of clause IX of the Schedule.

(2) The licensee shall not at any time assign his license or transfer his undertaking, or any part thereof, by sale, mortgage, lease, exchange or otherwise without the previous consent in writing of the Provincial Government.

SEC. 9. (2) : 'TRANSFER'—CREATION OF CHARGE. Per Full Bench.—'A charge' is a 'transfer' within the meaning of sub-sec. (2) of

sec. 9 of the Indian Electricity Act. Per *Iqbal Ahmad, C.J.*—Even though a 'charge' may not be a 'transfer' within the meaning of the Transfer

(3) Any agreement relating to any transaction of the nature described in sub-section (1) or sub-section (2), unless made with, or subject to, such consent as aforesaid, shall be void.

General power for Government to vary terms of purchase.

10. Notwithstanding anything in sections 5, 7 and 8, the Provincial Government may, [1* * *] in any license to be granted under this Act,—

(a) vary the terms and conditions upon which, and the periods on the expiration of which, the licensee shall be bound to sell his undertaking, or

(b) direct that, subject to such conditions and restrictions (if any) as it may think fit to impose, the provisions of the said sections or any of them shall not apply.

11. (1) Every licensee shall, unless expressly exempted from the liability by his license, or by order in writing of the Provincial Government, prepare and render to the Provincial Government or to such authority as the Provincial Government may appoint in this behalf on or before the prescribed date in each year, an annual statement of accounts of his undertaking made up to such date, in such form and containing such particulars, as may be prescribed in this behalf.

(2) The licensee shall keep copies of such annual statement at his office and sell the same to any applicant at a price not exceeding five rupees per copy.

Works.

12. (1) Any licensee may, from time to time but subject always to the terms and conditions of his license, within the area of supply, or, when permitted by the terms of his license to lay down or place electric supply-lines without the area of supply without that area—

Provisions as to the opening and breaking up of streets, railways and tramways.

LEG. REF.

¹ The words "with the previous sanction of the Governor-General in Council" were omitted by Sec. 2 and Sch. I of the Devolution Act (XXXVIII of 1920).

of Property Act, there is no adequate reason to give a restricted meaning to the word 'transfer' in the Electricity Act, the more so as the last mentioned Act is not in *pari materia* with the Transfer of Property Act. The word transfer is used in sec. 9 (2) in a wide sense as embracing the transactions which either in present or in future may lead to the passing of the undertaking from one person to another. 196 I.C. 425 = 1941 A.L.J. 518 = A.I.R. 1941 All. 345 (F.B.).

Sec. 9 (2) AND (3).—Where a licensee company for supply of electricity executed without the consent of Government, a debenture trust deed whereby the whole undertaking was transferred to trustees for debenture-holders and also purported to create a mortgage over the entire property of the company and it further purported to create a charge over the property in favour of the debenture-holders, it was held that the deed so far as it intended to operate as a transfer of the properties to the trustees was void in view of the provisions of section 9 (2) of the Act and that it was similarly void in so far as it purported to create a mortgage but that it was valid in so far as it purported to create a charge which entitled the debenture-holders to rank as secured creditors in the winding up of the company. A charge could not be regarded as a transfer either in *presenti* or in *future*. I.L.R. (1940) All. 568 = 1940 A.L.J. 449 = 1940 A.W.R. (H.C.)

413 = A.I.R. 1940 All. 458. See also I.L.R. (1941) All. 691. Words 'transfer' and 'undertaking' are used in widest sense in this section. Where a licensee took in partners and the partnership-deed vested the buildings, machinery, books, papers and the licence of electricity in the partners, held, that it amounted to 'transfer of undertaking' under this section. 167 I.C. 707 = A.I.R. 1937 Rang. 47.

Sec. 12.—The Act does not authorise a licensee to place any work on any private lands without the consent of the owner or occupier, except in the case provided for by the first proviso to section 12 (1). But in the case of lands dedicated to public use, the licensee would be able to place its works without the consent of the authorities in charge of such lands and without paying any compensation for the same. The Local Government might while granting the licence insert a term in it regarding rent or compensation for the use of such lands and in such cases undoubtedly a duty to pay rent or compensation will arise. I.L.R. (1937) 2 Cal. 746 = 41 C.W.N. 1045 = A.I.R. 1937 Cal. 521. The ordinary rule of law is that whoever owns the site is the owner of everything up to the sky and down to the centre of the earth, and such owner can, therefore, object to the laying of electric wire on his land although the line may be laid, more than 30 feet above land. There is no law authorising the District Magistrate to grant permission to an electric company to erect a post over the land of a person. 114 I.C. 692 = 1929 L. 226. A post was erected on the land of a person. Permission from the District Magistrate for erecting it was obtained not before

- (a) open and break up the soil and pavement of any street, railway or tramway ;
- (b) open and break up any sewer, drain or tunnel in or under any street, railway or tramway ;
- (c) lay down and place electric supply lines and other works ;
- (d) repair, alter or remove the same ; and
- (e) do all other acts necessary for the due supply of energy.

(2) Nothing contained in sub-section (1) shall be deemed to authorise or empower a licensee, without the consent of the local authority or of the owner and occupier, concerned, as the case may be, to lay down or place any electric supply-line, or other work in, through or against any building, or on, over or under any land not dedicated to public use whereon, wherever or whereunder any electric supply-line or work has not already been lawfully laid down or placed by such licensee :

Provided that any support of an aerial line or any stay or strut required for the sole purpose of securing in position any support of an aerial line may be fixed on any building or land or, having been so fixed, may be altered, notwithstanding the objection of the owner or occupier of such building or land, if the District Magistrate or, in a Presidency-town ^{1*} the Commissioner of Police by order in writing so directs :

Provided, also, that, if at any time the owner or occupier of any building or land on which any such support, stay or strut has been fixed shows sufficient cause, the District Magistrate or, in a Presidency-town ^{1*} the Commissioner of Police may by order in writing direct any such support, stay or strut to be removed or altered.

(3) When making an order under sub-section (2), the District Magistrate or the Commissioner of Police, as the case may be, shall fix the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(4) Every order made by a District Magistrate or a Commissioner of Police under sub-section (2) shall be subject to revision by the Provincial Government.

(5) Nothing contained in sub-section (1) shall be deemed to authorise or empower any licensee to open or break up any street not repairable by ²[the Central Government or the Provincial Government] or a local authority, or any railway or tramway, except such streets, railways or tramways (if any), or such parts thereof, as he is specially authorised to break up by his license, without the written consent of the person by whom the street is repairable or of the person for the time being entitled to work the railway or tramway, unless with the written consent of the Provincial Government:

Provided that the Provincial Government shall not give any such consent as aforesaid, until the licensee has given notice by advertisement or otherwise as the Provincial Government may direct, and within such period as the Provincial Government may fix in this behalf, to the person above referred to, and until all representations or objections received in accordance with the notice have been considered by the Provincial Government.

13. (1) Where the exercise of any of the powers of a licensee in relation to the execution of any works involves the placing of any works in, under, over, along or across any street, part of a street, railway, tramway, canal or waterway, the following provisions shall have effect, namely :—

LEG. REF.
¹ The words "or Rangoon" omitted by A.O., 1937.

² Substituted for the 'the Government' by *ibid.*

erecting but after institution of suit by the owner of land. Lower Court dismissed the suit. *Held*, that High Court could not interfere with the

decision. 114 I.C. 692=1929 L. 226. The Civil Courts have no jurisdiction to decide as to whether a bracket should be fixed on a particular private wall or not by a licensee under the Electricity Act and whether the person whose wall is being used should be given any compensation for it. It is entirely for the District Magistrate to decide these questions. 196 I.C. 547=A.I.R. 1941 Pesh. 73.

(a) not less than one month before commencing the execution of the works (not being a service-line immediately attached, or intended to be immediately attached, to a distributing main, or the repair, renewal or amendment of existing works of which the character or position is not to be altered), the licensee shall serve upon the person responsible for the repair of the street or part of a street, (hereinafter in this section referred to as "the repairing authority") or upon the person for the time being entitled to work the railway, tramway, canal or waterway (hereinafter in this section referred to as "the owner"), as the case may be, a notice in writing describing the proposed works, together with a section and plan thereof on a scale sufficiently large to show clearly the details of the proposed works, and not in any case smaller than one inch to eight feet vertically and sixteen inches to the mile horizontally, and intimating the manner in which, and the time at which, it is proposed to interfere with or alter any existing works, and shall upon being required to do so by the repairing authority or owner, as the case may be, from time to time give such further information in relation thereto as may be desired ;

(b) if the repairing authority intimates to the licensee that it disapproves of such works, section or plan, or approves thereof subject to amendment, the licensee may, within one week of receiving such intimation, appeal to the Provincial Government whose decision, after considering the reasons given by the repairing authority for its action, shall be final ;

(c) if the repairing authority fails to give notice in writing of its approval or disapproval to the licensee within one month, it shall be deemed to have approved of the works, section and plan, and the licensee, after giving not less than forty-eight hours' notice in writing to the repairing authority, may proceed to carry out the works in accordance with the notice and the section and plan served under clause (a) ;

(d) if the owner disapproves of such works, section or plan, or approves thereof subject to amendment, he may, within three weeks after the service of the notice under clause (a) serve a requisition upon the licensee demanding that any question in relation to the works or to compensation, or to the obligations of the owner to others in respect thereof, shall be determined by arbitration, and thereupon the matter shall, unless settled by agreement, be determined by arbitration :

(e) where no requisition has been served by the owner upon the licensee under clause (d), within the time named, the owner shall be deemed to have approved of the works, section and plan, and in that case, or where after a requisition for arbitration the matter has been determined by arbitration, the works may, upon payment or securing of compensation, be executed according to the notice and the section and plan, subject to such modifications as may have been determined by arbitration or agreed upon between the parties.

(f) where the works to be executed consist of the laying of any underground service-line immediately attached, or intended to be immediately attached, to a distributing main, the licensee shall give to the repairing authority or the owner, as the case may be, not less than forty-eight hours' notice in writing of his intention to execute such works ;

(g) where the works to be executed consist of the repair, renewal or amendment of existing works of which the character or position is not to be altered, the licensee shall, except in cases of emergency, give to the repairing authority, or to the owner, as the case may be, not less than forty-eight hours' notice in writing of his intention to execute such works, and, on the expiry of such notice, such works shall be commenced forthwith and shall be carried on with all reasonable despatch, and, if possible, both by day and by night until completed.

(2) Where the licensee makes default in complying with any of these provisions, he shall make full compensation for any loss or damage incurred by reason thereof, and, where any difference or dispute arises as to the amount of such compensation, the matter shall be determined by arbitration.

(3) Notwithstanding anything in this section, the licensee may, in case of emergency due to the breakdown of an underground electric supply-line, after giving notice in writing to the repairing authority or the owner, as the case may be, of his intention to do so, place an aerial line without complying with the provisions of sub-section (1) :

Provided that such aerial line shall be used only until the defect in the underground electric supply-line can be made good, and in no case (unless with the written consent of the Provincial Government) for a period exceeding six weeks, and shall be removed as soon as may be after such defect is removed.

14. (1) Any licensee may alter the position of any pipe (not forming, in a case where the licensee is not a local authority, part of a local authority's main sewer), or of any wire under or over any place which he is authorised to open or break up, if such pipe or wire is likely to interfere with the exercise of his powers under this Act ; and any person may alter the position of any electric supply-lines or works of a licensee under or over any such place as aforesaid, if such electric supply-lines or works are likely to interfere with the lawful exercise of any powers vested in him.

(2) In any such case as aforesaid the following provisions shall, in the absence of an agreement to the contrary between the parties concerned, apply, namely :—

(a) not less than one month before commencing any alteration, the licensee or other person desiring to make the same (hereinafter in this section referred to as "the operator") shall serve upon the person for the time being entitled to the pipe, wire, electric supply-lines or works, as the case may be (hereinafter in this section referred to as "the owner"), a notice in writing, describing the proposed alteration, together with a section and plan thereof on a scale sufficiently large to show clearly the details of the proposed works, and not in any case smaller than one inch to eight feet vertically and sixteen inches to the mile horizontally, and intimating the time when it is to be commenced, and shall subsequently give such further information in relation thereto as the owner may desire ;

(b) within fourteen days after the service of the notice, section and plan upon the owner, the owner may serve upon the operator a requisition to the effect that any question arising upon the notice, section or plan shall be determined by arbitration, and thereupon the matter shall, unless settled by agreement, be determined by arbitration ;

(c) every arbitrator to whom a reference is made under clause (b) shall have regard to any duties or obligations which the owner is under, and may require the operator to execute any temporary or other works so as to avoid as far as possible interference therewith ;

(d) where no requisition is served upon the operator under clause (b) within the time named, or where such a requisition has been served and the matter has been settled by agreement or determined by arbitration, the alteration may, upon payment or securing of any compensation accepted or determined by arbitration, be executed in accordance with the notice, section and plan and subject to such modifications as may have been determined by arbitration or agreed upon between the parties ;

SEC. 14.—The defendants who were a corporation had obtained a licence under the Act and as such licensees had put up an aerial line, etc., on a certain street within the Municipal district of the Municipality of Karachi, the plaintiffs. The Municipality having arranged with the N.-W. Railway Company, that the latter should erect an overbridge, the aerial line and poles had to be shifted from their position. The plaintiffs' suit was for a declaration that the cost of removal should be borne by defendants. *Held*, that sec. 14 of the Act applied and not the Bombay District Municipal Act and that plaintiffs must bear the cost of removal. 95 I.C. 226=

A.I.R. 1926 Sind 115.

SECS. 14 AND 19.—An operator cannot claim damages for acts of his own or done on his behalf and at his expense by the owner. Where a gas company was cut off from reasonable access to its own property by acts done in the exercise of its powers by the Electric Supply Company and those acts caused damage, detriment and inconvenience, *held*, that the damage claimed to have been suffered could be compensated under section 19, and sec. 14 did not apply and the gas company could not be deprived of its remedies. 16 Bom.L.R. 964=26 I.C. 892=A.I.R. 1939 Bom. 124.

(e) the owner may, at any time before the operator is entitled to commence the alteration, serve upon the operator a statement in writing to the effect that he desires to execute the alteration himself and requires the operator to give such security for the repayment of any expenses as may be agreed upon or, in default of agreement, determined by arbitration ;

(f) where a statement is served upon the operator under clause (e), he shall, not less than forty-eight hours before the execution of the alteration is required to be commenced, furnish such security and serve upon the owner a notice in writing intimating the time when the alteration is required to be commenced, and the manner in which it is required to be made ; and thereupon the owner may proceed to execute the alteration as required by the operator ;

(g) where the owner declines to comply, or does not, within the time and in the manner prescribed by a notice served upon him under clause (f), comply with the notice, the operator may himself execute the alteration ;

(h) all expenses properly incurred by the owner in complying with a notice served upon him by the operator under clause (f) may be recovered by him from the operator.

(3) Where the licensee or other person desiring to make the alteration makes default in complying with any of these provisions, he shall make full compensation for any loss or damage incurred by reason thereof, and, where any difference or dispute arises as to the amount of such compensation, the matter shall be determined by arbitration.

Laying of electric supply-line or other works near sewers, pipes or other electric supply-lines or works.

15. (1) Where—

(a) the licensee requires to dig or sink any trench for laying down any new electric supply-lines or other works, near to which any sewer, drain, water-course or work under the control of the Provincial Government or of any local authority, or any pipe, syphon, electric supply-line or other work belonging to any duly authorized person, has been lawfully placed, or

(b) any duly authorized person requires to dig or sink any trench for laying down or constructing any new pipes or other works, near to which any electric supply-lines or works of a licensee have been lawfully placed, the licensee or such duly authorized person, as the case may be (hereinafter in this section referred to as "the operator") shall, unless it is otherwise agreed upon between the parties interested or in case of sudden emergency, give to the Provincial Government or local authority, or to such duly authorized person, or to the licensee, as the case may be (hereinafter in this section referred to as "the owner"), not less than forty-eight hours' notice in writing before commencing to dig or sink the trench and the owner shall have the right to be present during the execution of the work, which shall be executed to the reasonable satisfaction of the owner.

(2) Where the operator finds it necessary to undermine, but not to alter, the position of any pipe, electric supply-line or work, he shall support it in position during the execution of the work, and before completion shall provide a suitable and proper foundation for it where so undermined.

(3) Where the operator (being the licensee) lays any electric supply-line across, or so as to be liable to touch, any pipes, lines or service-pipes or service-lines belonging to any duly authorized person or to any person supplying, transmitting or using energy under this Act, he shall not, except with the written consent of such person and in accordance with section 34, sub-section (1), lay his electric supply-lines so as to come into contact with any such pipes, lines or service-pipes or service-lines.

(4) Where the operator makes default in complying with any of the provisions of this section, he shall make full compensation for any loss or damage incurred by reason thereof.

(5) Where any difference or dispute arises under this section, the matter shall be determined by arbitration.

(6) Where the licensee is a local authority, the references in this section to the local authority and to sewers, drains, water-courses or works under its control shall not apply.

Streets, railways, tramways, sewers, drains or tunnels broken up to be reinstated without delay.

16. (1) Where any person, in exercise of any of the powers conferred by or under this Act, opens or breaks up the soil or pavement of any street, railway or tramway, or any sewer, drain or tunnel, he shall—

(a) immediately cause the part opened or broken up to be fenced and guarded ;

(b) before sunset cause a light or lights, sufficient for the warning of passengers to be set up and maintained until sunrise against or near the part opened or broken up ;

(c) with all reasonable speed fill in the ground and reinstate and make good the soil or pavement, or the sewer, drain or tunnel, opened or broken up, and carry away the rubbish occasioned by such opening or breaking up ; and

(d) after reinstating and making good the soil or pavement, or the sewer, drain or tunnel, broken or opened up, keep the same in good repair for three months and for any further period, not exceeding nine months, during which subsidence continues.

(2) Where any person fails to comply with any of the provisions of sub-section (1), the person having the control or management of the street, railway, tramway, sewer, drain or tunnel in respect of which the default has occurred, may cause to be executed the work which the defaulter has delayed or omitted to execute, and may recover from him the expenses incurred in such execution.

(3) Where any difference or dispute arises as to the amount of the expenses incurred under sub-section (2), the matter shall be determined by arbitration.

17. (1) A licensee shall, before laying down or placing, within ten yards of any part of any telegraph-line, any electric supply-

Notice to telegraph-authority.

line or other works (¹[not being either service lines] or electric-supply lines for the repair, renewal or amendment of existing works of which the character or position is not to be altered), give not less than ten days' notice in writing to the telegraph-authority, specifying—

(a) the course of the works or alterations proposed,

(b) the manner in which the works are to be utilized,

(c) the amount and nature of the energy to be transmitted, and

(d) the extent to, and manner in, which (if at all) earth returns are to be used ;

and the licensee shall conform with such reasonable requirements, either general or special, as may be laid down by the telegraph-authority within that period for preventing any telegraph-line from being injuriously affected by such works or alterations :

Provided that, in case of emergency (which shall be stated by the licensee in writing to the telegraph-authority) arising from defects in any of the electric supply-lines or other works of the licensee, the licensee shall be required to give only such notice as may be possible after the necessity for the proposed new works or alterations has arisen.

(2) Where the works to be executed consist of the laying ²[or placing] of any ³service line ⁴ * * * the licensee shall not less than forty-eight hours before commencing the work, serve upon the telegraph-authority a notice in writing of his intention to execute such works.

LEG. REF.

¹ These words were substituted for the words "not being service-lines immediately attached or intended to be immediately attached to a distributing main" by S. 4 of the Indian Electricity (Amendment) Act (1 of 1922).

² These words were inserted by *ibid.*

³ The word "underground" was omitted, by *ibid.*

⁴ The words "immediately attached or intended to be immediately attached, to a distributing main" were omitted by *ibid.*

18. (1) Save as provided in section 13, sub-section (3), nothing in this Part shall be deemed to authorize or empower a licensee to place any aerial line along or across any street, railway, tramway, canal or waterway unless and until the Provincial Government has communicated to him a general approval in writing of the methods of construction which he proposes to adopt :

Provided that the communication of such approval shall in no way relieve the licensee of his obligations with respect to any other consent required by or under this Act.

(2) Where any aerial line has been placed or maintained by a licensee in breach of the provisions of sub-section (1), the Provincial Government may require the licensee forthwith to remove the same, or may cause the same to be removed and recover from the licensee the expenses incurred in such removal.

¹[(3) Where any tree standing or lying near an aerial line, or where any structure or other object which has been placed or has fallen near an aerial line subsequently to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of energy or the accessibility of any works, a Magistrate of the first class or, in a Presidency-town ²[**], the Commissioner of Police may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he thinks fit].

(4) When disposing of an application under sub-section (3), the Magistrate or Commissioner of Police, as the case may be, shall, in the case of any tree in existence before the placing of the aerial line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

³[*Explanation.*—For the purposes of this section, the expression “tree” shall be deemed to include any shrub, hedge, jungle-growth or other plant.]

19. (1) A licensee shall, in exercise of any of the powers conferred by or under this Act, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.

(2) Save in the case provided for in section 12, sub-section (3), where any difference or dispute arises as to the amount or the application of such compensation, the matter shall be determined by arbitration.

Supply.

⁴[19-A. For the purposes of this Act, the point at which supply of energy by a licensee to a consumer shall be deemed to commence shall be determined in such manner as may be prescribed.]

LEG. REF.

¹ This sub-section was substituted by S. 5 of the Indian Electricity (Amendment) Act (I of 1922).

² Words “or Rangoon” omitted by A.O., 1937.

³ This explanation was added by sec. 5 of the Indian Electricity (Amendment) Act (I of 1922).

⁴ This section was inserted by sec. 6 of *ibid*.

Sec. 19.—*See* 16 Bom.L.R. 964=26 I.C. 892 =39 B. 124 cited under sec. 14. Sec. 19 of the Act primarily prohibits the licensee from doing anything which may amount to a nuisance in the exercise of the powers given by the Act and by the licence. Any infringement of any private right could only be justified on proof of the fact that without infringing those rights,

the duties imposed by the licence could not be carried out. Considerations of public welfare do not warrant an infringement of private rights, unless it is expressly or by necessary implication authorised by statute. The duty cast on the licensee by sec. 19 is enforceable at law. There is nothing in the Electricity Act to relieve the licensee from the liability to an action for injunction restraining him from infringing the rights of others. 1939 A.L.J. 19=I.L.R. (1939) All. 237=A.I.R. 1939 All. 280. The right of the Shia Mahomedans to carry tazias in a procession during moharrum is a normal user of the highway and does not originate in custom. Such a right is no more and no less than the right of any member of the public to take part in religious processions in the streets and can, therefore, be abridged where public rights may lawfully be

20. (1) A licensee or any person duly authorised by a licensee may, at any reasonable time, and on informing the occupier

Power for licensee to enter premises and to remove fittings or other apparatus of licensee.

of his intention, enter any premises to which energy is or has been supplied by him, for the purpose of—

(a) inspecting and testing the electric supply-lines, meters, fittings, works and apparatus for the supply of energy belonging to the licensee ; or

(b) ascertaining the amount of energy supplied or the electrical quantity contained in the supply ; or

(c) removing, where a supply of energy is no longer required, or where the licensee is authorised to take away and cut off such supply, any electric supply-lines, ¹[meters.] fittings, works or apparatus belonging to the licensee.

(2) A licensee or any person authorized as aforesaid may also, in pursuance of a special order in this behalf made by the District Magistrate, or, in a Presidency-town ²[* *] by the Commissioner of Police, and after giving not less than twenty-four hours' notice in writing to the occupier, enter any premises to which energy is or has been supplied, or is to be supplied, by him, for the purpose of examining and testing the electric wires, fittings, works, and apparatus for the use of energy belonging to the consumer.

³[(3) Where a consumer refuses to allow a licensee or any person authorised as aforesaid to enter his premises in pursuance of the provisions of sub-section (1) or sub-section (2), or, when such licensee or person has so entered, refuses to allow him to perform any act which he is authorised by those sub-sections to perform or fails to give reasonable facilities for such entry or performance, the licensee may after the expiry of twenty-four hours from the service of a notice in writing on the consumer, cut off the supply to the consumer for so long as such refusal or failure continues, but for no longer.]

21. (1) A licensee shall not be entitled to prescribe any special form of appliance for utilising energy supplied by him, or save as provided by section 23, sub-section (2), or by section 26, sub-section (7), in any way to control or interfere with the use of such energy :

Restrictions on licensee's controlling or interfering with use of energy.

Provided that no person may adopt any form of appliance, or use the energy supplied to him so as unduly or improperly to interfere with the supply by the licensee of energy to any other person.

⁴[(2) Subject to the provisions of sub-section (1), a licensee may, with the previous sanction of the Provincial Government given after consulting the local authority where the licensee is not the local authority, make conditions not

LEG. REF.

¹ This word was inserted by sec. 7 of the Indian Electricity (Amendment) Act (I of 1922).

² Words 'or Rangoon' omitted by A.O., 1937.

³ This sub-section was added by sec. 7 of the Indian Electricity (Amendment) Act (I of 1922.

⁴ Inserted by sec. 8, *ibid*.

abridged. Therefore, where an Electric Supply Company has been authorised under the Electricity Act to place wires across the streets in a certain place town at a height of 20 feet, the right of the Shia Mahomedans to carry through those streets tazias of a greater height is lawfully abridged. They cannot invoke sec. 19 of the Act to restrain the lawful exercise of power by the company even if it necessarily causes inconvenience, as that section has no application to the case. 48 C.W.N. 307 (P.C.).

Sec. 21: SCOPE.—Sec. 21 which speaks of regulating the relations with consumers has

nothing to do with the charges to be made for energy supplied. The section which deals with the matter is sec. 23. 35 C.W.N. 933.

Sec. 21 (2).—The rule made by Khattar Electric Engineering and General Supply Co., Ltd., Dera Ismail Khan, providing that every consumer shall pay a minimum charge of Rs. 25 per annum, had not been made with the approval of the Government. The fact that in 1936 the company had addressed a letter to the Chief Engineer on the subject and had received the reply that in the case of each consumer the recovery of the minimum charge was lawful from the date of the contract entered into by that consumer with the company is no approval of the rule and therefore the rule is *ultra vires*. 181 I.C. 345=A.I.R. 1939 Pesh. 8.

SECS. 21 AND 24.—Sec. 24 of the Electricity Act authorises the licensee to cut off supply only of that premises the charge of which is in arrear. It does not authorise the discontinuation of supply to premises the charge of which has been paid off. A clause in the agreement between the

inconsistent with this Act or with his license or with any rules made under this Act, to regulate his relations with persons who are or intend to become consumers, and may with the like sanction given after the like consultation add to or alter or amend any such conditions; and any conditions made by a licensee without such sanction shall be null and void:

Provided that any such conditions made before the 23rd day of January, 1922, shall, if sanctioned by the Provincial Government on application made by the licensee before such date as the Provincial Government may, by general or special order, fix in this behalf, be deemed to have been made in accordance with the provisions of this sub-section.]

¹[(3) The Provincial Government may, after the like consultation, cancel any condition or part of a condition previously sanctioned under sub-section (2) after giving to the licensee not less than one month's notice in writing of its intention so to do.]

²[(4)] Where any difference or dispute arises as to whether a licensee has prescribed any appliance or controlled or interfered with the use of energy in contravention of sub-section (1), the matter shall be either referred to an Electric Inspector and decided by him, or, if the licensee or consumer so desires, determined by arbitration.

22. Where energy is supplied by a licensee, every person within the area of supply shall, except in so far as is otherwise provided by the terms and conditions of the license, be

Obligation on licensee to supply energy.

entitled, on application, to a supply on the same terms as those on which any other person in the same area is entitled in similar circumstances to a corresponding supply:

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of energy for any premises having a separate supply unless he has agreed with the licensee to pay to him such minimum annual sum as will give him a reasonable return on the capital expenditure, and will cover other standing charges incurred by him in order to meet the possible maximum demand for those premises, the sum payable to be determined in case of difference or dispute by arbitration.

23. (1) A licensee shall not, in making any agreement for the supply of energy, show undue preference to any person, but

Charges for energy to be made without undue preference.

may, save as aforesaid, make such charges for the supply of energy as may be agreed upon, not exceeding the limits imposed by his license.

LEG. REF.

¹ This sub-section was inserted by sec. 8 of the Indian Electricity (Amendment) Act (I of 1922.

² This sub-section, which was originally numbered "(2)", was renumbered "(4)" by *ibid.*

licensee and the consumer, empowering the licensee to discontinue the supply to certain premises for non-payment of charges of other premises of the consumer is inconsistent with sec. 24 and is *ultra vires* and unenforceable under sec. 21 (2). The previous sanction of the Local Government for the insertion of such a condition, under sec. 21 (2) of the Act, is invalid and unenforceable. 39 C.W.N. 526=61 C.L.J. 111=A.I.R. 1935 Cal. 298.

SEC. 22.—See 63 Cal. 1047 noted under sec. 3, *supra*. There is nothing in the Act which bars, either expressly or impliedly, a suit for damages against licensee for failure to supply energy on proper requisition. 97 I.C. 537=1926 Lah. 349. Before a consumer can be supplied electric

power from a new connection in substitution of an old one he must put in a fresh requisition in writing under paras. 4 and 5 of cl. (6) of the Schedule to the Act. 49 Bom. 182=26 Bom.L.R. 1206=1925 Bom. 120. A person entitled to supply of energy under sec. 22 of the Act, has a cause of action for a suit for damages on account of licensee's failure to supply energy according to sec. 22 and para. 6 to the schedule. A Civil Court including the Judge, Small Cause Court has jurisdiction to entertain such suit. From the general scheme of the Act it is clear that most of the disputes are to be decided by arbitration. If the intention was to bar the civil remedy a similar provision would have been inserted for the breach of sec. 22 also. 1941 A.L.W. 450=1941 O.W.N. 606=I.L.R. (1941) All. 425=1941 All. 301.

SEC. 23.—See 63 Cal. 1047 noted under sec. 3, *supra*. A consumer of electricity employing electrical machinery is entitled within his own premises to use all reasonable tests which might be necessary to discover a defect. It is not obligatory on any one, whatever machinery he

(2) No consumer shall, except with the consent in writing of the licensee, use energy supplied to him under one method of charging in a manner for which a higher method of charging is in force.

¹[(3) In the absence of an agreement to the contrary, a licensee may charge for energy supplied by him to any consumer—

(a) by the actual amount of energy so supplied, or

(b) by the electrical quantity contained in the supply, or

(c) by such other method as may be approved by the Provincial Government.]

¹[(4) Any charges made by a licensee under clause (c) of sub-section (3) may be based upon, and vary in accordance with, any one or more of the following considerations, namely :—

(a) the consumer's load factor, or

(b) the power factor of his load, or

(c) his total consumption of energy during any stated period, or

(d) the hours at which the supply of energy is required.]

24. ³[(1)] Where any person neglects to pay any charge for energy or any ³[sum other than a charge or energy] due from him

Discontinuance of supply to consumer neglecting to pay charge.

to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and re-connecting the supply, are paid, but no longer.

LEG. REF.

¹These sub-sections were added by sec. 9 of the Indian Electricity (Amendment) Act (I of 1922).

²This paragraph was numbered as sub-section "(1)" by sec. 10 of *ibid*.

³These words were substituted for the words "other sum" by *ibid*.

may happen to use to call in an expert on every occasion when something goes wrong. A man is entitled, if he is able, to remedy defects himself in his own plant. If, in the case of electric supply, it is a reasonable test for a consumer to use an electric lamp and if he *bona fide* uses a lamp for this purpose without permission, sec. 23 has no application nor is he guilty under sec. 39 as his action does not amount to dishonest abstraction of the company's electric energy. 151 I.C. 19=35 Cr.L.J. 1274=1934 A. 320. Per *Suhrawardy, J.*—The words "such other" in cl. (c) of sec. 23 (3) cannot be interpreted as preventing the Government from utilising either method with such modifications as they think fit. 35 C.W.N. 933. Per *Graham, J.*—Sec. 23 (3) seems to give the licensee the option of adopting any one of the three methods mentioned. (*Ibid.*) The consumer and the supplier may enter into any agreement as to the charge for supply of energy subject to the limitation mentioned in sec. 23. Where the rate agreed and sanctioned by Government was 7 as. per unit plus Rs. 5 per month per kilowat of the rated capacity of the consuming devices installed provided the combined charges shall not exceed the flat rate of 8 as. per unit, *held*, that the charges for actual consumption and kilowat were two parts of the same method of charging and that

even if they were different it was *intra vires* of the Government to fix them under sec. 23 (3) (c). The system adopted cannot be said to amount to a double system of charge and the consumer is bound to pay the charges as agreed. (*Ibid.*)

Sec. 23 (3) (c).—Sec. 23 (3) (c) contemplates charges made on the basis of consumption. It does not authorise a licensee to levy minimum charges without any agreement with the consumer. Nor can the licensee invoke cl. (c) of sec. 23 (3) to support its claim for minimum charges when the Local Government has not exercised their powers under that clause by a notification under it. 63 Cal. 1047=40 C.W.N. 789= A.I.R. 1936 Cal. 265.

SEC. 24: POWERS UNDER—NATURE AND EXTENT OF—CONDITIONS OF EXERCISE.—The power to discontinue supply to a premises is power in given addition to the rights to realise the arrears by a suit; and this statutory power should be exercised in good faith and reasonably, and only as a last resort after all the formalities laid down in the Act had been complied with. 62 Cal. 886=39 C.W.N. 526=61 C.L.J. 111= 1935 C. 298.

NOTICE.—The notice under this section is purely for the protection of the consumer, and no question of public policy is involved in it. So, it is open to the consumer to waive the notice if he so desires. 20 N.L.J. 200=171 I.C. 640= A.I.R. 1937 Nag. 379.

SEC. 24 AND SCH., CL. (vi).—The licensee must bear the charge of the service line whether the consumer has paid the initial expenditure or not. The licensee can discontinue the supply of energy if the consumer's installation is defective. In case of any alleged defect, the licensee can refer the matter to the

¹[(2)] ^{2*} * Where any difference or dispute has been referred under this Act to an Electric Inspector before notice as aforesaid has been given by the licensee, the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision :

³[Provided that the prohibition contained in this sub-section shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the Electric Inspector of the amount of the licensee's charges or other sums in dispute or for the deposit of the licensee's further charges for energy as they accrue, and the consumer has failed to comply with such request.]

25. Where any electric supply-lines, meters, fittings, works or apparatus belonging to a licensee are placed in or upon any premises, not being in the possession of the licensee, for the purpose of supplying energy, such electric supply-lines, meters, fittings, works and apparatus shall not be liable to be taken in execution under any process of any Civil Court or in any proceedings in insolvency against the person in whose possession the same may be.

Exemption of electric supply-lines or other apparatus from attachment in certain cases.

26. (1) In the absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter :

Meters.

Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter.

(2) Where the consumer so enters into an agreement for the hire of a meter, the licensee shall keep the meter correct, and, in default of his doing so, the consumer shall, for so long as the default continues, cease to be liable to pay for the hire of the meter.

(3) Where the meter is the property of the consumer, he shall keep the meter correct, and, in default of his doing so, the licensee may, after giving him seven days' notice, for so long as the default continues, cease to supply energy through the meter.

(4) The licensee or any person duly authorised by the licensee shall, at any reasonable time and on informing the consumer of his intention, have access to, and be at liberty to inspect and test, and for that purpose, if he thinks fit, take off and remove, any meter referred to in sub-section (1) ; and, except where the meter is so hired as aforesaid, all reasonable expenses of, and incidental to, such inspecting, testing, taking off and removing shall, if the meter is found to be otherwise than correct, be recovered from the consumer; and, where any difference or dispute arises as to the amount of such reasonable expenses, the matter shall be referred to an Electric Inspector, and the decision of such Inspector shall be final :

Provided that the licensee shall not be at liberty to take off or remove any such meter if any difference or dispute of the nature described in sub-section (6) has arisen until the matter has been determined as therein provided.

(5) A consumer shall not connect any meter referred to in sub-section (1) with any electric supply-line through which energy is supplied by a licensee, or

LEG. REF.

¹ This paragraph was originally a proviso and was numbered sub-section "(2)" by sec. 10 of the Indian Electricity (Amendment) Act (I of 1922).

² The words "Provided that" were omitted by *ibid.*

³ This proviso was added by *ibid.*

decide the matter. If energy is supplied to the consumer knowing that the installation is defective the consumer will not pay for a new fuse or

cut-out if the old melts on account of defective installation. 45 I.C. 171.

SEC. 26 (5) deals with a case of connecting a new meter with the licensee's supply-line. Rule 31 (1) of the Electricity Rules on the other hand does not deal with cases which sec. 26 (5) contemplates. Rule 31 (1) deals with the tampering of seals placed on a meter which is already working. There is therefore no conflict between sec. 26 (5) and rule 31 (1). I.L.R. (1939) Bom. 496=41 Bom.L.R. 878=A.I.R., 1939 Bom. 480.

Application of section 18 to aerial lines maintained by railways.

railway administration.]

Control of transmission and use of energy.

Explanation thereto shall apply in the case of any aerial line placed by any railway administration as defined in section 3 of the Indian Railways Act, 1890, as if references therein to the licensee were references to the

30. (1) No person, other than a licensee duly authorized under the terms of his license, shall transmit or use energy at a rate exceeding two hundred and fifty watts,—

(a) in any street, or

(b) in any place,

(i) in which one hundred or more persons are likely ordinarily to be assembled, or

(ii) which is a factory within the meaning of the Indian Factories Act, 1911,¹ or

(iii) which is a mine within the meaning of the Indian Mines Act, 1901,² [or

(iv) to which the Provincial Government, by general or special order, declares the provisions of this sub-section to apply], without giving not less than seven clear days' notice in writing of his intention to the District Magistrate or, in a Presidency-town, ³[* *] to the Commissioner of Police, and complying with such of the provisions of Part IV, and of the rules made thereunder, as may be applicable :

Provided that nothing in this section shall apply to energy used for the public carriage of passengers, animals or goods on, or for the lighting or ventilation of the rolling-stock of, any railway or tramway subject to the provisions of the Indian Railways Act, 1890 :

Provided, also, that the Provincial Government may, by general or special order and subject to such conditions and restrictions as may be specified therein, exempt from the application of this section or of any such provision or rule as aforesaid any person or class of persons using energy on premises upon or in connection with which it is generated, or using energy supplied under Part II in any place specified in clause (b).

(2) Where any difference or dispute arises as to whether a place is or is not one in which one hundred or more persons are likely ordinarily to be assembled, the matter shall be referred to the Provincial Government and the decision of the Provincial Government thereon shall be final.

(3) The provisions of this section shall be binding on the Crown.

PART IV.

GENERAL.

Protective Clauses.

31. No person shall, in the generation, transmission, supply or use of energy, in any way injure any railway, tramway, canal or water-way or any dock, wharf or pier vested in or controlled by a local authority, or obstruct or interfere with the traffic on any railway, tramway, canal or water-way.

Protection of railways and canals, docks, wharves and piers.

32. (1) Every person generating, transmitting, supplying or using energy (hereinafter in this section referred to as the "operator") shall take all reasonable precautions in constructing, laying down and placing his electric supply-lines and other works and in working his system, so as not

Protection of telegraphic, telephonic and electric signalling lines.

LEG. REF.

¹ These figures were substituted for the figures "1881" by sec. 14 of the Indian Electricity (Amendment) Act (I of 1922). See now the Factories Act (XXV of 1934).

² The word "or" and sub-clause (iv) were inserted by the Indian Electricity (Amendment) Act (I of 1922), sec. 14.

³ The words "or Rangoon" omitted by A.O., 1937.

injuriously to affect, whether by induction or otherwise, the working of any wire or line used for the purpose of telegraphic, telephonic or electric-signalling communication, or the currents in such wire or line.

(2) Where any difference or dispute arises between the operator and the telegraph-authority as to whether the operator has constructed, laid down or placed his electric supply-lines or other works, or worked his system, in contravention of sub-section (1), or as to whether the working of any wire, line or current is or is not injuriously affected thereby, the matter shall be referred to the ¹[Central Government]; and the ¹[Central Government], unless ²[it] is of opinion that the wire or line has been placed in unreasonable proximity to the electric supply-lines or works of the operator after the construction of such lines or works, may direct the operator to make such alterations in, or additions to, his system as may be necessary in order to comply with the provisions of this section, and the operator shall make such alterations or additions accordingly :

Provided that nothing in this sub-section shall apply to the repair, renewal or amendment of any electric supply-line so long as the course of the electric supply-line and the amount and nature of the energy transmitted thereby are not altered.

(3) Where the operator makes default in complying with the requirements of this section, he shall make full compensation for any loss or damage incurred by reason thereof, and, where any difference or dispute arises as to the amount of such compensation, the matter shall be determined by arbitration.

Explanation.—For the purposes of this section, a telegraph-line shall be deemed to be injuriously affected if telegraphic, telephonic or electric-signalling communication by means of such line is, whether through induction or otherwise, prejudicially interfered with by an electric supply-line or work or by any use made thereof.

33. ³[(1) If any accident occurs in connection with the generation, transmission, supply or use of energy in, or in connection

with, any part of the electric supply-lines or other works of any person, and the accident results or is likely to have resulted in loss of life or personal injury, such person shall give notice of the occurrence, and of any loss of life or personal injury, actually occasioned by the accident, in such form and within such time and to such authorities as the Provincial Government may, by general or special order, direct.]

(2) The Provincial Government may, if it thinks fit, require any Electric Inspector, or any other competent person appointed by it in this behalf, to inquire and report—

(a) as to the cause of any accident affecting the safety of the public, which may have been occasioned by, or in connection with, the generation, transmission, supply or use of energy, or

LEG. REF.

¹ The words "Local Government" were substituted for the words "Governor-General in Council" by sec. 2 and Sch. I of the Devolution Act (XXXVIII of 1920) ; and word 'Local' was changed to 'Central' by A.O. 1937.

² This word was substituted for the word "he" by sec. 2 and Sch. I of the Devolution Act (XXXVIII of 1920).

³ This sub-section was substituted by sec. 15 of the Indian Electricity (Amendment) Act (I of 1922).

Sec. 33.—It was held under the old section that its applicability was not confined to the accidents occurring in connection with the works of persons licensed under Parts II and III of the Act, nor to cases in which the accident actually resulted in personal injury or death. See 39 M. 686=18 M.L.J. 150=30 I.C. 444.

CONTINUANCE IN FORCE OF RULES AND REGULATIONS MADE UNDER ACT IX OF 1910 AND ACT V OF 1923.—Rules made before the 31st day of March, 1937, under sec. 37 of the Indian Electricity Act, 1910, and regulations made before the 28th day of March, 1937, under sec. 28 of the Indian Boilers Act, 1923, by the Governor-General in Council shall, on and from the said dates respectively, be deemed to have been made under the said sections of the said Acts by the authority substituted for the Governor-General in Council by the Indian Electricity (Amendment) Act, 1937, and the Indian Boilers (Amendment) Act, 1937, respectively, and shall continue to be in force until superseded by rules or regulations made under the said sections of the said Acts by the Central Electricity Board or the Central Boilers Board, as the case may be. (*Vide* sec. 2 of Act XXIV of 1937.)

(b) as to the manner in, and extent to, which the provisions of this Act or of any license or rules thereunder, so far as those provisions affect the safety of any person, have been complied with.

34. (1) No person shall, in the generation, transmission, supply or use of energy, permit any part of his electric supply-lines to be connected with earth except so far as may be prescribed in this behalf or may be specially sanctioned by the Provincial Government.

(2) If at any time it is established to the satisfaction of the Provincial Government—

(a) that any part of an electric supply-line is connected with earth contrary to the provisions of sub-section (1), or

(b) that any electric supply-lines or other works for the generation, transmission, supply or use of energy are attended with danger to the public safety or to human life or injuriously affect any telegraph-line, or

(c) that any electric supply-lines or other works are defective so as not to be in accordance with the provisions of this Act or of any rule thereunder, the Provincial Government may, by order in writing, specify the matter complained of and require the owner or user of such electric supply-lines or other works to remedy it in such manner as shall be specified in the order, and may also in like manner forbid the use of any electric supply-line or works until the order is complied with or for such time as is specified in the order.

Administration and rules.

35. (1) The Central Government may, for the whole or any part of British India, and each Provincial Government may for the whole or any part of the province, by notification in the official Gazette, ¹* * * constitute an Advisory Board.

(2) Every such Board shall consist of a chairman and not less than two other members.

²* * * * *

³[(3)] The Central Government or the Provincial Government, as the case may be, may, by general or special order,—

⁴[(a)] determine the number of members of which any such Board shall be constituted and the manner in which such members shall be appointed,]

⁵[(b)] define the duties and regulate the procedure of any such Board,

⁶[(c)] determine the tenure of office of the members of any such Board, and

⁵[(d)] give directions as to the payment of fees to, and the travelling expenses incurred by, any member of any such Board in the performance of his duty.

36. (1) The Central Government may, by notification in the official Gazette appoint duly qualified persons to be Electric Inspectors, and every Electric Inspector so appointed shall ⁶[in relation to mines, oil-fields and railways] exercise the powers and perform the functions of an Electric Inspector under this Act within such areas and subject to such restrictions as the Central Government may direct.

(2) The Provincial Government may, by notification in the official Gazette, appoint duly qualified persons to be Electric Inspectors within such areas as may be assigned to them respectively; and every Inspector so appointed shall ⁶[except in relation to mines, oil-fields and railways] exercise the powers and perform the functions of an Electric Inspector under this Act subject to such restrictions as the Provincial Government may direct.

LEG. REF.

¹ Words "or the local official Gazette, as the case may be", were omitted by A.O., 1937.

² Sub-section (3) was omitted by sec. 16 of the Indian Electricity (Amendment) Act (I of 1922).

³ This sub-section which was originally numbered "(4)", was re-numbered "(3)", by sec.

16 of the Indian Electricity (Amendment) Act (I of 1922).

⁴ This clause was inserted by *ibid.*

⁵ The clauses "(b)" "(c)" and "(d)" which were originally lettered "(a)", "(b)" and "(c)" were re-lettered by sec. 16 of the Indian Electricity (Amendment) Act (I of 1922).

⁶ Inserted by A.O., 1937.

(3) In the absence of express provision to the contrary in this Act or any rule thereunder, an appeal shall lie from the decision of an Electric Inspector, to the Central Government or the Provincial Government, as the case may be ¹[or, if the Central Government or the Provincial Government, as the case may be, by general or special order, so directs, to an Advisory Board.]

²[36-A. (1) A Board to be called the Central Electricity Board shall be constituted to exercise the powers conferred by section 37.

(2) The Central Electricity Board shall consist of fifteen members, namely :—

(a) a chairman to be nominated by the Central Government ;

(b) one member to be nominated by each of the Provincial Governments of Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces ³[and Berar], Assam, the North-West Frontier Province, Sind and Orissa ;

(c) one member, holding office for a period of three years, to be nominated alternatively by the Provincial Government of Delhi and the Provincial Government of Ajmer-Merwara ;

(d) one member to be nominated by the Chief Commissioner of Railways ; and

(e) one member to be nominated by the Chief Inspector of Mines.

(3) Any vacancy occurring in the Board, otherwise than by the expiry of the term of office of the member referred to in clause (c) of sub-section (2), shall be filled as soon as may be by a nomination made by the authority by whom the member vacating office was nominated.

(4) The Board shall have full power to regulate by by-laws or otherwise its own procedure and the conduct of all business to be transacted by it.

(5) The powers of the Central Electricity Board may be exercised notwithstanding any vacancy in the Board.]

37. (1) The ⁴[Central Electricity Board] may make ⁵rules, ⁶[* * *]

Power for Board to make rules. to regulate the generation, transmission, supply and use of energy, and, generally, to carry out the purposes and objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

LEG. REF.

¹ These words were added by sec. 17 of the Indian Electricity (Amendment) Act (I of 1922).

² Sec. 36-A inserted by Act X of 1937, sec. 3.

³ Inserted by A.O., 1937.

⁴ Substituted for ' Governor General in Council, by Act X of 1937.

⁵ See the Indian Electricity Rules, 1937, published with the Notification of the Government of India (Industries and Labour Department) No. F-601, dated the 27th March, 1937. These rules though made by the Governor-General in Council, are to be deemed to have been made by the Central Electricity Board : see the Rules and Regulations Continuance Act, 1937 (XXIV of 1937).

⁶ The words " for the whole or any part of British India " omitted by A.O. 1937.

which they use to provide motive power for generation. [(1881) 6 A.C. 193, Ref.] Nor does the fact that it is a company of public utility with compulsory obligations to the public confer on it immunity from the control of the local authority. [(1899) 2 Q.B. 664 ; (1909) 2 K.B. 744 ; (1900) 82 L.T. 562 ; (1909) 2 K.B. 138 ; (1903) 88 L.T. 772, Ref.] 54 Mad. 364=A.I.R. 1931 Mad. 152=60 M.L.J. 551.

"COMMERCIAL PREMISES"—MEANING OF—COFFEE-HOTEL.—"Commercial premises" in the context of the classification rules for electric supply by an electric licensee means nothing more than "premises used for purposes of business." The words cannot be read as being in contradiction to trade premises. Premises used for running a coffee-hotel must be regarded as "Commercial premises" for the purpose of fixing rates for the supply of electric energy. 53 L.W. 359=A.I.R. 1941 Mad. 439=(1941) 1 M.L.J. 411.

RULES 31 AND 37.—The provisions of R. 31 deal with the point of commencement of supply of energy by the licensee to the consumer and not with the question of control over an electric line as a matter of fact. R. 31 is one of the rules relating to the conditions of supply which is a matter of concern between the licensee and the consumer rather than a matter affecting the

SEC. 37.—The power to make general rules for the whole of British India or any considerable part of it cannot make local control and the consideration of immediate local conditions unnecessary. Because in their licence the electric company are empowered to have a generating station somewhere within the limits of Madras, they are not free from the ordinary control of the local authority in respect of the steam boiler

- (a) prescribe the form of applications for licenses and the payments to be made in respect thereof;
- (b) regulate the publication of notices;
- (c) prescribe the manner in which objections with reference to any application under Part II are to be made;
- (d) provide for the preparation and submission of accounts by licensees in a specified form;
- (e) provide for the securing of a regular, constant and sufficient supply of energy by licensees to consumers and for the testing at various parts of the system of the regularity and sufficiency of such supply, and for the examination of the records of such tests by consumers;

public; whereas R. 37 is one of the rules of precaution for the safety of the public. A.I.R. 1933 R. 70=11 Rang. 162=34 Cr.L.J. 1040. R. 37 applies to all electric supply lines, and in considering whether the case is governed by R. 37 or not, it is unnecessary to determine whether the line in question is a service-line or not. Under R. 37 the licensee is responsible that all electric supply lines under his control, even if they are on a consumer's premises, are maintained in a safe condition. In truth and in fact the consumer gets the use of the control of the electric current only when it reaches his switch and not as soon as it passes through the meter. (*Ibid.*) See also 41 Bom.L.R. 878. The contention that if the consumer elects to take a supply of energy from the licensee's distributing main at any point outside his premises, and receives the supply through the licensee's meter, and thereafter it is conveyed through a line which has been constructed by the consumer and at his cost, the obligation to keep in a safe condition the line and works from the point of commencement of supply (*i.e.*, the meter) to be consumer's premises and also the line and works on the consumer's premises, is cast upon the consumer and not on the licensee cannot be accepted, for it runs counter to the object and effect of the Electricity Act. The licensee is not entitled by agreement with the consumer to release himself from the obligation to see that the line, apparatus and works by which electricity is transmitted, so long as he retains control of them, are maintained in a safe condition because this obligation is cast upon him not merely for the benefit of the consumer and the licensee, but also for the protection and in the interest of the public generally. Where therefore the licensee allows the stay wire in the road to be in an unsafe condition the licensee fails to perform an obligation imposed upon him under the Act and is guilty of a breach of R. 37 and can be convicted under R. 107. But a conviction in the alternative under R. 107 and sec. 47 however is not in accordance with law, for, the case falls neither under sec. 236 nor sec. 367 (3), Cr. P. Code. 1933 Cr. C. 477=1933 R. 70. The evidence for the prosecution showed that when the officials of a licensee company visited the premises of the accused the seals which the company had affixed to the meter placed upon the premises of the accused had been removed. *Held*, that the accused must be held responsible for removing these seals and that his conviction under R. 106 read with R. 37 (4) was justified. 116 I.C. 889=1929 L. 867.

RULE 40-A : BOMBAY GOVERNMENT NOTIFICATION DATED 15-11-1934—"THEIR OWN WORKS"—INTERPRETATION OF—"WORKS"—MEANING OF.—The words "their own works" in the notification dated 15-11-1934, issued by the Government of Bombay under R. 40-A of the Electricity Rules, 1922, cannot be interpreted as being limited to works carried out on the premises of the various bodies referred to there. The words mean works carried out by the exempted bodies themselves or perhaps works belonging to them; and by "works" is meant the kind of works referred to in the rule and not the kind of works referred to in the definition in the Electricity Act. 43 Bom.L.R. 99=1941 Bom. 100; See also I.L.R. (1939) Bom. 496.

RULE 48 OF THE INDIAN ELECTRICITY RULES 1937, introduced by the Notification dated 27-3-1937, did not come into force until 22-3-1938; and R. 48 cannot therefore apply to any installation works carried out before 22-3-1938, and after March, 1937. Nor would the old R. 40-A of the Electricity Rules, 1922, would apply; because under the Notification of 23-3-1937 the old R. 40-A was superseded when the new rules were made applicable on 27-3-1937. Sec. 24 of the General Clauses Act of 1897 is of no avail in such a case and R. 40-A of the old cannot be regarded as superseded only when the new R. 48 came into force, because the notification of March, 1937 expressly superseded the rules of 1922. 43 Bom.L.R. 99=1941 Bom. 100. "COMMERCIAL PREMISES" in the context of the classification rules for electric supply by an electric licensee means nothing more than "premises used for purposes of business." The words cannot be read as being in contradiction to trade premises. Premises used for running a coffee-hotel, must be regarded as "Commercial premises" for the purpose of fixing rates for the supply of electric energy. 1941 M.W.N. 253=53 L.W. 359=(1941) 1 M.L.J. 411.

RULES 49, 57, 120 AND 124.—The principal of a college who is also the Secretary of the governing body of the Society which conducts the College, is liable to be punished for failure to keep the electric installation within the college premises in proper order so as to avoid danger to persons coming into contact with it. I.L.R. (1944) Nag. 692=1944 N.L.J. 475=1944 Nag. 380.

RULE 106 FRAMED UNDER ACT.—*Quare*.—Whether R. 106 of the rules framed under the Electricity Act is *ultra vires* of the rule making power conferred by sec. 37 (4). 172 I.C. 940=39 Cr.L.J. 206=18 P.L.T. 986=A.I.R. 1938 Pat.

(f) provide for the protection of persons and property from injury by reason of contact with, or the proximity of, or by reason of the defective or dangerous condition of, any appliance or apparatus used in the generation, transmission, supply or use of energy;

(g) for the purposes of electric traction regulate the employment of insulated returns, or of uninsulated metallic returns of low resistance, in order to prevent fusion or injurious electrolytic action of or on metallic pipes, structures or substances, and to minimise, as far as is reasonably practicable, injurious interference with the electric wires, supply-lines and apparatus of parties other than the owners of the electric traction system, or with the currents therein, whether the earth is used as a return or not;

(h) provide for preventing telegraph-lines and magnetic observatories or laboratories from being injuriously affected by the generation, transmission, supply or use of energy;

(i) prescribe the qualifications to be required of Electric Inspectors;

(j) authorize any Electric Inspector or other officer of a specified rank and class to enter, inspect and examine any place, carriage or vessel in which he has reason to believe any appliance or apparatus used in the generation, transmission, supply or use of energy to be, and to carry out tests therein, and to prescribe the facilities to be given to such Inspectors or officers for the purposes of such examinations and tests;^{1*}

(k) authorize and regulate the levy of fees for any such testing or inspection and, generally for the services of Electric Inspectors under this Act; ²[and

LEG. REF.

¹ The word "and" was omitted by sec. 18 of the Indian Electricity (Amendment, Act (I of 1922).

² The word "and" and Cl. (f) were inserted by sec. 18 of the Indian Electricity (Amendment) Act (I of 1922).

15. The definition of 'consumer' includes any person who is supplied with energy by a licensee, and any person whose premises are for the time being connected for the purposes of a supply of energy with the works of the licensee. Therefore in a prosecution for offences under sec. 44 and R. 106 *prima facie* it should be enough to prove either that energy was supplied for the use of the persons or that the persons were owners or occupiers of premises connected up with the licensee's electric system. 172 I.C. 940=18 P.L.T. 986=A.I.R. 1938 Pat. 15. It is clear from the provisions of sec. 37 of the Electricity Act that R. 106 was one which the Government of India had power to make and the necessity of a rule fixing responsibility for the integrity of the seals of the meter fixed on the consumer's premises is obvious. It is equally obvious that in case of a conviction under R. 106, although the breaking of a seal on a meter fixed on a consumer's premises is sufficient to render the consumer liable to a fine, the fine would be adopted to the circumstances of the case. 151 I.C. 1039=1934 N. 245. Rule 106 is unreasonable and repugnant to the general principles of law, and is in excess of the powers conferred by sec. 37 (4). It is also inconsistent with the provisions of sec. 44 of the Act. Consequently this rule is *ultra vires* of the Governor-General in Council and is therefore invalid. 12 R. 515=35 Cr.L.J. 1364=A.I.R. 1934 R. 178.

RULE 107.—Rule 107 framed under sec. 37 of the Act imposes penalties only on licensees and owners (*i.e.* experts). It is not applicable to

consumers, who are not experts. The only rules which any non-expert can observe are Rr. 29 and 40-A which are provided for by Rr. 106 and 106-A. 60 Bom. 770=37 Cr.L.J. 1124=38 Bom.L.R. 434=A.I.R. 1936 Bom. 327.

Under R. 123 it is not the workman who actually carries out the installation that is guilty of any offence; it is only the person under whose immediate supervision the work is carried out that is liable to punishment under the rule. I.L.R. (1940) All. 67=1939 A.W.R. (H.C.) 789=A.I.R. 1940 All. 5=1939 A.L.J. 1032.

RULE 62 (3) (a): LIABILITY UNDER—CIVIL RIGHTS.—The civil rights of a person would not in any way protect him against criminal liability for his acts and omissions under R. 62 (3) (a) of the Indian Electricity Rules. He has every right to move against the Electric Supply Co. to have the wire removed from over his land, but the wire being where it is he is not justified in law in effecting additions and alterations in his house making the aerial line running over land accessible otherwise than by the aid of a ladder or other special appliance. 15 Pat.L.T. 761=1934 P. 523.

SECS. 37 AND 38: RULES UNDER.—Validity of rules made and duly published by the Governor General can be canvassed in a Court of law. 12 R. 515=35 Cr.L.J. 1364=1934 R. 178. The definite policy underlying the penal rules framed under sec. 37 is to make licensees and owners who are experts, having or supposed to have some knowledge of the technical matters relating to electricity liable for breaches of the rules. An owner as defined under the rules is a sort of quasi-licensee; a person who is not a licensee, but authorised by Government under Part III of the Act to supply energy. The rules however, clearly are not part of the Act, and the provision in sec. 38 (4) giving them the same force as if they had been enacted by the Act does not make

(l) provide for any matter which is to be or may be prescribed ;]

¹[(3) Any rules made in pursuance of clause (f) or clause (h) of sub-section (2) shall be binding on the Crown].

²[(4)] In making any rule under this Act, the ³[Central Electricity Board] may direct that every breach thereof shall be punishable with fine which may extend to three hundred rupees, and, in the case of a continuing breach, with a further daily fine which may extend to fifty rupees.

Further provisions respecting rules. 38. (1) The power to make rules under section 37 shall be subject to the condition of the rules being made after previous publication.

(2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897, as that after which a draft of rules proposed to be made under section 37 will be taken into consideration shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

* * * * *

⁴[(3)] All rules made under section 37 shall be published in the ⁵[Gazette of India,] and on such publication shall have effect as if enacted in this Act.

⁶[38-A. The provisions of sections 37 and 38 shall, in relation to rules affecting mines, oilfields and railways, have effect as if the references to the Provincial Government and the Province were references to the Central Government and British India respectively.]

Criminal Offences and Procedure.

39. Whoever dishonestly abstracts, consumes or uses any energy shall be deemed to have committed theft within the meaning of the Indian Penal Code ; and the existence of artificial means for such abstraction shall be *prima facie* evidence of such dishonest abstraction.

LEG. REF.

¹ This sub-section was inserted by sec. 18 of Act I of 1922.

² This sub-section, which was originally numbered "(3)", was re-numbered "(4)" by *ibid.*

³ Substituted for 'Governor-General in Council' by Act X of 1937.

⁴ Old sub-sec. (3) was omitted and sub-sec. (4) was re-numbered as the present sub-sec. (3) by Act X of 1937.

⁵ See Government of India (Adaptation of Indian Laws) Supplementary Order, 1937.

⁶ Sec. 38-A inserted by the A.O., 1937.

them so. 60 Bom. 770=38 Bom.L.R. 434=37 Cr.L.J. 1124=A.I.R. 1936 Bom. 327.

Sec. 39.—The word "dishonestly" is a legal expression having the same sense as that in which it is used in the Penal Code. 27 I.C. 591.

BURDEN OF PROOF—CIRCUMSTANTIAL EVIDENCE.

—Sec. 39 does not remove from prosecution the burden of proving an offence against an individual. Such proof must naturally be circumstantial in character. Where the person charged is the lessee or owner of the house and the consumer of the electricity (that is, the person who is officially on the company's books as the consumer in the particular house) and where there is a large and obvious erection on the roof of the house or in any part of the house, where it could not possibly escape the notice of the consumer and where in addition the person charged is the only person who would gain advantage from the theft of the electricity, the charge under sec. 39 is made out. 146 I.C. 814=1933 A.L.J. 1175. Sec. 39 does not say that dishonest abstraction or consumption or use of energy is theft. Sec. 39 means no more than that the offender is to be tried in the same way

as if he had committed the offence of theft. A.I. R. 1936 Cal. 753. Abstraction is not always a necessary ingredient for an offence under sec. 39. The consuming of electricity and the regular causing of the record of that use in the shape of the figures on the dials in the meters to be altered, amounts to a dishonest user within the meaning of sec. 39, and the persons causing or allowing the alteration of the figures on the dial must be deemed to have committed theft within the meaning of sec. 379, Penal Code. (*Ibid.*).

OFFENCE UNDER SECTION—CONSUMER USING ELECTRICAL MACHINERY.—*Bona fide* CONDUCT.—A consumer employing electrical machinery is entitled within his own premises to use all reasonable tests which might be necessary to discover a defect. It is not obligatory on any one, whatever machinery he may happen to use, to call in an expert on every occasion when something goes wrong. A man is entitled, if he is able, to remedy defects himself in his own plant. If, in the electric supply, it is reasonable for a consumer to use an electric lamp and he *bona fide* uses a lamp for this purpose without permission, sec. 23 has no application nor is he guilty under sec. 39 as his action does not amount to dishonest abstraction of the company's electric energy. 151 I.C. 19=35 Cr.L.J. 1274=1934 A. 320.

SECS. 39 AND 44 (c).—Sec. 39 dispenses with direct proof of abstraction by the accused person, but does not indicate the person who is to be held liable for the constructive abstraction. Sec. 44 (c) also enables a presumption to be raised, under certain circumstances, that the prevention of a meter from duly registering itself has been knowingly and wilfully caused by the consumer in whose custody or control the meter is proved to be. But the prosecution cannot avail itself

40. Whoever maliciously causes energy to be wasted or diverted, or, with intent to cut off the supply of energy, cuts or injures, or attempts to cut or injure, any electric supply-line or works, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

41. Whoever, in contravention of the provisions of section 28, engages in the business of supplying energy shall be punishable with fine which may extend to three thousand rupees, and, in the case of a continuing contravention, with a daily fine which may extend to three hundred rupees.

Penalty for unauthorised supply of energy by non-licensees.

Penalty for illegal or defective supply or for non-compliance with order.

42. Whoever—

(a) being a licensee, save as permitted under section 27 or section 51 or by his license, supplies energy or lays down or places any electric supply-line or works outside the area of supply; or

(b) being a licensee, in contravention of the provisions of this Act or of the rules thereunder or in breach of the conditions of his license and without reasonable excuse, the burden of proving which shall lie on him, discontinues the supply of energy or fails to supply energy; or

(c) makes default in complying with any order issued to him under section 34, sub-section (2);

shall be punishable with fine which may extend to one thousand rupees, and, in the case of a continuing offence or default, with a daily fine which may extend to one hundred rupees.

43. Whoever in contravention of the provisions of section 30, transmits or

Penalty for illegal transmission or use of energy.

uses energy without giving the notice required thereby, shall be punishable with fine which may extend to five hundred rupees, and, in the case of a continuing

offence, with a daily fine which may extend to fifty rupees.

Penalty for interference with meters or licensee's works and for improper use of energy.

44. Whoever—

(a) connects any meter referred to in section 26, sub-section (1), or any meter, indicator or apparatus referred to in section 26, sub-section (7) with any electric supply-line through which energy is supplied by a

of this statutory presumption as against an accused person unless that person is shown to be a consumer within the meaning of sec. 2 (c). 1938 P.W.N. 182=19 P.L.T. 141=A.I.R. 1938 Pat. 243. Where an offence falls under both secs. 39 and 44 (c), the mere fact that a charge could have been made under sec. 44 (c) does not prevent a charge made under section 39 from being properly made especially where the offence under sec. 39 is clearly established. Sec. 39 is in fact the major offence. 65 I.A. 158=42 C.W.N. 621=1938 A.L.J. 382=174 I.C. 1=A.I.R. 1938 P.C. 130=(1938) 1 M.L.J. 647 (P.C.). Secs. 39 and 44, Electricity Act, are to be considered as separate enactments for purposes of sec. 26, General Clauses Act. A.I.R. 1936 Cal. 753.

SECS. 39 AND 50 : THEFT OF ELECTRIC ENERGY.—PERSONS AUTHORISED TO PROSECUTE.—Sec. 39 creates an offence, and prosecution for the theft of electric energy can be instituted only by one of the persons mentioned in sec. 50. Where the prosecution is not instituted at the instance of the Government or an Electric Inspector but by the Executive Officer of a Cantonment Board who are licensees for distribution of electric energy, the proceedings are liable to be quashed

in the absence of evidence to show that the Executive Officer has authority from the Board to institute the proceedings, as he cannot be deemed to be an aggrieved person within the meaning of sec. 50. 37 P.L.R. 758.

SEC. 44.—The latter part of sec. 44 of the Act does not exonerate the prosecution from discharging the onus which lies on it to show that there has been improper use of the energy of a licensee, but merely provides that in case there has been such improper use, the consumer himself will not be able to avoid the liability by saying that the energy was used by some person over whom he had no control. I.L.R. (1940) 2 Cal. 571. Presumption under—When to be raised—Not available against a person not proved to be consumer. 1938 P.W.N. 182=19 P.L.T. 141=1938 Pat. 243. See also I.L.R. (1940) 2 Cal. 571. In prosecution for offences under this section *prima facie* it is enough to prove either that energy was supplied for the use of the persons or that the persons were owners or occupiers of premises connected up with the licensee's electric system. A.I.R. 1938 Pat. 15=18 P.L.T. 986.

licensee, or disconnects the same from any such electric supply-line, without giving to the licensee forty-eight hours' notice in writing of his intention; or

(b) lays, or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee, without such licensee's consent; or

(c) maliciously injures any meter referred to in section 26, sub-section (1) or any meter, indicator or apparatus referred to in section 26, sub-section (7), or wilfully or fraudulently alters the index of any such meter, indicator, or apparatus, or prevents any such meter, indicator or apparatus from duly registering; or

(d) improperly uses the energy of a licensee;

shall be punishable with fine which may extend to ¹[five hundred] rupees, and, in the case of a continuing offence, with a daily fine which may extend to ²[fifty] rupees; and ³[if it is proved that any artificial means exist] for making such connection as is referred to in clause (a) or such communication as is referred to in clause (b) or for causing such alteration or prevention as is referred to in clause (c) or for facilitating such improper use as is referred to in clause (d) ⁴[and that] the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, ⁵[it shall be presumed, until the contrary is proved,] that such connection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and wilfully caused by such consumer.

45. Whoever maliciously extinguishes any public lamp shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to three hundred rupees, or with both.

Penalty for extinguishing public lamps.

46. Whoever negligently causes energy to be wasted or diverted, or negligently breaks, throws down or damages any electric supply-line, post, pole or lamp or other apparatus connected with the supply of energy, shall be punishable with fine which may extend to two hundred rupees.

Penalty for negligently wasting energy or injuring works.

47. Whoever in any case not already provided for by sections 39 to 46 (both

LEG. REF.

¹ These words were substituted for the words "three hundred" by sec. 19 of the Indian Electricity (Amendment) Act (I of 1922).

² This word was substituted for the word "thirty", by *ibid.*

³ These words were substituted for the words "the existence of artificial means," by *ibid.*

⁴ These words were substituted for the words "shall, where" by *ibid.*

⁵ These words were substituted for the words "be *prima facie* evidence," by *ibid.*

SEC. 44 (b) OF THE ACT does not require that the "works" laid or connected up with any other works belonging to the licensee must also be works belonging to the licensee. I.L.R. 1939 Bom. 496=41 Bom.L.R. 878=A.I.R. 1939 Bom. 480. "Works" as defined by sec. 2 (n) of the Electricity Act, include electric supply lines. The point at which the supply of energy by a licensee to a consumer shall be deemed to commence, where the amount supplied is ascertained by meter, is the point at which the conductor enters the meter, in view of sec. 35 read with sec. 19-A of the Act. The supply line up to the point at which it enters the meter constitutes "works" within the meaning of sec. 2 (n). Where a person therefore removes the meter board to a new position, after breaking open the seals which had been placed by the licensee upon the meter, laying additional lines from the former position of the meter up to its new position, his act amounts to an offence

under sec. 44 (b) of the Electricity Act as well as an offence under R. 31 (1) read with R. 122 (a) of the Electricity Rules. I.L.R. (1939) Bom. 496=41 Bom.L.R. 878=A.I.R. 1939 Bom. 480. The words "connects up" in sec. 44 (b) of the Act cannot be construed as extending only to the workman or man who actually does the physical work. The words embrace the whole process of connecting the wires in an installation with other wires for the purpose of communicating with the works of the licensee. There is no doubt that the words "connects up" include the house-holder who gives instructions to connect up, the contractor, if any, through whom those instructions are transmitted to the workman and the workman who actually does the work. 1943 Bom. 76=44 Bom.L.R. 800.

SEC. 44 (d) : PROSECUTION UNDER—ONUS OF PROOF.—The latter part of sec. 44 of the Act does not exonerate the prosecution from discharging the onus which lies on it to show that there has been improper use of the energy of a licensee, but merely provides that in case there has been such improper use, the consumer himself will not be able to avoid the liability by saying that the energy was used by some person over whom he had no control. I.L.R. (1940) 2 Cal. 571=42 Cr.L.J. 472=A.I.R. 1941 Cal. 87.

SEC. 47.—A conviction in the alternative under R. 107 and sec. 47 is not in accordance with law. See 1933 Cr.C. 477=A.I.R. 1933 R. 70 cited under sec. 37. Sec. 47 deals in terms with default in complying with any of the provisions of the Act, or with any order issued under it,

Penalty for offences not otherwise provided for. inclusive), makes default in complying with any of the provisions of this Act, or with any order issued under it, or, in the case of a licensee, with any of the conditions of his license, shall be punishable with fine which may extend to one hundred rupees, and, in the case of a continuing default, with a daily fine which may extend to twenty rupees :

Provided that, where a person has made default in complying with any of the provisions of sections 13, 14, 15, 17 and 32, as the case may be, he shall not be so punishable if the Court is of opinion that the case was one of emergency and that the offender complied with the said provisions as far as was reasonable in the circumstances.

48. The penalties imposed by sections 39 to 47 (both inclusive) shall be in addition to, and not in derogation of, any liability in respect of the payment of compensation or, in the case of a licensee, the revocation of his license, which the offender may have incurred.

49. The provisions of sections 39, 40, 44, 45 and 46 shall, so far as they are applicable, be deemed to apply also when the acts made punishable thereunder are committed in the case of energy supplied by, or of works belonging to, ¹[any Government in British India].

50. No prosecution shall be instituted against any person for any offence against this Act or any rule, license or order thereunder, except at the instance of the Government or an Electric Inspector, or of a person aggrieved by the same.

Supplementary.

51. Notwithstanding anything in sections 12 to 16 (both inclusive) and sections 18 and 19, the Provincial Government may, by order in writing, for the placing of appliances and apparatus for the transmission of energy, confer upon any public officer or licensee, subject to such conditions and restrictions (if any) as the Provincial Government may think fit to impose, and to the provisions of the Indian Telegraph Act, 1885, any of the powers which the telegraph-authority possesses under that Act, with respect to the placing of telegraph-

LEG. REF.

¹ Substituted for "the Government" by A.O., 1937.

or in the case of a licence with any of the conditions of his licence ; but it does not deal with a breach of any of the rules made under the Act. Section cannot be held by implication to provide a penalty for breach of the rules also. 69 Bom. 770=37 Cr.L.J. 1124=38 Bom.L.R. 434=A.I.R. 1936 Bom. 327.

SEC. 50.—Sec. 50 of the Act applies to a prosecution under sec. 379, I. P. Code, read with sec. 39 of the Act for the theft of electricity. An offence of this nature is an offence against the Electricity Act as it would not have been an offence under sec. 379, I. P. Code, if it had not been for the provisions of sec. 39 of that Act. It is an offence which is created by that section and the Legislature intended sec. 50 to apply to an offence of this nature. 165 I.C. 689=1936 A.L.J. 955=A.I.R. 1936 All. 742. The phrase "at the instance of" in sec. 50 means merely at the solicitation of or at the request of. Where

a prosecution under the Act is instituted by the police on report from the Electric Company whose officers come into Court and give evidence, the prosecution is really at the instance of the Electric Company who is a 'person aggrieved,' although they may not make the immediate complaint on which the Magistrate takes cognizance of the offence. 1936 A. 742. A prosecution originated with the complaint of the District Magistrate who acted on the recommendation of the Electric Inspector to Government, is legal. The expression "at the instance of" occurring in sec. 50 of the Electricity Act does not mean "on the complaint of" or "with the sanction of" but only means "at the asking" or "the suggestion of." I.L.R. (1944) Nag. 692=1944 N.L.J. 475=A.I.R. 1944 Nag. 380.

A licensee company is a "person aggrieved" within the meaning of sec. 50. 116 I.C. 889=1929 L. 867. So also a person who is directly in charge of an Electric Company such as its Chief Residential Engineer. A.I.R. 1938 Pat. 15=18 P.L.T. 986=172 I.C. 940. See also 35 P.L.R. 753 cited under sec. 39, *supra*.

lines and posts for the purposes of a telegraph established or maintained by the Government or to be so established or maintained.

52. Where any matter is, by or under this Act, directed to be determined by arbitration, the matter shall, unless it is otherwise

Arbitration. expressly provided in the licence of a licensee, be determined by such person or persons as the Provincial Government may nominate in that behalf on the application of either party; but in all other respects the arbitration shall be subject to the provisions of the ¹[* *] Arbitration Act, ²[1940].

¹ Service of notices, orders or documents. 53. (1) Every notice, order or document by or under this Act required or authorised to be addressed to any person may be served by post or left,—

(a) where ³[the Central Government or the Provincial Government] is the addressee, at the office of ⁴[such officer as the Central Government or the Provincial Government, as the case may be, may designate in this behalf;]

⁵[(aa) where the Federal Railway Authority is the addressee, at the office of the Authority;]

(b) where a local authority is the addressee, at the office of the local authority;

(c) where a company is the addressee, at the registered office of the Company or, in the event of the registered office of the Company not being in India, at the head office of the Company in India;

(d) where any other person is the addressee, at the usual, or last known place of abode or business of the person.

(2) Every notice, order or document by or under this Act required or authorized to be addressed to the owner or occupier of any premises shall be deemed to be properly addressed if addressed by the description of the "owner" or "occupier" of the premises (naming the premises), and may be served by delivering it, or a true copy thereof, to some person on the premises, or, if there is no person on the premises to whom the same can with reasonable diligence be delivered, by affixing it on some conspicuous part of the premises.

54. Every sum declared to be recoverable by section 5, clause (f), section 6, sub-section (2), section 14, sub-section (2), clause (h), section 16, sub-section (2), section 18, sub-section (2) or sub-section (4), or section 26, sub-section (4) and every fee leviable under this Act, may be recovered, on application to a Magistrate having jurisdiction where the person liable to pay the same is for the time being resident, by the distress and sale of any movable property belonging to such person.

55. The Provincial Government may, by general or special order, authorise the discharge of any of its functions under section 13 or section 18, ⁶[or section 34, sub-section (2)] or clause V, sub-clause (2), or clause XIII of the Schedule by an Electric Inspector.

56. No suit, prosecution or other proceeding shall lie against any public officer, or any servant of a local authority, for anything done, or in good faith purporting to be done, under this Act.

57. (1) In section 40, sub-section (1), clause (b), and section 41, sub-section (5), of the Land Acquisition Act, 1894, the term "work" shall be deemed to include electrical energy supplied, or to be supplied, by means of the work to be constructed.

LEG. REF.

¹ In section 52 the word "Indian" omitted by Act XXXII of 1940.

² Substituted by Act X of 1940.

³ Substituted for "the Government" by A.O., 1937.

⁴ These words were substituted for the words "the Secretary in the Public Works Department" by sec. 21 of the Indian Electricity (Amendment) Act (I of 1922).

⁵ Cl. (aa) inserted by A.O., 1937.

⁶ These words, figures and brackets were inserted by sec. 22 of the Indian Electricity (Amendment) Act (I of 1922).

SEC. 52.—With regard to an award under this Act, the procedure laid down in the Arbitration Act has to be followed. I.L.R. (1943) All. 907= 1944 A.L.J. 43=1944 All. 66.

(2) The Provincial Government may, if it thinks fit, on the application of any person, not being a company, desirous of obtaining any land for the purposes of his undertaking, direct that he may acquire such land under the provisions of the Land Acquisition Act, 1894, in the same manner and on the same conditions as it might be acquired if the person were a company.

Repeals and savings.

58. (1) The Indian Electricity Act, 1903, is hereby repealed :

Provided that every application for a license made and every license granted under the said Act shall be deemed to have been made and granted under this Act.

(2) Nothing in this Act shall be deemed to affect the terms of any license which was granted, or of any agreement which was made, by or with the sanction of the Government for the supply or use of electricity before the commencement of this Act.

THE SCHEDULE.

PROVISIONS TO BE DEEMED TO BE INCORPORATED WITH, AND TO FORM PART OF, EVERY LICENSE GRANTED UNDER PART II, SO FAR AS NOT ADDED TO, VARIED OR EXCEPTED BY THE LICENSE.

[See section 3, sub-section (2), clause (f).]
Security and Accounts.

Security for execution of works of licensee not being local authority.

1. Where the licensee is not a local authority, the following provisions as to giving security shall apply, namely :—

(a) The licensee shall, within the period fixed in that behalf by his license, or any longer period which the Provincial Government may substitute therefor by order under section 4, sub-section (3), clause (b), of the Indian Electricity Act, 1910, before exercising any of the powers by the license conferred on him in relation to the execution of works show, to the satisfaction of the Provincial Government, that he is in a position fully and efficiently to discharge the duties and obligations imposed upon him by the license throughout the area of supply.

(b) The licensee shall also, within the period fixed in that behalf by his license, or any longer period which the Provincial Government may substitute therefor by order under section 4, sub-section (3), clause (b), of the Indian Electricity Act, 1910, and before exercising any of the powers conferred on him in relation to the execution of works, deposit or secure to the satisfaction of the Provincial Government such sum (if any) as may be fixed by the license or, if not so fixed, by the Provincial Government.

(c) The said sum deposited or secured by the licensee under the provisions of this clause shall be repaid or released to him on the completion of the works or at such earlier date or dates and by such instalments, as may be approved by the Provincial Government.

Audit of accounts of licensee not being local authority.

2. Where the licensee is not a local authority, the following provisions as to the audit of accounts shall apply, namely :—

(a) The annual statement of accounts of the undertaking shall, before being rendered under section 11 of the Indian Electricity Act, 1910, be examined and audited by such person as the Provincial Government may appoint or approve in this behalf, and the remuneration of the auditor shall be such as the Provincial Government may direct, and his remuneration and all expenses incurred by him in or about the execution of his duties to such an amount as the Provincial Government shall approve, shall be paid by the licensee on demand.

(b) The licensee shall afford to the auditor, his clerks and assistants, access to all such books and documents relating to the undertaking as are necessary for the purposes of the audit, and shall, when required, furnish to him and them all vouchers and information requisite for that purpose, and afford to him and them all facilities for the proper execution of his and their duty.

(c) The audit shall be made and conducted in such manner as the Provincial Government may direct.

(d) Any report made by the auditor, on such portion thereof as the Provincial Government may direct, shall be appended to the annual statement of accounts of the licensee, and shall thenceforth form part thereof.

(e) Notwithstanding the foregoing provisions of this clause, the Provincial Government may, if it thinks fit, accept the examination and audit of an auditor appointed by the licensee.

3. The licensee shall, unless the Provincial Government otherwise directs, at all times keep the accounts of the capital employed for the purposes of the undertaking distinct from the accounts kept by him of any other undertaking or business.

Separate accounts.

Compulsory works and Supply.

4. The licensee shall, within a period of three years after the commencement of the license, execute to the satisfaction of the Provincial Government all such works as may be specified in the license in this behalf or, if not so specified, as the Provincial Government may, by order in writing issued within six months of the date of the commencement of

Execution of work after commencement of license.

the license, direct.

5. (1) Where, after the expiration of two years and six months from the commencement of

Provisions as to laying down of further distributing mains.

the license, a requisition is made by six or more owners or occupiers of premises in or upon any street or part of a street within the area of supply or by the Provincial Government or a local authority charged with the public lighting thereof, requiring the licensee to provide distributing mains throughout such street or part thereof, the licensee shall comply within six months with the requisition, unless—

(a) where it is made by such owners or occupiers as aforesaid, the owners or occupiers making it do not, within fourteen clear days after the service on them by the licensee of a notice in writing in this behalf, tender to the licensee a written contract duly executed and with sufficient security binding themselves to take, or guaranteeing that there shall be taken, a supply of energy for not less than two years to such amount as will in the aggregate produce annually, at the current rates charged by the licensee, a reasonable return to the licensee; or

(b) where it is made by the Provincial Government or a local authority, the Provincial Government or local authority, as the case may be, does not, within the like period, tender a like contract binding itself to take a supply of energy for not less than seven years for the public lamps in such street or part thereof.

(2) Where any difference or dispute arises between the licensee and such owners or occupiers as to the sufficiency of the security offered under this clause, or as to the amount of energy to be taken or guaranteed as aforesaid, the matter shall be referred to the Provincial Government and either decided by it or, if it so directs, determined by arbitration.

(3) Every requisition under this clause shall be signed by the maker or makers thereof and shall be served on the licensee.

(4) Every requisition under this clause shall be in a form to be prescribed by rules under the Indian Electricity Act, 1910; and copies of the form shall be kept at the office of the licensee and supplied free of charge to any applicant.

6. (1) Where ¹[after distributing mains have been laid down under the provisions of clause 4

Requisition for supply to owners or occupiers in vicinity.

or clause 5 and the supply of energy through those mains or any of them has commenced,] a requisition is made by the owner or occupier of any premises situate within ²[the area of supply] requiring the licensee to supply energy for such premises, the licensee shall, within one month from the making of the requisition, ³[or within such longer period as the Electric Inspector may allow,] supply, and, save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control, continue to supply, energy in accordance with the requisition:

Provided first, that the licensee shall not be bound to comply with any such requisition unless and until the person making it—

(a) within fourteen days after the service on him by the licensee of a notice in writing in this behalf, tenders to the licensee a written contract, in a form approved by the Provincial Government duly executed and with sufficient security, binding himself to take a supply of energy for not less than two years to such amount as will produce, at current rates charged by the licensee, a reasonable return to the licensee, and

(b) if required by the licensee so to do, pays to the licensee the cost of so much of any service-line as may be laid down or placed for the purposes of the supply upon the property in respect of which the requisition is made, and of so much of any service-line as it may be necessary for the said purposes to lay down or place beyond one hundred feet from the licensee's distributing main, although not on that property:

Provided secondly, that the licensee shall be entitled to discontinue such supply—

LEG. REF.

¹ These words were inserted by sec. 23 of the Indian Electricity (Amendment) Act (I of 1922).

² These words were substituted for the words "one hundred yards from any distributing main," by *ibid.*

³ These words were inserted by *ibid.*

CLS. 5, 6 AND 10.—Clauses 6 and 5 cast the obligation on the licensee to supply electric energy to an applicant or a group of applicants for supply of electric energy only when the applicant or group of applicants enter into a written contract with the licensee. The only power reserved to the licensee by the Act in the matter of rates which may be exercised by him apart from contract is that he can charge on any one of the three alternative modes specified in Cls. (a), (b) and (c) of sub-sec. (3) of sec. 23 of the Act; and even when the licensee intends to prefer to go upon the basis of sec. 23 (3) (c) the consumer can by following the procedure laid down in cl. 10 of the Schedule, compel the

licensee to adopt either of the modes mentioned in cls. (a) and (b). 63 Cal. 1047=162 I.C. 811=40 C.W.N. 789=A.I.R. 1936 Cal. 265.

CL. 6.—The licensee must bear the charge of the service line whether the consumer has paid the initial expenditure or not. 45 I.C. 171. As to discontinuance of supply of energy if the consumer's installation is defective, see *ibid.*

CL. 6, PROV. (2).—A part of the electric apparatus, namely, the seals of the cut-out were not in good order and condition. As a result of this defect there had been a leakage of energy. *Held*, such a state of things must certainly be deemed to be "likely to affect injuriously the use of energy by the licensee or by other persons," and accordingly, the electric company were entitled upon discovering this condition of things to discontinue the electric supply. Where a main fuse was burnt out, in other words, where the cut-out became defective, *held*, the Company was entitled to discontinue the supply of energy to the consumer. 75 I.C. 456=4 L. 182=1924 L. 142.

(a) if the owner or occupier of the property to which the supply is made has not already given security, or if any security given by him has become invalid or insufficient, and such owner or occupier fails to furnish security or to make up the original security to a sufficient amount, as the case may be, within seven days, after the service upon him of notice from the licensee requiring him so to do, or

(b) if the owner or occupier of the property to which the supply is made adopts any appliance, or uses the energy supplied to him by the licensee for any purposes, or deals with it in any manner so as unduly or improperly to interfere with the efficient supply of energy to any other person by the licensee, or

(c) if the electric wires, fittings, works and apparatus in such property are not in good order and condition, and are consequently likely to affect injuriously the use of energy by the licensee, or by other persons, or

(d) if the owner or occupier makes any alterations of, or additions to, any electric wires, fittings, works or apparatus within such property as aforesaid, and does not notify the same to the licensee before the same are connected to the source of supply, with a view to their being examined and tested; ¹[but the licensee shall re-connect the supply with all reasonable speed on the cessation of the act or default or both, as the case may be, which entitled him to discontinue it:]

Provided, thirdly, that the maximum rate per unit of time at which the owner or occupier shall be entitled to be supplied with energy shall not exceed what is necessary for the maximum consumption on his premises, and, where the owner or occupier has required a licensee to supply him at a specified maximum rate, he shall not be entitled to alter that maximum, except after one month's notice in writing to the licensee, and the licensee may recover from the owner or occupier any expenses incurred by him by reason of such alteration in respect of the service-lines by which energy is supplied to the property beyond one hundred feet from the licensee's distributing main, or in respect of any fittings or apparatus of the licensee upon that property; and

Provided, fourthly, that, ²[if any requisition is made for a supply of energy and] the licensee can prove, to the satisfaction of an Electric Inspector,—

(a) that ³[the nearest distributing main] is already loaded up to its full current carrying capacity, or

(b) that, in case of a larger amount of current being transmitted by it, the loss of pressure will seriously affect the efficiency of the supply to other consumers in the vicinity, the licensee may refuse to accede to the requisition for such reasonable period, not exceeding six months, as such Inspector may think sufficient for the purpose of amending the distributing main or laying down or placing a further distributing main.

(2) Any service-line laid for the purpose of supply in pursuance of a requisition under sub-clause (1) shall, notwithstanding that a portion of it may have been paid for by the person making the requisition, be maintained by the licensee.

(3) Where any difference or dispute arises as to the amount of energy to be taken or guaranteed as aforesaid, or as to the cost of any service-line or as to the sufficiency of the security offered by any owner or occupier, or as to the improper use of energy, or as to any alleged defect in any wires, fittings, works or apparatus, or as to the amount of the expenses incurred under the third proviso to sub-clause (1), the matter shall be referred to an Electric Inspector and decided by him.

(4) Every requisition under this clause shall be signed by the maker or makers thereof and shall be served on the licensee.

(5) Every requisition under this clause shall be in a form to be prescribed by rules under the Indian Electricity Act, 1910; and copies of the form shall be kept at the office of the licensee and supplied free of charge to any applicant.

“17. The licensee shall, before commencing to lay down or place a service-line in any street in which a distributing main has not already been laid down or placed, serve upon the local authority (if any) and upon the owner or occupier of all premises abutting on so much of the street as lies between the points of origin and termination of the service-line so to be laid down or placed, twenty-one days' notice stating that the licensee intends to lay down or place a service-line, and intimating that, if within the said period the local authority or any five or more of such owners or occupiers require, in accordance with the provisions of the license, that a supply shall be given for any public lamps or to their premises, as the case may be, the necessary distributing main will be laid down or placed by the licensee at the same time as the service-line.]

8. (1) Where ⁴[after distributing mains have been laid down under the provisions of clause 4 or clause 5 and the supply of energy through those mains or any of them has commenced] a requisition is made by the Provincial Government or by a local authority requiring the licensee to supply for a period of not less than seven years energy for any public lamps within the ⁵[area of

LEG. REF.

¹ These words were inserted by sec. 23 of the Indian Electricity (Amendment) Act (I of 1922).

² These words were substituted for the words “in the event of any requisition being made for a supply of energy from any distributing main of which,” by *ibid.*

³ These words were substituted for the word “it” by *ibid.*

⁴ This clause was substituted by sec. 24 *ibid.*

⁵ These words were inserted by sec. 25 of *ibid.*

⁶ These words were substituted for the words “distance of one hundred yards from any distributing main,” by *ibid.*

supply] the licensee shall supply, and save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control, continue to supply, energy for such lamps in such quantities as the Provincial Government or the local authority, as the case may be, may require.

(2) The provisions of sub-clause (b) of the first proviso, of sub-clauses (c) and (d) of the second proviso, and of the third and fourth provisos to sub-clause (1) and the provisions of sub-clauses (2) and (3) of clause 6 shall, so far as may be, apply to every case in which a requisition for the supply of energy is made under this clause as if the Provincial Government or local authority were an owner or occupier within the meaning of those provisions.

Supply by bulk-licensees.

(1) Where, and in so far as, the licensee (hereinafter in this clause referred to as "the bulk-licensee") is authorized by his license to supply energy to other licensees for distribution by them (hereinafter in this clause referred to as "distributing licensees") the following provision shall apply, namely:—

(a) any distributing licensees within the bulk-licensee's area of supply may make a requisition on the bulk-licensee, requiring him to give a supply of energy and specifying the point, and the maximum rate per unit of time, at which supply is required, and the date upon which the supply is to commence, such date being fixed after the date of receipt of the requisition so as to allow an interval that is reasonable with regard to the locality and to the length of the electric supply-line and the amount of the plant required;

(b) such distributing-licensee shall, if required by the bulk-licensee so to do, enter into a written agreement to receive and pay for a supply of energy for a period of not less than seven years of such an amount that the payment to be made for the same at the rate of charge for the time being charged for such supply shall not be less than such an amount as will produce a reasonable return to the bulk-licensee on the outlay (excluding expenditure on generating plant then existing and any electric supply-line then laid down or placed) incurred by him in making provision for such supply;

(c) the maximum rate per unit of time at which a distributing licensee shall be entitled to be supplied with energy shall not exceed what is necessary for the purposes for which the supply is required by him, and need not be increased except upon a fresh requisition made in accordance with the foregoing provisions;

(d) if any difference or dispute arises under this clause, it shall be determined by arbitration, and, in the event of such arbitration, the arbitrator shall have regard to the following amongst other considerations, namely:—

(i) the period for which the distributing-licensee is prepared to bind himself to take energy;

(ii) the amount of energy required and the hours during which the bulk-licensee is to supply it;

(iii) the capital expenditure incurred or to be incurred by the bulk-licensee in connection with the aforesaid supply of energy; and

(iv) the extent to which the capital expended or to be expended by the bulk-licensee in connection with such supply may become unproductive upon the discontinuance thereof.

(2) Notwithstanding anything in sub-clause (1), the bulk-licensee shall give a supply of energy to any distributing-licensee within his area of supply applying therefor, even although the distributing licensee desires to be supplied with only a portion of the energy required for distribution by him:

Provided that the distributing licensee shall, if so required by the bulk-licensee, enter into an agreement to take such energy upon special terms (including a minimum annual sum to be paid to the bulk-licensee) to be determined, if necessary, by arbitration in the manner laid down in sub-clause (1) (d).

(3) The maximum price fixed by a license for energy supplied to a distributing licensee shall not apply to any partial supply given under sub-clause (2).

(4) Every distributing licensee, who is supplied with energy by a bulk licensee and intends to discontinue to receive such supply, shall give not less than twelve months' notice in writing of such intention to the bulk-licensee:

Provided that, where the distributing-licensee has entered into a written agreement with the bulk-licensee to receive and pay for a supply of energy for a certain period, such notice shall be given so as not to expire before the end of that period.

Charges.

10. 1[* * * * *]
 2[(1)] 3[* * * * *]

Methods of charging.

month's notice in writing, require the licensee to charge him, at the licensee's option, either by the actual amount of energy supplied to him or by the electrical quantity contained in the supply and

LEG. REF.

¹ The first part of Clause 10 up to and including sub-clause (c) was omitted by sec. 26 of the Indian Electricity (Amendment) Act (I of 1922).

² The first proviso was re-numbered as sub-

clause "(1)" and the words "Provided first, that" were omitted, by *ibid.*

³ These words, figures and brackets were substituted for the words "so approved by the Local Government," by *ibid.*

thereafter the licensee shall not, except with the consent of the consumer, charge him by another method.

¹[(2)] ¹* * * *] Before commencing to supply energy through any distributing main, the licensee shall give notice, by public advertisement, of the method by which he proposes to charge for energy so supplied; and, where the licensee has given such notice, he shall not be entitled to change that method of charging without giving not less than one month's notice in writing of such change to the Provincial Government to the local authority (if any), concerned, and to every consumer of energy who is supplied by him from such distributing main.

²[(3)] ²* * * *] If the consumer is provided with a meter in pursuance of the provisions of section 26, sub-section (1), of the Indian Electricity Act, 1910, and the licensee changes the method of charging for the energy supplied by him from the distributing main, the licensee shall bear the expense of providing a new meter, or such other apparatus, as may be necessary by reason of the new method of charging.

11. Save as provided by clause 9, sub-clause (3), the prices charged by the licensee for energy supplied by him shall not exceed the maxima fixed by his license, or, in the case of a method of charge approved by the Provincial Government, such maxima as the Provincial Government shall fix on approving the method:

Provided that, if at any time after the expiration of seven years from the commencement of the license, the Provincial Government considers ³[* * *] that the maxima so fixed or approved as aforesaid should be altered, it ⁴[shall refer the matter to an advisory Board and, if the Board recommends any alteration, may make an order in accordance with such recommendation], which shall have effect from such date as may be mentioned therein.

Provided, also, that where an order in pursuance of the foregoing proviso has been made, no further order altering the maxima fixed thereby shall be made until the expiration of another period of five years.

⁵[11-A. A licensee may charge a consumer a minimum charge for energy of such amount and determined in such manner as may be specified by his license, and such minimum charge shall be payable notwithstanding that no energy has been used by the consumer during the period for which such minimum charge is made.]

12. The price to be charged by the licensee and to be paid to him for energy supplied for the public lamps and the mode in which those charges are to be ascertained, shall be settled by agreement between the licensee and the Provincial Government or the local authority, as the case may be, and, where any difference or dispute arises, the matter shall be determined by arbitration.

Testing and Inspection.

13. The licensee shall establish at his own cost and keep in proper condition such number of testing stations, situated at such places within reasonable distance from any distributing main, as the Provincial Government may direct for the purpose of testing the pressure or periodicity of the supply of energy in the distributing main, and shall supply and keep in proper condition thereat, and on all premises from which he supplies energy, such instruments for testing as an Electric Inspector may approve, and shall supply energy to each testing station for the purpose of testing.

14. The licensee shall afford all facilities for inspection and testing of his works and for the reading, testing and inspection of his instruments, and may, on each occasion of the testing of his works or the reading, testing or inspection of any instruments, be represented by an agent, who may be present, but shall not interfere with the reading, testing or inspection.

LEG. REF.

¹ The second proviso was re-numbered as sub-clause (2) and the words "Provided, secondly, that" were omitted by sec. 26 of the Indian Electricity (Amendment) Act I of 1922.

² The third proviso was re-numbered as sub-clause (3) and the words "Provided, thirdly, that" were omitted by *ibid.*

³ The words "or is satisfied" were omitted by sec. 27 of the Indian Electricity (Amendment) Act I of 1922.

⁴ These words were substituted for the words "may, after such inquiry (if any) as it thinks fit, make an order accordingly," by *ibid.*

⁵ This clause was inserted by sec. 28, of *ibid.*

CL. 11-A.—CL. 11-A is the only provision which empowers or authorises the licensee to levy minimum charges. But such power can only be exercised by a licensee through a contract entered into with the consumer. When there is no such contract with an intending consumer, the licensee cannot claim or sue for minimum charges. 63 Cal. 1047=40 C.W.N. 789=A.I.R. 1936 Cal. 265.

CL. 12 only applies to the preliminary negotiations leading up to an agreement for the supply of electricity. It does not apply to a dispute arising as to the amount due for electricity supplied for any particular year. 46 P.L.R. 218=1944 Lah. 441.

15. On the occasion of the testing of any works of the licensee by an Electric Inspector reason-

Testing of works.

able notice thereof shall be given to the licensee; and the testing shall be carried out at such suitable hours as in the opinion of the Electric Inspector, will least interfere with the supply of energy by the licensee, and in such manner as the Electric Inspector may think fit; but, except under the provisions of an order made in each case in that behalf by the Provincial Government, the Electric Inspector shall not be entitled to have access to, or interfere with, the works of the licensee at any points other than those at which the licensee himself has access to the same;

Provided that the licensee shall not be held responsible for any interruption or irregularity in the supply of energy which may be occasioned by, or required by the Electric Inspector for the purpose of, any such testing as aforesaid:

Provided, also, that the testing shall not be made in regard to any particular portion of the works oftener than once in any three months, unless in pursuance of an order made in each case in that behalf by the Provincial Government.

Plans.

16. (1) The licensee shall, after commencing to supply energy, forthwith cause a plan to be

Plan of area of supply to be made and kept open for inspection.

made of an area of supply, and shall cause to be marked thereon the alignment ¹[and, in the case of underground works, the approximate depth] below the surface of all his then existing electric supply-lines, street-distributing boxes and other works, and shall once in every year cause that plan to be duly corrected, so as to show the electric supply-lines, street-distributing boxes and other works for the time being in position. The licensee shall also, if so required by an Electric Inspector, cause to be made sections showing the approximate level of all his existing underground works other than service-lines.

²[(2) Every such plan shall be drawn to such scale as the Provincial Government may require: provided that no scale shall be required unless maps of the locality on that scale are for the time being available to the public.]

³[(3) Every such section shall be drawn to horizontal and vertical scales which shall be such as the Provincial Government may require.]

(4) Every plan and section so made or corrected or a copy thereof, marked with the date when it was so made or corrected, shall be kept by the licensee at his principal office or place of business within the area of supply, and shall at all reasonable times be open to the inspection of all applicants, and copies thereof shall be supplied on such terms and conditions as may be prescribed by rules under the Indian Electricity Act, 1910.

(5) The licensee shall, if required by an Electric Inspector and, where the licensee is not a local authority, by the local authority (if any) concerned, supply free of charge to such Electric Inspector or local authority a copy of every such plan or section duly corrected so as to agree with the original kept at the principal office or place of business of the licensee.

Additional notice of certain works.

17. On the day next preceding the commencement of any such works as are referred to in

Notice to Electric Inspector.

section 13 of the Indian Electricity Act, 1910, the licensee shall in addition to any other notices which he may be required to give, serve upon the Electric Inspector, or such officer as the Provincial Government may appoint in this behalf for the area of supply, a notice in writing stating that he is about to commence the works, and the nature and position of the same.

THE INDIAN EMIGRATION ACT (VII OF 1922).³

Year.	No.	Short title.	Amendments.
1922	VII	The Indian Emigration Act, 1922.	Rep. in part XII of 1927. Amended, XXVII of 1927; XVI of 1932; XXI of 1938; VIII of 1940; and Government of India (Adaptation of Indian Laws) Order, 1937.

[5th March, 1922.]

An Act to amend the law relating to emigration.

WHEREAS it is expedient to amend the law relating to emigration; It is hereby enacted as follows:—

LEG. REF.

¹ These words were substituted for the words "and the approximate height above or depth" by sec. 29 of the Indian Electricity Act I of 1922

² These sub-clauses were substituted by sec. 29

of *ibid.*

³ For Statement of Objects and Reasons, see Gazette of India, 1921, Pt. V, p. 109; and for Report of Select Committee, see *ibid.*, 1922, Pt. V, p. 17.

CHAPTER I.

PRELIMINARY.

Short title and extent.

1. (1) This Act may be called THE INDIAN EMIGRATION ACT, 1922.

(2) It extends to the whole of British India.

Definitions.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) “dependant” means any woman or child who is related to an emigrant and any aged or incapacitated relative of an emigrant;

(b) “emigrant” means any person who emigrates or has emigrated or who has been registered as an emigrant under this Act, and includes any dependant of an emigrant, but does not include—

(i) any person emigrating to a country in which he has resided for not less than five years or the wife or child of such person, or

(ii) the wife or child of any person who has lawfully emigrated when such wife or child departs for the purpose of joining such person;

(c) “emigrate” and “emigration” mean the departure by sea out of British India of—

(i) any person who departs under an agreement to work for hire in any country beyond the limits of India, and

(ii) any person who is about to depart, otherwise than by a relative, if he departs, for the purpose or with the intention of working for hire or engaging in agriculture in any country beyond the limits of India;

¹[(cc) “emigrant ship” means any ship specially chartered for the conveyance of emigrants, or conveying emigrants exceeding a number to be prescribed:

Provided that the Central Government may, by notification in the Official Gazette, declare that ships conveying emigrants to any specified port shall not be deemed to be emigrant ships;]

(d) “prescribe” means to prescribe by rules made under this Act;

(e) “work,” with its grammatical variations, means skilled or unskilled work;

(f) “skilled work” means—

(i) working as an artisan; or

(ii) working as a clerk or shop assistant; or

(iii) working for the purpose of any exhibition or entertainment; or

(iv) service in any restaurant, tea-house, or other place of public resort;

or

(v) domestic service; or

(vi) any other occupation which the Central Government may, by notification in the Official Gazette, declare to be skilled work;

(g) “unskilled work” includes engaging in agriculture.

(2) In case of any doubt or dispute arising otherwise than in the course of any legal proceedings, as to whether—

(a) any person is an emigrant, or

(b) any work is skilled or unskilled, or

(c) any person has been assisted otherwise than by a relative, within the meaning of this Act, the question shall be determined by such person and in

LEG. REF.

¹ This clause was inserted by sec. 2 of the Indian Emigration (Amendment) Act, 1927 (XXVII of 1927).

SEC. 1.—Scope and operation of the Act, see 14 A.L.J. 1212=17 Cr.L.J. 407=35 I.O. 967. Who is a Magistrate of the first class

under this Act, see 9 Bom.L.R. 967=6 Cr.L.J. 240

SEC 2 (1) (b)—See (1939) 1 M.L.J. 131=1939 Mad. 445 (meaning of “Emigrant”).

SEC. 2 (f) (1).—A person engaged to drive an engine on board a steamer, is an artisan within the meaning of this Act. 9 Bom.L.R. 1059=32 B. 10; 7 Cr.L.J. 238.

such manner as the ¹[Central Government] may prescribe, and such determination shall be final.

CHAPTER II.

PROTECTORS OF EMIGRANTS AND MEDICAL INSPECTORS.

3. (1) ²[* *] The ¹[Central Government] may appoint a person to be the Protector of Emigrants for any post situate ³[in British India] from which emigration is lawful.

(2) The ¹[Central Government] may define the area to which the authority of a Protector of Emigrants so appointed shall extend.

(3) Every Protector of Emigrants shall be a public servant within the meaning of the Indian Penal Code.

4. Every Protector of Emigrants, in addition to the special duties assigned to him by or under this Act, shall—

(a) protect and aid with his advice all emigrants;

(b) cause, so far as he can, all the provisions of this Act and of the rules made thereunder to be complied with;

(c) inspect, at the time of arrival, to such extent and in such manner as the ¹[Central Government] may prescribe, vessels bringing return emigrants to the port for which he is Protector;

(d) inquire into the treatment received by return emigrants both during the period of their residence in the country to which they emigrated, and also during the return voyage, and report thereon to the ¹[Central Government];

(e) aid and advise return emigrants so far as he reasonably can; and

(f) on being satisfied that any person intending to depart by sea out of British India, comes within one of the classes expressly excluded from the definition of emigrant in section 2, furnish such person with a certificate to the effect that such person is not an emigrant for the purpose of this Act.

5. (1) In any specified area where there is not a Protector of Emigrants, the ¹[Central Government] ²[* *] may appoint any person to perform all or any of the duties of a Protector of Emigrants under this Act.

(2) Every person so appointed shall be a public servant within the meaning of the Indian Penal Code.

6. (1) The ¹[Central Government] may appoint one or more Medical Inspectors, of Emigrants at any port from which emigration is lawful or at any other place, and, where more than one are appointed, may apportion their respective duties.

(2) Every Medical Inspector of Emigrants shall be a public servant within the meaning of the Indian Penal Code.

7. The Central Government may, for the purpose of safeguarding the interests of emigrants in any place outside British India, appoint persons to be agents in such places, and may define their powers and duties.

8. The ¹[Central Government] may, for the purpose of assisting any Protector of Emigrants appointed by it or any person appointed by it under section 5, constitute an Advisory Committee in such manner as it may think fit, and may prescribe the procedure to be followed and the functions to be performed by such committee.

LEG. REF.

¹ Substituted for 'Local Government' by A.O., 1937.

² The words "subject to the control of the

Governor-General in Council" were omitted by *ibid.*

³ Substituted for "within the territories administered by it" by *ibid.*

CHAPTER III.

EMIGRATION FOR THE PURPOSE OF UNSKILLED WORK.

9. (1) Emigration, for the purpose of unskilled work, shall not be lawful except from the ports of Calcutta, Madras, Bombay, Karachi, Negapatam, Tuticorin and Dhanushkodi, and from such other ports as the

Ports from which emigration of unskilled workers is lawful.

Central Government may, by notification in the Official Gazette, declare to be ports from which such emigration is lawful.

(2) The ¹[Central Government] may, by notification in the Official Gazette, fix for the purposes of this Act the limits of any port from which such emigration is lawful.

Countries to which emigration of unskilled workers is lawful.

10. (1) Emigration for the purpose of unskilled work, shall not be lawful except to such countries and on such terms and conditions as the Central Government, by notification² in the Official Gazette, may specify in this behalf.

(2) No notification shall be made under sub-section (1) unless it has been laid in draft before both the Chambers of the ³[Central] Legislature and has been approved by a resolution of each Chamber, either without modification or addition, or with modifications and additions to which both Chambers agree, but, upon such approval being given, the notification may be issued in the form in which it has been so approved.

11. (1) Where the Central Government has reason to believe that in any country to which emigration for the purpose of unskilled work is lawful, plague or any other epidemic disease dangerous to human life has broken out, and that emigrants if allowed to emigrate to that country would be exposed to serious risk to life on arrival there, ⁴[it] may, by notification in the Official Gazette, declare that emigration to that country for the purpose of unskilled work shall cease to be lawful.

⁵[(2) Where the Protector of Emigrants for any port has reason to believe that such a state of affairs as is described in sub-section (1) exists in any country to which emigration for the purpose of unskilled work is lawful, he may, by notification in such manner as he thinks fit, declare that emigration to that country for the purpose of unskilled work from that port shall cease to be lawful pending a reference to the Central Government.].

(3) The ⁶[Protector of Emigrants] publishing a notification under sub-section (2) shall forthwith report such notification with the reasons for it to the Central Government, ⁷[which] shall thereupon publish a notification in the Official Gazette confirming or cancelling the notification published by the ⁶[Protector of Emigrants.]

12. Where the Central Government is satisfied that the ground on which a notification under sub-section (1) of section 11, or a notification under sub-section (3) of section 11 confirming a notification of a ⁶[Protector of Emigrants] has been made with respect to any country, has ceased to exist, ¹[it] may, by notification in the Official Gazette, declare that emigration to that country for the purpose of unskilled work shall again be lawful from a date to be specified in the notification.

13. (1) The Central Government may, by notification in the Official

LEG. REF.

¹ Substituted for 'Local Government' by A.O., 1937.

² For such Notification, see Gen. R. and O., Vol., V, pp. 8-10.

³ Substituted for 'Indian' by A.O., 1937.

⁴ Substituted for 'he' by A.O., 1937.

⁵ Sub-sec. (2) was substituted for old sub-sec. (2) by *ibid.*

⁶ Substituted by A.O., 1937 for 'Local Government'.

⁷ Substituted for 'who' by *ibid.*

Power of Central Government to prohibit emigration to specified country.

Gazette, prohibit, from a date, and for reasons, to be specified in the notification, all persons or any specified class of persons from emigrating to any specified country from the territories under the administration of any Provincial Government or any specified part thereof, for the purpose of unskilled work.

(2) Every notification issued under this section shall be laid before both Chambers of the ¹[Central] Legislature as soon as may be after it is made.

14. A notification under section 10, section 11, section 12 or section 13 shall not affect any act done, offence committed, or legal proceedings commenced before the date on which such notification takes effect.

CHAPTER IV.

EMIGRATION FOR THE PURPOSE OF SKILLED WORK.

15. Emigration, for the purpose of skilled work, shall not be lawful except from a port from which emigration for the purpose of unskilled work is lawful and from such other ports² as the Central Government may, by notification in the Official Gazette, specify in this behalf.

16. (1) Whoever desires to engage, or to assist, any person to emigrate for the purpose of skilled work shall apply for the permission of the ³[Central Government] and shall state in his application—

- (a) the number of persons whom he proposes so to engage or assist;
- (b) the place beyond the limits of India to which each such person and his dependants are to proceed;
- (c) the accommodation to be provided for each such person and his dependants until their departure out of India and during the voyage.

(2) Whoever desires to engage any person for the purpose described in sub-section (1) shall, in addition to the information which he is required by that sub-section to supply in his application, further state therein—

(a) the provision to be made for the health and well-being of such person and his dependants during the period of the proposed engagement and for their repatriation at the end of such period;

(b) the terms of the agreement under which such person is to be engaged;

(c) the security in British India which he proposes to furnish for the due observance of such agreement and for the proper treatment of the person to be engaged and his dependants.

17. On receiving an application under section 16, the ⁴[Central Government] may, after such inquiry as it may deem necessary, grant the permission applied for on such terms and conditions (if any) and on payment of such fees (if any) as it thinks fit, or withhold such permission, and the decision of the ⁴[Central Government] shall be final.

18. (1) Before any person departs from British India in accordance with

LEG. REF.

¹ Substituted for 'Indian' by A.O., 1937.

² For declaration of Rangoon as such a port, see Gen. R. and O., Vol. V, p. 10.

³ Substituted for "Local Government having jurisdiction, etc.," by A.O., 1937.

⁴ Substituted for 'Local Government' by A.O., 1937.

SEC. 16.—See (1939) 1 M.L.J. 131=A.I.R. 1939 Mad. 445 cited under sec. 25, *infra*.

Appearance of engaged persons before, and registration of names by Protector of Emigrants.

permission granted under section 17, the person by whom he has been engaged or assisted shall appear in person or by his duly authorised agent before the Protector of Emigrants at the port of embarkation with such first-mentioned person and with any persons intending to accompany him as his dependants.

(2) If it appears to the Protector of Emigrants—

(a) that permission to engage or assist such person has been duly obtained,

(b) in the case of an engagement, that the terms of the agreement under which such person has been engaged are in accordance with the terms of the permission granted and are understood by him, and

(c) that the conditions on which the permission was granted have been complied with,

he shall register in a book to be kept for the purpose such particulars concerning the person engaged or assisted and his dependants (if any) and concerning the person engaging or assisting him, and in such form, as the ¹[Central Government] may prescribe.

19. Where such security as is referred to in sub-section (2) of section 16

Provisions as to security. has been furnished, the ¹[Central Government] may, at any time after making such inquiry as it may deem necessary, pass orders in regard to the forfeiture of the security in whole or in part and the application of the same or any part thereof, and, on the expiry of the period to which the agreement relates and on being satisfied that no ground exists for forfeiting the security in whole or in part, order the return of the security or of any part thereof to the person by whom it was furnished or to his representative.

Delegation to Protector of Emigrants of authority to receive or dispose of applications.

20. The ¹[Central Government] may, by notification in the Official Gazette, authorise a Protector of Emigrants to receive and dispose of applications made under this Chapter:

Provided that an appeal shall lie to the ¹[Central Government] from every order passed by a Protector of Emigrants in exercise of the authority so conferred.

21. (1) Where the Central Government has reason to believe that sufficient grounds exist for prohibiting emigration of

Power to prohibit emigration of skilled workers.

skilled workers to any country, ¹[it] may by notification in the Official Gazette, declare that such emigration to that country shall cease to be lawful from a date specified in the notification; and from that date such emigration to that country shall accordingly cease to be lawful.

(2) Every notification issued under this section shall be laid before both Chambers of the ³[Central] Legislature as soon as may be after it is made.

* 22. Nothing in this Chapter shall apply in any case in which a person engages another to accompany him out of India as his personal domestic servant.

Saving.

CHAPTER V.

RULES.

23. ⁴[* * *] The ¹[Central Government] may, by notification in the Official Gazette, make rules consistent with this Act

Power of Central Government to make rules.

to prescribe the person by whom any doubt or dispute referred to in sub-section (2) of section 2 shall be determined and the procedure to be followed and the proof to be required in

LEG. REF.

¹Substituted for 'Local Government' by A.O., 1937.

²Substituted by the A.O., 1937, for "he".

³Substituted by A.O., 1937 for "Indian".

⁴Words "Subject to the control of the Governor-General in Council" omitted by A.O., 1937.

such cases, and to provide for any other matter which the ¹[Central Government] is by this Act empowered to prescribe.

24. (1) The Central Government may, by notification in the Official Gazette, and after previous publication, make rules² for the purposes of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the powers and duties of the several officers appointed by the Central Government under this Act;

³[(b) the licensing, supervision and control of persons in British India engaged in causing or assisting persons to emigrate and in the conveyance and accommodation of emigrants, and the prohibition of unlicensed persons from being so engaged.];

(c) the establishment, supervision and regulation of any places of accommodation provided for emigrants and for their medical care while resident there;

(d) the forms to be maintained and the returns to be submitted by persons licensed in accordance with rules framed under clause (b);

(e) the information to be furnished by persons licensed in accordance with rules framed under clause (b) to emigrants and the language in which such information is to be furnished;

(f) the production and examination of emigrants before District Magistrates or such other authorities as may be appointed in this behalf;

(g) the age below which persons of either sex may not emigrate except as dependants;

(h) the accommodation, the provisions, fuel and other necessities, the medical stores and staff, the life-saving and sanitary arrangements, and the records to be maintained on ⁴[emigrant ships];

(i) the reception and the despatch to their homes of return emigrants;

(j) the fees, if any, payable by Emigration Agents to Protectors of Emigrants for each emigrant departing from India;

⁵[(k) the issue of the permits referred to in sub-section (1) of section 30-A; and]

(l) generally, the security, well-being and protection of emigrants ⁶[up to the date of their departure from India, during a voyage on an emigrant ship] and on their return to India.

CHAPTER VI.

OFFENCES.

25. (1) Whoever, except in conformity with the provisions of this Act or

LEG. REF.

¹ Substituted for "Local Government" by A.O., 1937.

² For such rules, see Gen. R. and O., Vol. V, p. 11.

For fees in respect of emigrants to such countries, see *ibid.*, p. 48.

For the modifications with which the rules apply in Ceylon, the Straits Settlements, the Federated Malay States and Unfederated Malay States, see *ibid.*, p. 45.

³ Substituted for old sec. 24 (2) (b) by Act XVI of 1932. The old clause (b) stood as follows:—(b) The licensing, supervision and control of all persons employed in British India in connection with the inducement of persons to emigrate and with the conveyance and accommodation of persons so induced.

⁴ These words were substituted for the words "any ship specially chartered for the

transport of emigrants" by sec. 3 of the Indian Emigration (Amendment) Act, 1927 (XXVII of 1927).

⁵ Cl. (k) of sec. 24 inserted by Act XXI of 1938.

⁶ These words were substituted for the words "both up to the date of their actual departure from India" by sec. 3 of the Indian Emigration (Amendment) Act, 1927 (XXVII of 1927).

SEC. 25.—Liability of master for criminal acts done by servant on master's behalf. See 9 Bom.L.R. 967=6 Cr.L.J. 240; 9 Bom.L.R. 1059=32 B. 10=7 Cr.L.J. 238. See also (1930) 1 M.L.J. 131=A.I.R. 1939 Mad. 445. Where the proprietor of a Cigar Manufacturing Company in British India supported the emigration out of British India of some skilled workmen with the purpose of their being employed by his own concern outside

Unlawful emigration or inducement to emigrate. of the rules made under this Act, emigrates or attempts to emigrate shall be punishable with fine which may extend to fifty rupees.

(2) Whoever, except in conformity with the provisions of this Act or of the rules made under this Act,—

(a) makes, or attempts to make, any agreement with any person purporting to bind that person, or any other person, to emigrate, or

(b) ¹[causes or assists or attempts to cause or assist] any person to emigrate or to attempt to emigrate or to leave any place for the purpose of emigrating, or

(c) causes any person engaged or assisted by him, after grant of the permission referred to in section 17, to depart by sea out of British India without registration of the particulars required by sub-section (2) of section 18, shall be punishable with fine, which may extend to five hundred rupees.

²[(3) When in the course of any proceedings in connection with emigration in which a person licensed in accordance with rules framed under clause (b) of sub-section (2) of section 24 is concerned, a breach of the provisions of this Act or of the rules made under this Act is committed, such person shall be liable to the punishment provided by sub-section (2), unless he shows that he was not responsible for and could not have prevented the commission of the breach.]

²[(4)] If any person commits an offence under this section, any police-officer may arrest him without warrant.

26. Whoever, by means of intoxication, coercion or fraud, causes or induces, or attempts to cause or induce, any person to emigrate, or enter into any agreement to emigrate, or leave any place with a view to emigrating, shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

27. Whoever falsely represents that any emigrants are required by the Government or are to be engaged on behalf of the Government shall be punishable with imprisonment for a term which may extend to six months, or with fine, which may extend to five hundred rupees, or with both.

28. No prosecution shall be instituted for any offence under this Chapter except with the sanction of a Protector of Emigrants or of a person appointed under section 5 and empow-

LEG. REF.

¹ Substituted by Act XVI of 1932.

² Sub-sec. (3) of sec. 25 has been re-numbered as sub-sec. (4), and the new sub-sec. (3) has been inserted by Act XVI of 1932.

British India in a place called Klang, and since the requirements of sec. 16 of the Emigration Act were not complied with, the workmen were suspected and detained, and a prosecution was sanctioned under sec. 25 (2) (b) of the Emigration Act against the proprietor for having helped them to emigrate, but he raised the defence that he was not responsible for any help given to them and that even otherwise they were emigrants as defined under sec. 2 (1) (b) of the Act. *Held*, (1) that an agreement to work for hire was not necessary for an offence under sec. 25 (2) (b) of the Act and it was unnecessary to consider whether as found by the lower Court the workmen ought to have been engaged by the proprietor in his own

concern at a place outside British India; (2) that since the permission of the Local Government for skilled workmen to emigrate was not obtained as required by sec. 16 of the Act, the proprietor should be convicted in so far as the material sec. 25 (2) (b) provides, that whoever assists or attempts to assist any person to emigrate or attempts to emigrate or to leave any place for the purpose of emigrating, shall be punishable with fine. 181 I.C. 370=40 Cr.L.J. 957=A.I.R. 1939 Mad. 445=(1939) 1 M.L.J. 131. Where a person secures steamer tickets for certain labourers to enable them to depart by land out of British India so as to depart for the purpose of working for hire in a country beyond the sea, he commits an offence punishable under sec. 30 (3) read with sec. 25 (2) (b) of the Emigration Act. Assistance does not mean merely either financial assistance or entering into an agreement to work for hire. 51 L.W. 679=A.I.R. 1940 Mad. 587=(1940) 1 M.L.J. 816.

ered in this behalf, or, where there is no Protector or person so appointed and empowered, of the District Magistrate:

Provided that no sanction shall be required when an offence has been committed in respect of an emigrant or an intended emigrant and the complaint is filed by such emigrant, or intended emigrant or, on behalf of such emigrant or intended emigrant, by the father, mother, husband, wife or guardian of such emigrant or intended emigrant or, if such emigrant or intended emigrant is a member of a joint Hindu family, by the manager of that family.

29. All the powers for the time being conferred by law on officers of sea-

Power for Customs-officer to search and detain for purposes of Act.

customs with regard to the searching and detention of vessels or otherwise for the prevention of smuggling on board thereof ¹[may be exercised, for the prevention of offences against this Act, by any such

officer, or by a protector of Emigrants, or a person appointed under section 5].

CHAPTER VII.

SUPPLEMENTAL.

30. (1) The departure by land out of British India of any person under, or with a view to entering into, an agreement to work

Prohibition of departure by land under an agreement to work for hire in some country beyond the sea.

for hire, or when assisted, otherwise than by a relative, so to depart for the purpose or with the intention of working for hire or engaging in agriculture, in any country beyond the sea, is prohibited.

(2) Whoever departs, or attempts to depart, by land out of British India in contravention of this section, shall be deemed to have committed an offence under sub-section (1) of section 25.

(3) Whoever ²[causes or assists or attempts to cause or assist] any person to depart by land out of British India in contravention of this section shall be deemed to have committed an offence under sub-section (2) of section 25.

³[30-A. (1) The Central Government may, by notification in the Official

Power to prohibit departure by sea from British India for the purpose of unskilled work.

Gazette from a date and for reason to be specified in the notification, prohibit all persons or any specified class of persons from departing by sea out of British India to any specified country beyond the limits of India for the purpose of unskilled work unless possessed of a prescribed permit or otherwise exempted by general or special order of the Central Government from the provisions of the notification.

(2) Every notification issued under this section shall be laid before both Chambers of the Central Legislature as soon as may be after it is made.

(3) Whoever departs or attempts to depart out of British India in contravention of a notification issued under sub-section (1) shall be punishable with the punishment provided for an offence under sub-section (1) of section 25.

(4) Whoever causes or assists or attempts to cause or assist any person to depart out of British India in contravention of a notification issued under sub-section (1) shall be punishable with the punishment provided for an offence under sub-section (1) of section 25.]

⁴[(5) If any person commits an offence under this section, any Police officer may arrest him without warrant.

LEG. REF.

¹ Substituted by Act VIII of 1940.

² Substituted by Act XVI of 1932.

³ Sec. 30-A inserted by the Indian Emigration (Amendment) Act XXI of 1938.

⁴ Sub-sec. (5) to sec. 30-A added by Act

VIII of 1940.

SEC. 30 (3).—See 51 L.W. 679=A.I.R. 1940 Mad. 587=(1940) 1 M.L.J. 816 cited *supra*.

CHAPTER VIII.

SAVINGS AND REPEAL.

Application of Act.

31. Nothing in this Act shall be deemed to apply to the departure out of British India of—

(i) any person who is neither of Indian parentage nor a subject of a State in India, or

(ii) any person enrolled under the Indian Army Act, 1911.

32. Notwithstanding anything contained in this Act, the provisions of this

Saving.

Act shall not apply for a period of twelve months from the date of the commencement of this Act to

persons emigrating to Ceylon, the Straits Settlements, or any protected Native State adjoining the Straits Settlements.

33. [Repeal.] Repealed by section 2 and Schedule of the Repealing Act, 1927 (II of 1927).

THE EMPLOYERS' LIABILITY ACT (XXIV OF 1938).

[24th September, 1938.

An Act to declare that certain defences shall not be raised in suits for damages in British India in respect of injuries sustained by workmen.

WHEREAS it is expedient to declare that certain defences shall not be raised in suits for damages in British India in respect of injuries sustained by workmen; It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called THE EMPLOYERS' LIABILITY ACT, 1938.

(2) It extends to the whole of British India.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "workman" means any person who has entered into, or works under a contract of, service or apprenticeship with an employer whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, oral or in writing, and

(b) "employer" includes any body of persons whether incorporated or not, and any managing agent of an employer, and the legal representatives of a deceased employer, and, where the services, of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered, into a contract of service or apprenticeship, means such other person while the workman is working for him.

Defence of common employment barred in certain cases.

3. Where personal injury is caused to a workman—

(a) by reason of the omission of the employer to maintain in good and safe condition any way, works, machinery or plant connected with or used in his trade or business, or by reason of any like omission on the part of any person in the service of the employer who has been entrusted by the employer with the duty of seeing that such way, works, machinery or plant are in good and safe condition; or

(b) by reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him, whilst in the exercise of such superintendence; or

(c) by reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform and did conform, where the injury resulted from his having so conformed; or

(d) by reason of any act or omission of any person in the service of the employer done or made in obedience to any rule or bye-law of the employer (not being a rule or bye-law which is required by or under any law for the time being

in force to be approved by any authority and which has been so approved) or in obedience to particular instructions given by any person to whom the employer has delegated authority in that behalf or in the normal performance of his duties;

a suit for damages in respect of the injury instituted by the workman or by any person entitled in case of his death shall not fail by reason only of the fact that the workman was at the time of the injury a workman of, or in the service of, or engaged in the work of, the employer.

4. In any such suit for damages, the workman shall not be deemed to have undertaken any risk attaching to the employment unless the employer proves that the risk was fully explained to and understood by the workman and that the workman voluntarily undertook the same.

Risk not to be deemed to have been assumed without full knowledge.

5. Nothing in this Act shall affect the validity of any decree or order of a Civil Court passed before the commencement of this Act in any such suit for damages.

Saving.

THE EMPLOYMENT OF CHILDREN ACT (XXVI OF 1938).

[Amended by Act XV of 1939. Rep. in parts by Act XXV of 1942.]

[1st December, 1938.

An Act to regulate the admission of children to certain industrial employments.

WHEREAS it is expedient to regulate the admission of children to certain industrial employments; It is hereby enacted as follows:—

- Short title and extent. 1. (1) This Act may be called THE EMPLOYMENT OF CHILDREN ACT, 1938.

- (2) It extends to the whole of British India.

2. In this Act—

- (a) “competent authority”, in respect of a major port, as defined in the Indian Ports Act, 1908, and in respect of a federal railway, as defined in the Indian Railways Act, 1890,

Definition.

means the Central Government, and in any other case means the Provincial Government;

¹[(b) ‘occupier’ of a workshop means the person who has ultimate control over the affairs of the workshop;

(c) ‘prescribed’ means prescribed by rules made under this Act;

(d) ‘workshop’ means any premises (including the precincts thereof) wherein any industrial process is carried on, but does not include any premises to which the provisions of section 50 of the Factories Act, 1934, for the time being apply.]

- Prohibition of employment of children in certain occupations. 3. (1) No child who has not completed his fifteenth year shall be employed or permitted to work in any occupation connected with the transport of passengers, goods or mails by railway.

(2) No child who has not completed his fifteenth year shall be employed or permitted to work in any occupation involving the handling of goods within the limits of any port to which for the time being any of the provisions of the Indian Ports Act, 1908, are applicable.

¹[(3) No child who has not completed his twelfth year shall be employed, or permitted to work, in any workshop wherein any of the processes set forth in the Schedule is carried on:]

Provided that nothing in this sub-section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family; only

LEG. REF.

¹ Added by Act XV of 1939.

and without employing hired labour or to any school established by, or receiving assistance or recognition from, a Provincial Government.]

¹[3-A. The Provincial Government, after giving, by notification in the official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add any description of process to the Schedule, and thereupon the Schedule shall have force in the Province as if it has been enacted accordingly.

3-B. Before work in any of the processes set forth in the Schedule is carried on in any workshop after the 1st day of October, 1939, the occupier shall send to the inspector, within whose local limits the workshop is situated, a written notice containing—

- (a) the name and situation of the workshop,
- (b) the name of the person in actual management of the workshop,
- (c) the address to which communications relating to the workshop should be sent, and
- (d) the nature of the processes to be carried on in the workshop.

3-C. If any question arises between an inspector and an employer as to whether any child has or has not completed his twelfth or fifteenth year, as the case may be, the question shall, in the absence of a certificate as to the age of such child, granted by a prescribed medical authority, be referred by the inspector for decision to the prescribed medical authority.]

4. Whoever employs any child or permits any child to work in contravention of the provisions of section 3 ²[or fails to give notice as required by section 3-B] shall be punishable with fine which may extend to five hundred rupees.

5. (1) No prosecution under this Act shall be instituted except by or with the previous sanction of an inspector appointed under section 6.

³[(2) Every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purposes of this Act, be conclusive evidence as to the age of the child to whom it relates.]

(3) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

6. The competent authority may appoint persons to be inspectors for the purpose of securing compliance with the provisions of this Act, and any inspector so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code.

7. (1) The competent authority may by notification in the official Gazette and subject to the condition of previous publication make rules for carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) regulate the procedure of inspectors appointed under section 6, and
- (b) make provision for the grant of certificates of age in respect of young persons in employment or seeking employment, ⁴[the medical authorities] which may issue such certificates, the form of such certificate, the charges which may be made therefor, and the manner in which such certificates may be issued:

LEG. REF.

¹ Secs. 3-A to 3-C added by Act XV of 1939.

² Added by Act XV of 1939.

³ Sec. 5, cl. (2) substituted by Act XV of 1939.

⁴ Substituted by *ibid*.

Provided that no charge shall be made for the issue of any such certificate if the application is accompanied by evidence of age deemed satisfactory by the authority concerned.

8. [Amendment of section 6, Act XV of 1908.] (*Repealed by Act XXV of 1942.*)

¹THE SCHEDULE.
(See Sections 3, 3-A and 3-B.)
List of Processes.

1. *Bidi* making.
2. Carpet-weaving.
3. Cement manufacture, including bagging of cement.
4. Cloth-printing, dyeing and weaving.
5. Manufacture of matches, explosives and fireworks.
6. Mica-cutting and splitting.
7. Shellac manufacture.
8. Soap manufacture.
9. Tanning.
10. Wool cleaning.

THE EPIDEMIC DISEASES ACT (III OF 1897).²

Year.	No.	Short title.	Amendments.
1897	III	The Epidemic Diseases Act, 1897.	Repealed in part. XIII of 1898; X of 1914; Amended, XXXVIII of 1920.

[4th February, 1897.]

An Act to provide for the better prevention of the spread of Dangerous Epidemic Disease.

WHEREAS it is expedient to provide for the better prevention of the spread of dangerous epidemic disease; It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called THE EPIDEMIC DISEASES ACT, 1897.

(2) It extends to the whole of British India (inclusive of ³[* *] British Baluchistan, the Santhal Parganas and the Pargana of Spiti); ⁴[* *] ⁵[* *] ⁶[* *] ⁷[* *] ⁸[* *] ⁹[* *] ¹⁰[* *] ¹¹[* *] ¹²[* *] ¹³[* *] ¹⁴[* *] ¹⁵[* *] ¹⁶[* *] ¹⁷[* *] ¹⁸[* *] ¹⁹[* *] ²⁰[* *] ²¹[* *] ²²[* *] ²³[* *] ²⁴[* *] ²⁵[* *] ²⁶[* *] ²⁷[* *] ²⁸[* *] ²⁹[* *] ³⁰[* *] ³¹[* *] ³²[* *] ³³[* *] ³⁴[* *] ³⁵[* *] ³⁶[* *] ³⁷[* *] ³⁸[* *] ³⁹[* *] ⁴⁰[* *] ⁴¹[* *] ⁴²[* *] ⁴³[* *] ⁴⁴[* *] ⁴⁵[* *] ⁴⁶[* *] ⁴⁷[* *] ⁴⁸[* *] ⁴⁹[* *] ⁵⁰[* *] ⁵¹[* *] ⁵²[* *] ⁵³[* *] ⁵⁴[* *] ⁵⁵[* *] ⁵⁶[* *] ⁵⁷[* *] ⁵⁸[* *] ⁵⁹[* *] ⁶⁰[* *] ⁶¹[* *] ⁶²[* *] ⁶³[* *] ⁶⁴[* *] ⁶⁵[* *] ⁶⁶[* *] ⁶⁷[* *] ⁶⁸[* *] ⁶⁹[* *] ⁷⁰[* *] ⁷¹[* *] ⁷²[* *] ⁷³[* *] ⁷⁴[* *] ⁷⁵[* *] ⁷⁶[* *] ⁷⁷[* *] ⁷⁸[* *] ⁷⁹[* *] ⁸⁰[* *] ⁸¹[* *] ⁸²[* *] ⁸³[* *] ⁸⁴[* *] ⁸⁵[* *] ⁸⁶[* *] ⁸⁷[* *] ⁸⁸[* *] ⁸⁹[* *] ⁹⁰[* *] ⁹¹[* *] ⁹²[* *] ⁹³[* *] ⁹⁴[* *] ⁹⁵[* *] ⁹⁶[* *] ⁹⁷[* *] ⁹⁸[* *] ⁹⁹[* *] ¹⁰⁰[* *] ¹⁰¹[* *] ¹⁰²[* *] ¹⁰³[* *] ¹⁰⁴[* *] ¹⁰⁵[* *] ¹⁰⁶[* *] ¹⁰⁷[* *] ¹⁰⁸[* *] ¹⁰⁹[* *] ¹¹⁰[* *] 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(2) In particular and without prejudice to the generality of the foregoing provision, the ¹[Provincial Government] may take measures and prescribe regulations for—

(a) ²[* * * * *]

(b) the inspection of persons travelling by railway or otherwise, and the segregation, in hospital, temporary accommodation or otherwise, of persons suspected by the inspecting officer of being infected with any such disease.

(3) ³[* * * * *]

⁴[2-A. When the Central Government is satisfied that India or any part

Powers of Central Government.

thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease and that the ordinary provisions of the law for the time being in

force are insufficient to prevent the outbreak of such disease or the spread thereof, the Central Government may take measures and prescribe regulations for the inspection of any ship or vessel leaving or arriving at any port in British India and for such detention thereof, or of any person intending to sail therein, or arriving thereby, as may be necessary.]

3. Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code.

Penalty.

Protection to persons acting under Act.

4. No suit or other legal proceeding shall lie against any person for anything done or in good faith intended to be done under this Act.

THE EUROPEAN DESERTERS ACT (XI OF 1856).⁵

[11th April, 1856]

Year.	No.	Title.	Amendment.
1856	XI	The European Deserters, Act, 1856.	Short title given, Act XIV of 1897. Rep. in part, Act XIV of 1890; Act XII of 1873; Act XVI of 1874. Amended, Act X of 1927.

LEG. REF.

¹ Substituted by "Governor-General in Council" by A.O., 1937.

² Para. (a) of sub-sec. (2) omitted by *ibid.*

⁵ Short title. "The European Deserters Act, 1856". See the Indian Short Titles Act, 1897 (XIV of 1897).

This Act has been declared to be in force in—

the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (XV. of 1874), sec. 3;

³ Rep. by Act XXXVIII of 1920.

⁴ Inserted by Act XXXVIII of 1920 and the present sec. 2-A has been substituted by A.O., 1937.

the Santhal Parganas, by the Santhal Parganas Settlement Regulation (III of 1872), sec. 3, as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899).

It has been declared by notification under sec. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts, namely:—

SEC. 2.—As to registration of prostitutes under the Contagious Diseases Act, see 12 W.R. (Cr.) 55=3 Beng.L.R. (Cr.) 70; 6 Cal. 163; 17 W.R. (Cr.) 11.

For notifications issued under sec. 2 for (1) Bengal, including the districts now under E. B. & A., see Ben. Stat. R. and O., Vol. 1; (2) Burma. see Bur. R. M., Vol. 1; (3) Central Provinces see Cen. Pros. R. and O.; (4) Coorg. see Coorg R. and O.; (5) Madras, see Mad. R. and O., Vol. I; (6) United Provinces of Agra and Oudh—see U. P. List of Local R. and O., Vol. I. For

special provisions as to inspection of passengers sailing for ports in the Red Sea—see sec. 30 of the Native Passengers Ships Act, 1887 (X of 1887), *supra*.

SEC. 3: POWERS OF LOCAL GOVERNMENT TO DELEGATE.—Under sec. 3 the prosecution has not to prove that the accused's disobedience was likely to cause damage and where the accused pleads not guilty the prosecution has to prove the legality of the order. Under the Act, the Local Government can give power to take measures, but it cannot empower them to delegate those powers to

An Act for the better prevention of desertion by European Soldiers ¹[and Air-men] from the Land ¹[and Air] Forces of her Majesty ²[* *] in India.*

WHEREAS it is expedient to make better provision for apprehending and detaining European deserters from the Land ²[and Air] Forces in the service of Her Majesty ²[* * *] in India, and for punishing persons who aid an encourage such deserters; It is enacted as follows:—

Preamble.

Penalty on master in certain cases if a deserter be concealed on board his ship.

from the said Forces, has been concealed on board any merchant vessel, and that the master or person in charge of such vessel for the time being, though ignorant of the fact of such concealment, might have

known of the same but for some neglect of his duty as such master or person or for the want of proper discipline on board his vessel, such master or person shall be liable to a fine not exceeding 500 Rupees:

Provided always that no conviction for such offence as is hereinbefore described shall be lawful unless the same shall be stated in the charge which the party is called upon to

Proviso.

LEG. REF.

Sindh	...	See <i>Gazette of India</i> , 1880, Pt. I, p. 672.
West Jalpaiguri	...	Ditto 1881, Pt. I, p. 74.
The Districts of Hazaribagh, Lohardaga (now the Ranchi District, see Calcutta Gazette. 1899, Pt. I, p. 44), and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum	...	
The Scheduled portion of the Mirzapur District	...	Ditto 1881, Pt. I, p. 504.
Jaunsar Bawar	...	Ditto 1879, Pt. I, p. 383.
The Districts of Hazara, Peshawar, Kohat Bannu, Dera Ismail Khan and Dera Ghazi Khan. [Portions of the Districts of Hazara, Bannu, Dera Ismail Khan and Dera Ghazi Khan and Districts of Peshawar and Kohat now form the North-West Frontier Province see Gazette of India, 1901, Pt. I, p. 857, and ibid., 1902, Pt. I, p. 575; but its application to that part of the Hazara District known as Upper Tanawal has been barred by the Hazara (Upper Tanawal) Regulation, 1900 (II of 1900), Punjab & N. W. Code].	...	Ditto 1879, Pt. I, p. 382.
The Scheduled Districts of the Central Provinces	...	Ditto 1886, Pt. I, p. 48.
The Scheduled Districts in Ganjam and Vizagapatam	...	Ditto 1879, Pt. I, p. 771.
The District of Sylhet	...	Ditto 1898, Pt. I, p. 870.
The rest of Assam (except the North Lushai Hills)	...	Ditto 1879, Pt. I, p. 631.
It has been declared, by notification under sec. 3 (b) of the last mentioned Act, not to be in force in the scheduled District of Lahul. See Gazette of India, 1886, Pt. I, p. 301.	...	Ditto 1897, Pt. I, p. 299.

¹ These words were inserted by sec. 2 and Sch. I of the Repealing and Amending Act, 1927 (X of 1927).

² The words "and of the East India Company" were repealed by the Repealing Act,

others, and hence the Collector has no power to delegate his own power. The power to take measures under the Act which may be granted by the Local Government to any person is different from the orders and regulations which have to be observed by the public in respect of these measures. Rule 104 of the regulations under the Act is *ultra vires* of the Local Government. 38 M. 602=21 L.C. 668=14 Cr.L.J. 620. On this section,

It has been extended, by notification under sec. 5 of the same Act, to the Scheduled Districts of Kumaon and Garhwal. See Gazette of India, 1876, Pt. I, p. 606.

1870 (XIV of 1870).

³ These words were substituted for the words "or soldier" by sec. 2 and Sch. I of the Repealing and Amending Act, 1927 (X of 1927).

see also 23 M. 213; 1 Weir 750; 1 Bom.L.R. 223; 24 M. 70; 2 Weir 158 (sanction to prosecute); Rat. 966 (Quarantine); 1 Bom. L. R. 5.

INFORMATION AS TO PLAGUE PATIENT.—Rule 6, framed under this Act, does not require the person who is himself attacked with plague to give information of his own sickness *albeit* he is an occupant of the house in which he is attacked. It refers to third persons only. Rat. 978.

answer; and in such charge it shall be lawful to state in the alternative that the party has either knowingly harboured or concealed a deserter on board his vessel, or has, by neglect of duty or by reason of the want of proper discipline on board the vessel, allowed such deserter to be so concealed.

2. Any person, whether a European British subject or not, who shall be guilty of an offence punishable under this Act, shall be punishable for the same by any Justice of the Peace for any of the Presidency-towns of Calcutta, Madras and Bombay, ¹[***] Magistrate, ²[* * *] or person lawfully exercising the powers of a Magistrate in any port within ³[British India] within whose jurisdiction the offence may have been committed, or such person may have been apprehended or found, whether the offence shall have been committed within the local limits of the jurisdiction of such officer or not; and any person hereby made punishable by a Justice of the Peace shall be punishable on summary conviction.

3. No conviction, order or judgment of any Justice of the Peace shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order or judgment the evidence on which it proceeds; but the depositions taken, or a copy of them, shall be returned with the conviction, order or judgment, in obedience to any writ of *certiorari*; and, if no jurisdiction appears on the face of the conviction, order or judgment, but the depositions taken supply that defect, the conviction, order or judgment shall be aided by what so appears in such depositions.

4. Nothing in this Act contained shall prevent any Justice of the Peace, Magistrate or other officer having authority in that behalf from committing for trial any person who shall be charged with an offence punishable under ⁴[* * *] any other Act hereafter to be in force, notwithstanding that such offence may be also punishable under this Act: Provided that no proceedings shall have been had against such person in respect of the same offence under this Act.

5. Whenever, on information given on oath or solemn affirmation, where by law a solemn affirmation may be used instead of an oath, to the commanding officer of any fort, garrison, station, regiment or detachment, at any port or place within ⁵[British India] in which no person lawfully exercising magisterial powers can be found, which oath or affirmation the several persons above named shall severally under this Act have power to administer;

or whenever, on such information as aforesaid given to any Justice of the Peace, Magistrate ⁶[* *] or person lawfully exercising the powers of a Magistrate, having jurisdiction within such port or place, there shall appear reason to suspect that any European officer, ⁷[soldier or airman], belonging to the said Forces, who may have deserted or be absent without leave, is on board any ship, vessel or boat, or is concealed on shore at any such port or place within ⁸[British India], it shall be lawful for such commanding officer or Justice of

LEG. REF.

¹ The words "or for any of the Settlements of Prince of Wales' Island, Singapore and Malacca" were repealed by the Repealing Act, 1874 (XVI of 1874).

² The words "Joint Magistrate" were repealed by the Repealing Act, 1873 (XII of 1873).

³ Substituted for "the territories of the East India Company" by A.O., 1937.

⁴ The words and figures "Act No. XIV of

1849, or," were repealed by the Repealing Act, 1874 (XVI of 1874).

⁵ Substituted for "the territories of the East India Company" by A.O., 1937.

⁶ The words "Joint Magistrate" were repealed by the Repealing Act, 1873 (XII of 1873).

⁷ These words were substituted for the words "or soldier" by sec. 2 and Sch. I, of the Repealing and Amending Act, 1927 (X of 1927).

the Peace, Magistrate ¹[* *] or person lawfully exercising the powers of a Magistrate as aforesaid, to issue a warrant authorizing the person or persons to whom such warrant may be addressed to enter into and search, at any time of the day or night, any such ship, vessel or boat, or any house or place on shore, and to apprehend any such officer, ²[soldier or airman] and to detain him in custody in order to his being dealt with according to law.

6. The warrant to be issued under the preceding section may be addressed to any European officer, ²[soldier or airman] of the said Forces or to all constables, peace-officers, and other persons who may be bound to execute the warrant of any Justice of the Peace, Magistrate ¹[* *] or person lawfully exercising the powers of a Magistrate, and acting in the execution of this Act; and all such persons shall be bound to execute, perform and obey such warrant.³

7. Every person who shall be apprehended under any warrant under the fifth section of this Act shall be brought without delay before a Justice of the Peace, Magistrate ¹[* *] or person lawfully exercising the powers of a Magistrate, in or near the place wherein such person shall have been arrested, who shall examine such person, and if he shall be satisfied, either by the confession of such person or the testimony of one or more witness or witnesses, or by his own knowledge, that such person is a deserter from the said Forces, shall cause him to be delivered, together with any depositions and papers relative to the case, to the commanding officer of the regiment, corps or detachment to which he shall belong, if the same shall be in or near the place of such arrest, or, if otherwise, then to the commanding officer of the nearest ⁴[military or air-force station, as the case may be], in order that he may be dealt with according to law.

THE EUROPEAN VAGRANCY ACT (IX OF 1874).

Year.	No.	Short title.	Amendment.
1874	IX	The European Vagrancy Act, 1874.	Rep. in pt., Act 1 of 1879 ; Act 10 of 1914 ; Rep. in pt. and am.— Act 4 of 1914 ; Act 38 of 1920 and Act 1 of 1938 ; Amended, Act 12 of 1891 ; Act 38 of 1930 ; Government of India (Adaptation of Indian Laws) Order in Council.

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LEG. REF.

¹ The words "Joint Magistrate" were repealed by the Repealing Act, 1873 (XII of 1873).
² These words were substituted for the words "or soldier" by sec. 2 and Sch. I of the Repealing and Amending Act, 1927 (X of 1927).
³ Under Code of Criminal Procedure, 1898,

sec. 54, cl. 6, a police officer may now, without orders from a Magistrate and without a warrant, arrest any person reasonably suspected of being a deserter from Her Majesty's Army. See Act V of 1898.
⁴ These words were substituted for the words "military station" by sec. 2 and Sch. I of the Repealing and Amending Act, 1927 (X of 1927).

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THE FIRST SCHEDULE.—FORM OF CERTIFICATE.

THE SECOND SCHEDULE.—FORM OF AGREEMENT.

[7th April, 1874.]

An Act to consolidate and amend the Law relating to European Vagrancy.

WHEREAS it is expedient to consolidate and amend the laws relating to persons of European extraction who wander in a destitute condition throughout India; it is hereby enacted as follows:—

Preamble.

PART I.

PRELIMINARY.

1. This Act may be called THE EUROPEAN VAGRANCY ACT, 1874.¹

Short title.

LEG. REF.

¹ For the Statement of Objects and Reasons, see Gazette of India, 1873, Pt. V, p. 399; for Proceedings in Council, see *ibid.*, 1874, Extra Supplement, August 23rd, pp. 10 and 14; *ibid.*, 1874, Supplement, pp. 323 and 412.

This Act has been declared in force in—
Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), sec. 4 (1) and Sch. I, Bur. Code, Vol. I;

Angul and the Khondmals by the Angul Laws Regulation, 1913 (III of 1913), sec. 3, B. & O. Code, Vol. I;

British Baluchistan by the British Balu-

chistan Laws Regulation, 1913 (II of 1913), Bal. Code;

The Arakan Hill District by the Arakan Hill District Laws Regulation, 1916 (II of 1916), sec. 2, Bur. Code, Vol. I.

It has been declared in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (III of 1872) as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (III of 1899), B. & O. Code, Vol. I.

It has been declared, by notification under sec. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts, namely:—

the Districts of Hazaribagh, Lohardaga

Local extent.

It extends to the whole of British India and to ¹[British subjects in any Indian State];

²[And it shall come into force at once: Provided that sections 4 to 16 (both inclusive), 19, 20, 24 and 29 shall not come

Commencement.

into force in Coorg, or in the Andaman and Nicobar Islands, or as regards British subjects in any Indian State, until such day or respective days as the appropriate Government by notification in the Official Gazette appoints in this behalf].

Repeal of Acts.

2. [Repealed by Act I of 1938.]

Interpretation clause.

3. In this Act—

³["the appropriate Government" means, in relation to British subjects in "Appropriate Government," any Indian State, the Central Government, and in other cases, the Provincial Government.]

"Person of European extraction,"

⁴"person of European extraction" includes—

(a) persons born in Europe, America, the West Indies, Australia, Tasmania, New Zealand, Natal or the Cape Colony;

(b) the sons and grandsons of such persons;

but does not include persons commonly called Eurasians or East Indians;

"vagrant" means a person of European extraction found asking for alms, or wandering about without any employment or visible means of subsistence:

"Vagrant".

"Master of a ship."

"master of a ship" includes any person in charge of a decked vessel:

and in Parts III and V of this Act "Magistrate" means, within the

"Magistrate".

limits of the towns of Calcutta, Madras and Bombay, a Magistrate of Police⁵ and, outside those limits, a

person exercising powers under the Code of Criminal Procedure⁶ not less than those of a Magistrate of the second class.

PART II.

PROCEDURE.

4. Any Police-officer may, within the limits of the towns of Calcutta Madras and Bombay, require any person who is

Power to require apparent vagrant to go before Magistrate.

apparently a vagrant to accompany him or any other Police-officer to, and to appear before, the nearest

Magistrate of Police⁵ and may, without those limits,

require any such person to accompany him or any other Police-officer to, and to appear before ⁷[the nearest Magistrate of the first class].

5. The Magistrate of Police⁵ or ⁸[Magistrate of the first class] shall in

LEG. REF.

and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum, see Gazette of India, 1881, Pt. I, p. 504. The Lohardaga District at this time included the Palamau District; Lohardaga is now called the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44.

It has been extended, by notification under sec. 5 of the same Act, to the Scheduled District of the North-Western Provinces Tarai, see Gazette of India 1876, Pt. I, p. 505; and to Ganjam and Vizagapatam see Fort St. George Gazette, 1899, Pt. I, p. 1140.

¹Substituted for "the dominions of Princes and States in India in alliance with Her Majesty" by A.O., 1937.

²Substituted for old paras. (3) and (4) of

sec. 1 by *ibid.*

³Inserted by A.O., 1937.

⁴*Cf.* definition of "European British subject" in the Code of Criminal Procedure, 1898 (V of 1898), sec. 4 (1) (4).

⁵Read now "Presidency Magistrate", see Act V of 1898, sec. 3.

⁶See now the Code of Criminal Procedure 1898 (Act V of 1898).

⁷These words were substituted for the words "the nearest Justice of the Peace exercising the powers of a Magistrate of the first class under the Code of Criminal Procedure" by sec. 35 of the Criminal Law Amendment Act, 1923 (XII of 1923).

⁸These words were substituted for the word "Justice" by sec. 36, *ibid.*

Summary inquiry into
vagrant's circumstances.
Declaration of vagrancy.

such case, or in any other case where a person apparently a vagrant comes before him, make a summary inquiry into the circumstances and character of the apparent vagrant; and if he is satisfied that such person is a vagrant, he shall record in his office a declaration to that effect.

If he is further of opinion that the vagrant is not likely to obtain employment at once, or if he has reason to believe that a declaration of vagrancy has on any former occasion been recorded in respect of such vagrant, he shall require the vagrant to go to a Government workhouse, and shall draw up an order to that effect.

The vagrant shall then be placed in charge of the police for the purpose of being forwarded to the workhouse, and the said order shall be a sufficient authority to the police for retaining him in their charge while he is on his way to the workhouse, and to the Governor of the workhouse for receiving and detaining such vagrant.

6. Where the officer making the inquiry mentioned in section 5 is of opinion that the vagrant is likely to obtain employment in any place subject to the Provincial Government, or¹ (when the vagrant is¹ [in any Indian State] in any place subject to any adjacent Provincial Government), such officer may in his discretion forward the vagrant to such place in charge of the police, and draw up an order to that effect.

Such order shall be a sufficient authority to the police for retaining the vagrant in their charge while he is on his way to such place of employment.

7. Upon his arrival at the place of employment, the vagrant shall be taken before the nearest Magistrate of Police² or³ [Magistrate of the first class] to whom the order for transmission shall be delivered.

Such officer shall thereupon to the best of his ability, assist the vagrant in seeking employment, and may in the meantime, if he think fit, keep the vagrant in the charge of the police.

Should the vagrant fail to obtain suitable employment within a reasonable time not exceeding fifteen days from such arrival, such officer shall forward him to a Government workhouse in the manner provided by section 5.

8. Every person while in charge of the police, whether before enquiry as to his vagrancy, or while he is on his way, under section 5, to the workhouse, or under section 6, to a place of employment, shall be entitled to an allowance for his subsistence at the rate of eight annas per diem.

The Magistrate of Police² or³ [Magistrate of the first class] before whom any vagrant is taken under section 7, may, if he think fit, order the vagrant to receive a similar allowance while he is seeking employment.

The⁴ [appropriate Government] shall cause such allowance to be paid out of such funds at his disposal and in such manner as it may from time to time direct.

9. Any Magistrate of Police² or³ [Magistrate of the first class] may, on

LEG. REF.

¹ Substituted for "in any part of the dominions mentioned in sec. (1)" by A.O., 1937.

² Read now "Presidency Magistrate," see sec. 3 of the Code of Criminal Procedure, 1898 (Act V of 1898).

³ These words were substituted for the words "Justice of the Peace exercising powers as aforesaid" by sec. 37 of the Criminal Law Amendment Act, 1923 (XII of 1923).

⁴ Substituted for words "Local Government" by A.O., 1937.

being satisfied that any person of European extraction is not likely to become a vagrant, give such person certificate under his hand stating that for a certain time (mentioning it) not exceeding six months from the date of the certificate and within certain limits (mentioning them), nothing in sections 4, 5, 6 and 7 shall apply to the holder of such certificate; and thereupon, so long as the certificate remains in force, nothing in sections, 4, 5, 6 and 7 shall apply to such person within such limits as aforesaid.

Every such certificate shall be in the form set forth in the first schedule to this Act annexed, or as near thereto as circumstances will admit.

10. The ¹[appropriate Government] may from time to time, by notification ²in the Official Gazette, invest any ³[* * * *] District Superintendent of Police or Assistant District Superintendent of Police with the jurisdiction and powers conferred by this Part on a ⁴[Magistrate of the first class].

Power to invest certain officials with jurisdiction of Magistrates under Ss. 5, 7, 8 and 9.

PART III.

GOVERNMENT WORKHOUSES.

11. The ¹[appropriate Government] ⁵[* * *] may provide⁶ workhouses with their necessary furniture and establishment, at such places as it may think proper, for the temporary reception of vagrants,

Provision of Government workhouse.

or may, by writing under the hand of a Secretary to such Government certify any building, or part of a building, not provided as a workhouse under the former part of this section, to be fit for a workhouse for the purposes of this Act. Every such certificate shall be published in the Official Gazette, and thereupon such building or part of a building shall, until the ¹[appropriate Government] otherwise orders, be deemed a Government workhouse under this Act.

The ¹[appropriate Government] shall allow the same scale of diet for the support of vagrants received in such workhouses as is for the time being allowed for Europeans confined in the local prisons or penitentiaries.

Scale of diet.

¹². Every such workhouse shall be under the immediate charge of a Superintendent of work-Governor, who shall be appointed, ⁷[* * * *] by the ¹[appropriate Government].

Every Governor shall, if the ¹[appropriate Government] think fit, be subject to the orders of a Committee of Management appointed from time to time by such Government, or, in the absence of a committee, to the orders of

LEG. REF.

¹ Substituted for words "Local Government" by A.O., 1937.

² For instance of such notification, see Mad. R. & O.

³ The words "Justice of the Peace" were omitted by sec. 37 of the Criminal Law Amendment Act, 1923 (XII of 1923).

⁴ These words were substituted for the words "Justice of the Peace exercising powers as aforesaid" by sec. 37, *ibid*.

⁵ The words "with the previous sanction of the Governor-General in Council" were omitted by sec. 2 and Part I of the Schedule of the Decentralization Act, 1914 (IV of 1914).

⁶ For notifications issued under the powers conferred by this section, see different local rules and orders.

⁷ Words 'and may be suspended or removed' omitted by A.O., 1937.

such officer as the ¹[appropriate Government] from time to time appoints in this behalf.

13. Every such Governor may order that any vagrant admitted to the

Search of vagrants. workhouse under his charge shall be searched, and that the vagrant's bundles, packages and other effects shall be inspected, and may direct that any money then found with or on the vagrant shall be applied (subject to the orders of the ¹[appropriate Government]) towards the expense of carrying this Act into execution, and may order that all or any of the said effects shall be sold, and that the produce of the sale be applied as aforesaid, but subject to the like orders.

14. Vagrants admitted to workhouses under this Act shall be subject to

Discipline. such rules² of management and discipline as may from time to time be prescribed by the ¹[appropriate Government] ³[* * * *].

The ¹[appropriate Government] may authorize⁴ any Governor of a workhouse to punish (under or not under the supervision and direction of a Committee of Management, as the ¹[appropriate Government] thinks fit) any vagrant who knowingly disobeys or neglects any such rule with any one of the following punishments (namely):—

(a) Solitary confinement within the workhouse for any time not exceeding seven days;

(b) solitary confinement within the workhouse for any time not exceeding three days upon a diet reduced to such extent as the ¹[appropriate Government] may prescribe;

(c) hard labour for any time not exceeding seven days;

(d) reduction of diet to such extent as the ¹[appropriate Government] may prescribe;⁵ for any time not exceeding five days;

or in lieu of any such punishment any such vagrant may, on conviction before a Magistrate of such disobedience or neglect, be punishable with rigorous imprisonment in jail for a term which may extend to three months.

15. The Governor and the Committee of Management (if any) of every

Refusal to accept employment. such workhouse shall use his and their best endeavours to obtain outside the workhouse suitable employment for the vagrants admitted thereto.

When such employment is obtained, any such vagrant refusing or neglecting to avail himself thereof shall, on conviction before a Magistrate, be punishable with rigorous imprisonment for a term which may extend to one month.

PART IV.

REMOVAL FROM INDIA.

16. If after the lapse of a reasonable time no suitable employment is

Removal of vagrants. obtainable for any such vagrant, the ¹[Central Government] may either (when he has entered into such agreement as hereinafter mentioned) cause him to be removed from British

Cost of removal. India in manner hereafter provided, the cost of such removal being paid by ⁶[the Central Government];

or it may cause sections 23 and 30 to be read to him and may then release him.

LEG. REF.

¹ Substituted for "Local Government" by A.O., 1937.

² For notifications prescribing such rules, see different local rules and orders.

³ The words "subject to the control of the Governor-General in Council" were omitted by sec. 2 and Sch. I of the Devolution Act,

1920 (XXXVIII of 1920).

⁴ For notifications conferring such authority in—

Madras see Mad. R. & O.

⁵ For instance of such notification, see Bur. R.M.

⁶ Substituted for 'Government' by A.O., 1937.

17. Any vagrant or other person of European extraction may enter into an agreement¹ in writing with the ²[Central Government] binding himself—

(a) to proceed to such port in British India as shall be mentioned in the agreement;

(b) thereto embark on board such ship and at such time as is directed by an officer appointed in this behalf by ³[the Central Government], for the purpose of being removed from India at the expense of ²[Central Government];

(c) to remain on board such ship until she has arrived at her port of destination; and

(d) not to return to India until five years have elapsed from the date of such embarkation.

Every such agreement ⁴[* * *] shall be in the form set forth in the second schedule to this Act annexed, or as near thereto as circumstances admit.

Form of agreement.

⁵18. [Power to perform agreement]. *Repealed by the Government of India (Adaptation of Indian Laws) Order, 1937.*

PART V.

PENALTIES.

19. Any person refusing or failing to accompany a Police-officer to, or to appear before, a Magistrate of Police⁶ or ⁷[Magistrate of the first class] for the purpose of preliminary inquiry, when required so to do under section 4, may be arrested without warrant and shall be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with imprisonment for a term which may extend to one month, or with fine, or with both.

And any person who, when required under section 4 to accompany a Police-officer to, or to appear before a Magistrate of Police⁶ or ⁷[Magistrate of the first class] commits an offence punishable under section 353 of the Indian Penal Code, may, whether he be or be not a European British subject, be tried by a Magistrate for such offence.

20. Any vagrant who escapes from the police while committed to their charge under the orders specified in sections 5 and 6,

or, who leaves a workhouse, under this Act, without permission from the Governor,

or who, having with such permission left a workhouse for a limited time or a specified purpose, fails to return on the expiration of such time or when such purpose has been accomplished or proves to be impracticable,

shall for every such offence be punishable, on conviction before a Magistrate with rigorous imprisonment for a term which may extend to two years.

LEG. REF.

¹For notification requiring that the Commissioner of Police and Justices of the Peace do obtain Government sanction before concluding an agreement with any vagrant, see *Mad. R. & O.*

²Substituted for "the Secretary of State for India in Council" by A.O., 1937.

³Substituted for "the Local Government of the territories in which such port is situated" by *ibid.*

⁴The words "may be on unstamped paper and" were repealed by the Indian Stamp

Act, 1879 (I of 1879), which exempted these agreements from stamp duty; see now, however, the Indian Stamp Act, 1899 (II of 1899).

⁵Sec. 18 omitted by A.O., 1937.

⁶Read now "Presidency Magistrate", see sec. 3 of the Code of Criminal Procedure, 1898 (Act V of 1898).

⁷These words were substituted for the words "Justice of the Peace" by sec. 38 of the Criminal Law Amendment Act, 1923 (XII of 1923).

Failing to proceed to port of embarkation.

Refusing to go on board ship.

Escaping from ship.

21. Any person entering into an agreement under section 17, and failing to proceed in pursuance thereof to the port therein mentioned, or refusing to embark when directed so to do under the same section, or escaping from the ship in which he has so embarked before she has reached her port of destination,

shall for every such offence be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to six months.

22. Any person returning to India within five years of the date of his embarkation pursuant to any agreement entered into under section 17, unless specially permitted so to do by the ¹[Central Government], shall for every such offence be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

Begging.

23. Any person of European extraction found asking for alms when he has sufficient means of subsistence,

or asking for alms in a threatening or insolvent manner, or continuing to ask for alms of any person after he has been required to desist,

shall be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term not exceeding one month for the first offence, two months for the second, and three months for any subsequent offence.

24. Every person imprisoned under sections 19, 20, 21, 22 or 23 shall, at the end of his term of imprisonment, be placed before the nearest Magistrate of Police² or ³[Magistrate of the first class] who shall, if he think fit, forthwith deal with him in the manner prescribed by sections 5 and 6.

The order of transmission shall certify the fact of the previous conviction.

25. Every master of a ship landing or allowing to land in any part of British India any person of European extraction who has been convicted in any other part of Her Majesty's dominions of felony, or of an offence which, if committed in England, would be felony, shall, on conviction before a Magistrate, be liable, for every such person so landed or allowed to land, to pay a fine not exceeding five hundred rupees and not less than one hundred rupees, and, in default of payment, to imprisonment for any term not exceeding two months,

unless the defendant satisfy the Magistrate by evidence (which the defendant is hereby declared competent to give) that he had made due inquiry as to the person so landed, or allowed to land, and that he had no reason to believe that such person had been convicted as aforesaid.

The Central Government may from time to time, by notification in the Official Gazette, exempt⁴ from the operation of the former part of this section the masters of any class of ships, on such terms as to the Central Government

Power to exempt certain ship-masters.

LEG. REF.

¹ Substituted for 'Secretary of State for India' by A.O., 1937.

² Read now "Presidency Magistrate" see sec. 3 of the Code of Criminal Procedure, 1898 (Act V of 1898).

³ These words were substituted for the words "Justice of the Peace exercising

powers as aforesaid" by sec. 37 of the Criminal Law Amendment Act, 1923 (XII of 1923).

⁴ For notification issued under the powers conferred by sec. 25 of Act XXI of 1869, which is kept in force by sec. 2 of this Act, see Gazette of India, 1870, Pt. I, p. 723.

seem fit, and either in respect of all or any of the persons on board such ships.

The Central Government may in like manner revoke any exemption made under this section.

26. ¹[* * * * *]

Payment of fines.

²[All fines recovered under this Act shall be paid to the credit of the Government of the Province in which the fine was imposed.]

27. [All prosecutions under this Act, other than prosecutions under

Prosecutions.

section 22, may be instituted and conducted by such officer as the appropriate Government from time to time appoints in that behalf, and all prosecutions under section 22 may be instituted and conducted by such officer as the Central Government from time to time appoints in that behalf.]

28. In imposing penalties under this Part and Part III of this Act, no

Limits of jurisdiction.

person shall exceed the limits of jurisdiction prescribed for him by the Code of Criminal Procedure⁴ in the case of offenders not being European British subjects.

29. No proceeding under this Act shall be deemed invalid by reason only

Validity of proceedings where Magistrate is not the nearest.

that the Magistrate of Police⁵ or ⁶[Magistrate of the first class] before whom a person, apparently a vagrant, was required to appear, or before whom a person was placed under section 24 was not the nearest.

PART VI.

MISCELLANEOUS.

30. Any European British subject who, upon the summary inquiry men-

Deprivation of privileges of European British subjects under Criminal Procedure Code.

tioned in section 5, has been determined to be a vagrant, or who has been convicted under section 22 or section 23, shall, so long as he remains in India, be subject ⁷[* * * * *] to the provisions of the ⁸Code of Criminal Procedure ⁹[* * * * *] applicable to a European not being a British subject.

⁹[* * * * *].

Save as aforesaid nothing herein contained shall be deemed to confer jurisdiction over European British subjects on Magistrates who, if this Act had not been passed, would have had no such jurisdiction.

31. Whenever any person of European extraction lands in India, or being

Liability of importers of Europeans or employers of soldiers becoming vagrants.

a non-commissioned officer or soldier in Her Majesty's Army leaves that Army in India, under an engagement to serve any other person, or any Company, Association or body of persons in any capacity.

and whenever a sailor of European extraction not being a British subject is discharged from his ship in any British Indian port,

and becomes ¹⁰[* * * * *] a vagrant within one year after his arrival in India or leaving the Army, or discharge from ship, as the case may be, then

LEG. REF.

¹ The first paragraph of sec. 26 (Recovery of fines) was repealed by the Repealing and Amending Act, 1914 (X of 1914).

² Sec. 26 substituted by A.O., 1937.

³ Sec. 27 substituted by A.O., 1937.

⁴ See now Act V of 1898.

⁵ Read now "Presidency Magistrate", see sec. 3 (2) of the Code of Criminal Procedure, 1898 (Act V of 1898).

⁶ These words were substituted for the

word "Justice" by sec. 36 of the Criminal Law Amendment Act, 1923 (XII of 1923).

⁷ The words "beyond the limits of the said town" were omitted by sec. 39, *ibid.*

⁸ The words "(other than those contained in Chapter XXXVIII of the same Code)" were omitted by *ibid.*

⁹ Para. 2 of sec. 30 was omitted by sec. 39, *ibid.*

¹⁰ The words "chargeable to the State as" were omitted by A.O., 1937.

the person, or Company, Association, or body, to serve whom, he has so landed in India or left the Army, or, in the case of a sailor, the person who is at the date of the discharge the owner or agent of the ship from which the sailor has been so discharged, shall be liable to ¹[pay to the Central Government the costs of his removal under this Act, and to that and any other Government in British India all other charges incurred by the Government in question] in consequence of his becoming a vagrant.

Such costs and charges shall be recoverable by suit as if an express agreement to repay them had been entered into with the ²[Government concerned] by the person, Company, Association, body, owner or agent chargeable.

32. When any person of European extraction lands in India, being or having been during his passage to India, or from one Indian port to another, in charge of, or in attendance upon, any animal, and becomes ³* * * *] a vagrant within one year after his arrival in India, then

the consignee of such animal, or the agents in India for the sale of such animal, or, if, such consignee or agents cannot be found, the agent to whom the ship in which such animal arrived in India was consigned, shall be liable to pay ⁴[to the Central Government the cost of such person's removal under this Act, and to that and any other Government in British India all other charges incurred by the Government in question,] in consequence of his becoming a vagrant.

Any such consignee or agent shall be entitled to charge the consignor or principal for any payment to ⁵[any] Government under this section.

For the purposes of this section "consignee" includes any person who undertakes to dispose of such animal for the benefit of the consignor, and

"agent" includes any person who undertakes the agency of such ship, though it may not have been consigned to him.

33. In any proceeding under this Part, a certified copy of the declaration recorded under section 5 shall be *prima facie* evidence that the European British subject named therein has been, upon the summary enquiry mentioned in that section, determined to be and that he was at the date of the declaration a vagrant.

34. The powers and duties conferred and imposed ⁶[section 16] on ⁷[the Central Government] may be exercised and performed by such class of officers as the ⁸[Central Government] from time to time, by notification⁹ in the Official Gazette, appoints in this behalf.

35. The powers and duties conferred and imposed by this Act on Magistrates ¹⁰* * *] and police-officers respectively may, in places beyond the limits of British India, be exercised and performed by such persons respectively as the Central Government from time to time, by notifi-

LEG. REF.

¹ Substituted by A.O., 1937.

² Substituted for 'Secretary of State for India in Council' by A.O., 1937.

³ Words 'chargeable to the State as' omitted by A.O., 1937.

⁴ Substituted by *ibid.*

⁵ Substituted for 'the' by *ibid.*

⁶ Substituted for 'Sections 16 and 18' by

ibid.

⁷ Substituted for 'a Local Government' by

ibid.

⁸ Substituted for "Local Government" by *ibid.*

⁹ For notifications making such directions, see different local rules and orders.

¹⁰ The words "Justices of the Peace exercising the powers of a Magistrate of the first

cation in the Official Gazette, appoints in this behalf:

¹[Provided that, in the case of any such place which is within the political charge of a Provincial Government, the power conferred on the Central Government by this section ²[may, subject to the provisions of section 124 of the Government of India Act, 1935], be exercised by that Provincial Government by notification in the Official Gazette.]

36. The ³⁻⁴[Central Government] and any Provincial Government, as respects matters with which they are respectively concerned] ⁵[* * *] may from time to time make rules,⁶ consistent with this Act, for the guidance of officers in matters connected with its enforcement.

All such rules shall be published in the Official Gazette and shall thereupon have the force of law.

THE FIRST SCHEDULE.

(See section 9.)

Whereas *E. F. of* , a person of European extraction and holder of this certificate, has appeared before me and satisfied me that he is not likely to become a vagrant within the meaning of the European Vagrancy Act, 1874, THESE ARE TO CERTIFY that for the space of _____ months from the date hereof and within the Province [or District] of _____ nothing in sections 4, 5, 6 and 7 of the same Act shall be deemed to apply to him, unless he is found asking for alms, IN WHICH CASE this certificate shall be void.

(Signed) G. H.

Magistrate of Police⁷ for the town of _____

⁸[Magistrate of the first class.]

or

Dated this _____

day

of

18 _____

THE SECOND SCHEDULE.

(See section 17).

ARTICLES OF AGREEMENT made this _____ day of _____ 18 _____, BETWEEN the ⁹[the Governor-General in Council or, after the establishment of the Federation, the Governor-General of India] of the one part and *C. D. of, etc., [the vagrant]* of the other part; each of the parties hereto (so far as relates to the acts on his own part to be performed) hereby agrees with the other of them as follow:—

1. The said *C. D.* shall proceed forthwith to the port of [*the port of embarkation*].
2. The said *C. D.* shall there embark on board such ship and at such time as an officer appointed in this behalf by ⁹[the Governor-General in Council or, after the establishment of the Federation, the Governor-General of India] shall direct.
3. The said *C. D.* shall remain on board such ship until she shall have arrived at her port of destination.
4. The said *C. D.* shall not return to India until five years shall have elapsed from the date of such embarkation, unless specially permitted so to return by ⁹[the Governor-General in Council or, after the establishment of the Federation, the Governor-General of India].
5. ⁹[The Governor-General in Council or, after the establishment of the Federation, the Governor-General of India] shall defray the cost of the transit of the said *C. D.* to the said port, and of his lodging and subsistence during such transit and during his detention (if any) at the same port, and shall contract with the owner of the said ship, or his agent, for the passage of the said *C. D.* on board the said ship, and for his subsistence during the voyage for which he shall embark as aforesaid.

¹⁰[*

*

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*]

LEG. REF.

class" were omitted by sec. 40 of the Criminal Law Amendment Act, 1923 (XII of 1923).

¹This proviso was added by sec. 2 and Sch. I of the Devolution Act, 1920 (XXXVIII of 1920).

²Substituted for word "shall" by A.O., 1937.

³⁻⁴Substituted for 'Local Government' by *Ibid.*

⁵The words "subject to the control of the Governor-General in Council" were omitted by sec. 2 and Sch. I of the Devolution Act

(XXXVIII of 1920).

⁶For such rules see different local rules and orders.

⁷Read now "Presidency Magistrate", see sec. 3 of the Code of Criminal Procedure, 1898 (Act V of 1898).

⁸These words were substituted for the words "Justice of the Peace for exercising the powers of a Magistrate of the first class" by sec. 41 of the Criminal Law Amendment Act, 1923 (XII of 1923).

⁹Substituted by A.O., 1937.

¹⁰Omitted by *ibid.*

THE INDIAN EXPLOSIVES ACT (IV OF 1884).¹

Year.	No.	Short title.	Amendments.
1884	IV	The Indian Explosives Act, 1884.	Repealed in part, X of 1889; XI of 1891; X of 1914; X of 1927. See A XXXV of 1939, S. 5 and Ordinance XVIII of 1945.

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SECTIONS.

10. Forfeiture of explosives.
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17. Extension of definition of "explosive" to other explosive substances.
18. Procedure for making, publication and confirmation of rules.

[26th February, 1884.

An Act to regulate the manufacture, possession, use, sale, transport and importation of Explosives.

WHEREAS it is expedient to regulate the manufacture, possession, use, sale, transport and importation of explosives; It is hereby enacted as follows:—

Short title.

1. (1) This Act may be called THE INDIAN EXPLOSIVES ACT, 1884; and

Local extent.

(2) It extends to the whole of British India.

Commencement.

2. (1) This Act shall come into force on such day² as the Central Government, by notification in the

Official Gazette appoints.

* * * * *

LEG. REF.

¹ For Statement of Objects and Reasons, see Gazette of India, 1883, Pt. V, p. 22; for Proceedings in Council, see *ibid.*, 1882, p. 1856, and *ibid.*, 1883, Supplement, p. 43, and *ibid.*, 1884, Supplement, p. 377.

This Act has been declared, under sec. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the Districts of Hazaribagh, Lohardage (now called the Ranchi District—see Calcutta Gazette, 1899, Pt. I, p. 44), Palamau and Manbhum and in Pargana Dhalbhum and the Kolhan in the Singhbhum District of the Chota Nagpur

Division—see Gazette of India, 1896 Pt. I, p. 972 and to British Baluchistan, see Gazette of India, 1931, Pt. Pt. II-A, p. 353. p. 358.

It has now been declared to be in force in the Sonchal Parganas by sec. 3 of Regulation III of 1872.

For the law relating to explosive substances, see also the Explosive Substances Act, 1908 (VI of 1908).

² The 1st July, 1887—see Gazette of India 1887, Pt. I, p. 307.

³ Sub-sec. (3) was repealed by the Amending Act, 1891 (XII of 1891).

3. [Repeal of portions of Act XII of 1875.] Repealed by Act X of 1889¹

Definitions.

4. In this Act, unless there is something repugnant in the subject or context,—

(1) “explosive”²

(a) means gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires and every other substance, whether similar to those above-mentioned or not, used or manufactured with a view to produce a practical effect by explosion, or a pyrotechnic effect; and

(b) includes fog-signals, fireworks, fuses, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined;

(2) “manufacture” includes the process of dividing into its component parts, or otherwise breaking up or unmaking, any explosive or making fit for use any damaged explosive, and the process of remarking, altering or repairing any explosive;

(3) “vessel” includes every ship, boat and other vessel used in navigation, whether propelled by oars or otherwise;

(4) “carriage” includes any carriage, wagon, cart, truck, vehicle or other means of conveying goods, or passengers by land, in whatever manner the same may be propelled;

(5) “master” includes every person (except a pilot or harbour-master) having for the time being command or charge of a vessel: provided that, in reference to any boat belonging to a ship, “master” shall mean the master of the ship;

(6) “import” means to bring into British India by sea or land.

LEG. REF.

¹ Repealed by the Indian Ports Act, 1908 (XV of 1908).

² For a list of authorised explosives, see Gazette of India, 1936, Pt. II, p. 962.

SEC. 4.—Under Rule 3 issued under the Act “toy fire-works” include clove crackers or *lavangi crackers* which are therefore exempted from R. 35 requiring licence. 18 Cr.L.J. 139; 37 I.C. 491; 18 Bom.L.R. 556. Rule 35 is not applicable to toy fire-works. 1930 M.W.N. 1261. Under the amendment to R. 3 and 10 under the Explosives Act even “throw downs” and Chinese crackers are “explosive”, 136 I.C. 781 (1)=33 Cr.L.J. 364=1934 Mad. 320; 1930 Mad. 768; 53 All. 226. *Quære*, whether a licence for the sale of *patakhas* is required under the Explosives Act, 53 All. 226=32 Cr.L.J. 564=1930 A.L.J. 1467=1931 All. 17. See also 1930 M.W.N. 1261; 1930 Mad. 768. “Explosive” as defined by sec. 4 of the Explosives Act is wide enough to include *electric sparklets*, and possession of the same without licence is an offence under R. 35 of the Act. 189 I.C. 779=1939 M.W.N. 1250=A.I.E. 1940 Mad. 284. The terms of sec. 4, cls. (1) and (2) are wide enough to include crackers but it is open to the accused, to show (the onus of proving which lies on him) that the fire-works in his possession are within the description of toy fire-works which are excluded from the operation of the Act by Rules 3 of

the rules framed under the Act. 8 L.W. 626=20 Cr.L.J. 108; 25 M.L.T. 175; 48 I.C. 988; 1919 M.W.N. 351. Where a licence permitted possession of a limited quantity at a specified period of time, the general permission to import a larger quantity during a longer period must be read subject to the quantity in actual possession being reduced below the maximum for which possession is so permitted by the said licence and possession of more than the quantity covered by the former licence is an offence. (*Ibid.*) The whole scheme of the rules framed under the Act is to require a separate licence for possession at any one time and place of explosives in addition to a licence to import during a particular period. (*Ibid.*).

POSSESSION OF TOY FIRE-WORKS—OFFENCE IF CONSTITUTED—PROSECUTION FOR OFFENCE UNDER RULES—ONUS OF PROOF.—*Held*, that the Rules under the Explosives Act do not apply to the manufacture, possession, etc., of toy fire-works, and that no offence was committed by reason of such acts. The burden of proving that certain articles were explosives is clearly on the prosecution and the mere fact that the accused took possession of and signed for a consignment which was described as fire-works does not amount to an admission by him that they were explosives such as are within the purview of the rules. 31 Cr.L.J. 851=1930 M.W.N. 73=1930 M. 678. But see also 1932 M. 320=136 I.C. 781.

5. (1) The Central Government may for any part of British India¹ [* *] make rules² consistent with this Act to regulate or prohibit, except under and in accordance with the conditions of a license granted as provided by those rules, the manufacture, possession, use, sale, transport and importation of explosives, or any specified class of explosives.

(2) Rules under this section may provide for all or any of the following, among other matters, that is to say:—

- (a) the authority by which licenses may be granted;
- (b) the fees to be charged for licenses, and the other sums (if any) to be paid for expenses by applicants for licenses;
- (c) the manner in which applications for licenses must be made, and the matters to be specified in such applications;
- (d) the form in which, and the conditions on and subject to which, licenses must be granted;
- (e) the period for which licenses are to remain in force; and
- (f) the exemption absolutely or subject to conditions of any explosives from the operation of the rules.

(3) [Rules made under this section may] impose penalties on all persons manufacturing, possessing, using, selling, transporting or importing explosives in breach of the rules, or otherwise contravening the rules:

Provided that the maximum penalty which may be imposed by any such rules shall not exceed—

- (a) in the case of a person so importing or manufacturing an explosive, a fine which may extend to three thousand rupees;
- (b) in the case of a person so possessing, using or transporting an explosive, a fine which may extend to one thousand rupees;

LEG. REF.

¹ Provision re: Local Government, omitted by A.O., 1937.

² For rules made by the Governor-General in Council under this section and sec. 7 to regulate the manufacture, possession, sale, transport and importation of explosives, see Gen. R. and O., Vol. II, p. 326.

³ Substituted by A.O., 1937.

SEC. 5: LICENCE FOR MANUFACTURE OF EXPLOSIVES.—A licensee for the manufacture of explosives is not at liberty to associate other persons with himself in the manufacture and sale of explosives without such other persons being approved of by the authorities and being provided with licences. 1 Weir 750.

RULES FRAMED UNDER THE SECTIONS—POSSESSION OF EXPLOSIVES.—Accused's house was searched for opium and in it were found three cartridges of blasting powder and three detonators. He was convicted under sec. 5 of the rules for the manufacture, possession and sale of explosives in Burma, for possessing an explosive without a licence. *Held*, that licences under these rules are not required for the possession of explosives of this nature in moderate quantities. The rules are not applicable to the case. But cartridges and detonators are 'ammunition' as de-

fined in sec. 4, Arms Act and the accused might properly have been convicted under sec. 19 (f) of that Act. U. B. R. (1897—1901) Vol. I, 193. The accused held a licence under the Indian Explosives Act to manufacture gun-powder. One of the conditions of the licence was that the explosive shall be manufactured in a tent or lightly constructed building exclusively appropriated for the purpose and separated from any dwelling-house. The accused constructed a building outside the village, which complied with this condition, and employed a woman who used to work exclusively in this building. One day the woman with her assistant went with ingredients for manufacturing gun-powder to the house of the accused in the village, and performed part of the process of manufacture there with pestles having iron rings without the knowledge of their master and while he was engaged elsewhere. During the process of manufacture there was explosion and the woman was killed and her assistant was injured. *Held*, (per *Fawcett and Crump, JJ.*), contra, *Shah, J.*, that the act of the woman, though unauthorised, was one within the scope of her employment and the accused her master, would be liable for her wrongful act. 51 B. 352=29 Bom.L.R. 153=1927 B. 209. See also notes under sec. 4, *supra*.

(c) in the case of a person so selling an explosive, a fine which may extend to five hundred rupees; and

(d) in any other case, two hundred rupees.

Power for Central Government to prohibit the manufacture, possession or importation of specially dangerous explosives.

6. (1) Notwithstanding anything in the rules under the last foregoing section, the Central Government may, from time to time, by notification in the Official Gazette,—

(a) prohibit, either absolutely or subject to conditions, the manufacture, possession or importation of any explosive which is of so dangerous a character that, in the opinion of the Central Government, it is expedient for the public safety to issue the notification; ¹[*]

¹[* * * *]

(2) The officers of sea customs at every port shall have the same power in respect of any explosive with regard to the importation of which a notification has been issued under this section and the vessel containing the explosive as they have for the time being in respect of any article the importation of which is prohibited or regulated by the law relating to sea customs² and the vessel containing the same; and the enactments for the time being in force relating to sea customs or any such article or vessel shall apply accordingly.

(3) Any person manufacturing, possessing or importing an explosive in contravention of a notification issued under this section shall be punished with fine which may extend to three thousand rupees, and, in the case of importation by water, the owner and master of the vessel in which the explosive is imported shall, in the absence of reasonable excuse, each be punished with fine which may extend to three thousand rupees.

Power to make rules conferring powers of inspection, search, seizure, detention and removal.

7. (1) The Central Government, ³[* *] may make rules consistent with this Act authorizing any officer, either by name or in virtue, of his office—

(a) to enter, inspect and examine any place, carriage or vessel in which an explosive is being manufactured, possessed, used, sold, transported or imported under a license granted under this Act, or in which he has reason to believe that an explosive has been or is being manufactured, possessed, used, sold, transported or imported in contravention of this Act or of the rules made under this Act;

(b) to search for explosives therein;

(c) to take samples of any explosive found therein on payment of the value thereof; and

(d) to seize, detain, remove and, if necessary, destroy any explosive found therein.

(2) The provisions of the Code of Criminal Procedure⁴ relating to searches under that Code shall, so far as the same are applicable, apply to searches by officers authorized by rules under this section.

8. (1) Whenever there occurs in or about, or in connection with, any place in

LEG. REF.

¹ The word "and" and cl. (b) were repealed by the Repealing and Amending Act, 1914 (X of 1914).

² See Chapter IV of the Sea Customs Act, 1878 (VIII of 1878).

³ Provision as to Local Government omitted by A.O., 1937.

⁴ See now Act V of 1898.

SEC. 7.—[See also notes under secs. 4 and 5 *supra*]. Phatakas are not explosives within the meaning of the Act but are toy fire-works and as such exempt from R. 35. 145 I.C. 621; 34 Cr.L.J. 1046; 1933 Sind 171.

Where neither the trial Court nor the ap-

pellate Court personally inspected a phataka in order to come to a finding that it was not a toy-work, the High Court in revision refused to be bound by the concurrent finding of fact arrived at by the two Courts and on a personal inspection came to a different finding that the phataka was a toy-work and not a fire-work within the meaning of R. 35. 145 I.C. 621=34 Cr.L.J. 1046=1933 Sind 171.

SEC. 8.—The primary requisite to give notice is accidental explosion and not serious injury to property. The word 'occupier' in sec. 8 refers to some one on the spot at the time of the explosion who must necessarily become aware of the explosion. Sec.

Notice of accidents.

which an explosive is manufactured, possessed or used, or any carriage or vessel either conveying an explosive or on or from which an explosive is being loaded, or unloaded, any accident by explosion or by fire attended with loss of human life or serious injury to person or property or of a description usually attended with such loss or injury, the occupier of the place, or the master of the vessel or the person in charge of the carriage, as the case may be, shall [within such time and in such manner as may be by rule prescribed give notice thereof and of the attendant loss of human life or personal injury, if any, to the Chief Inspector of Explosives in India and] to the officer in charge of the nearest police-station. (See Ord. XVIII of 1945.)

[(2) Whoever in contravention of sub-section (1) fails to give notice of any accident shall be punishable with fine which may extend to five hundred rupees or if the accident is attended by loss of human life, with imprisonment for a term which may extend to three months, or with fine, or with both]. —(Ordinance XVIII of 1945).

[9. (1) Where any accident such as is referred to in section 8 occurs in or

Inquiring into accidents. about or in connection with any place, carriage or vessel under the control of any of His Majesty's Forces, an inquiry into the causes of the accident shall be held by the naval, military, or air force authority concerned, and where any such accident occurs in any other circumstances, the District Magistrate (or in a Presidency-town, the Commissioner of Police) shall, in cases attended by loss of human life, or may, in any other case, hold or direct Magistrate subordinate to him to hold, such an inquiry.

(2) Any person holding an inquiry under this section shall have all the powers of a Magistrate in holding an inquiry into an offence under the Code of Criminal Procedure, 1898 (V of 1898) and may exercise such of the powers conferred on any officer by rules under section 7 as he may think it necessary or expedient to exercise for the purposes of the inquiry.

(3) The person holding an inquiry under this section shall make a report to the Central Government stating the causes of the accident and its circumstances.

(4) The Central Government may make rules—

(a) to regulate the procedure at inquiries under this section;

(b) to enable the Chief Inspector of Explosives in India to be present or represented at any such inquiry;

(c) to permit the Chief Inspector of Explosives in India or his representative to examine any witnesses at the inquiry;

(d) to provide that where the Chief Inspector of Explosives in India is not present or represented at any such inquiry, a report of the proceedings thereof shall be sent to him;

(e) to prescribe the manner in which and the time within which notices referred to in section 8 shall be given.] (Substituted by Ordinance XVIII of 1945).

[9-A. (1) The Central Government may, where it is of opinion, whether

Inquiry into more serious accidents. or not it has received the report of an inquiry under section 9, that an inquiry of more formal character should be held into the causes of an accident such as is referred to in section 8, appoint the Chief Inspector of Explosives in India or any other competent person to hold such inquiry, and may also appoint one or more persons possessing legal or special knowledge to act as assessors in such inquiry.

(2) Where the Central Government Orders an inquiry under this section,

177 of the Penal Code will not apply unless the omission to give notice was intentional. 16 Cr.L.J. 622=30 I.C. 446. See also 18 N.L.J. 235 as to meaning of "occupier".

it may also direct that any inquiry under section 9 pending at the time shall be discontinued.

(3) The person appointed to hold an inquiry under this section shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908) for the purposes of enforcing the attendance of witnesses and compelling the production of documents and material objects; and every person required by such person as aforesaid to furnish any information shall be deemed to be legally bound so to do within the meaning of section-176 of the Indian Penal Code (XLV of 1860).

(4) Any person holding an inquiry under this section may exercise such of the powers conferred on any officer by rules under section 7 as he may think it necessary or expedient to exercise for the purposes of the inquiry.

(5) The person holding an inquiry under this section shall make a report to the Central Government stating the causes of the accident and its circumstances, and adding any observations which he or any of the assessors may think fit to make; and the Central Government shall cause every report so made to be published at such time and in such manner as it may think fit.

(6) The Central Government may make rules for regulating the procedure at inquiries under this section.] (*Substituted by Ordinance XVIII of 1945*).

10. When a person is convicted of an offence punishable under this Act or the rules made under this Act, the Court before which he is convicted may direct that the explosive, or ingredient of the explosive or the substance (if any) in respect of which the offence has been committed, or any part of that explosive, ingredient or substance, shall, with the receptacles containing the same, be forfeited.

11. Where the owner or master of a vessel is adjudged under this Act to pay a fine for an offence committed with, or in relation to, that vessel, the Court may, in addition to any other power it may have for the purpose of compelling payment of the fine, direct it to be levied by distress and sale of the vessel, and the tackle, apparel and furniture thereof, or so much thereof as is necessary.

12. Whoever abets, within the meaning of the Indian Penal Code, the commission of an offence punishable under this Act, or the rules made under this Act, or attempts to commit any such offence and in such attempt does any act towards the commission of the same, shall be punished as if he had committed the offence.

13. Whoever is found committing any act for which he is punishable under this Act or the rules under this Act, and which tends to cause explosion or fire in or about any place where an explosive is manufactured or stored, or any railway or port, or any carriage, ship or boat, may be apprehended without a warrant by a Police-officer, or by the occupier of, or the agent or servant of, or other person authorized by the occupier of, that place, or by any agent or servant of, or other person authorized by, the railway administration or conservator of the port, and be removed from the place where he is arrested and conveyed as soon as conveniently may be before a Magistrate.

[14. (1) Nothing in this Act, except sections 8, 9 and 9-A, shall apply to the manufacture, possession, use transport or importation of any explosive—

(a) by any of His Majesty's Forces in accordance with rules or regulations made by His Majesty's Government in the United Kingdom or the Central Government;

(b) by any person employed under any Government in British India in execution of this Act.

(2) The Central Government may by notification in the Official Gazette exempt, absolutely or subject to any such conditions as it may think fit to impose, any explosive from all or any of the provisions of this Act.] *Substituted by Ordinance XVIII of 1945.*

Saving of Indian Arms Act, 1878.

15. Nothing in this Act shall affect the provisions of the Indian Arms Act, 1878:

Provided that an authority granting a license under this Act for the manufacture, possession, sale, transport or importation of an explosive may, if empowered in this behalf by the rules under which the license is granted, direct by an order written on the license that it shall have the effect of a like license granted under the said Indian Arms Act.

16. Nothing in this Act or the rules under this Act shall prevent any person from being prosecuted under any other law for

Saving as to liability under other law.

any act or omission which constitutes an offence against this Act or those rules, or from being liable

under that other law to any other or higher punishment or penalty than that provided by this Act or those rules:

Provided that a person shall not be punished twice for the same offence.

17. The Central Government may, from time to time, by notification in the

Extension of definition of "explosive" to other explosive substances.

Official Gazette, declare that any substance which appears to the Central Government to be specially dangerous to life or property, by reason either of its explosive properties or of any process in the manu-

facture thereof being liable to explosion, shall be deemed to be an explosive within the meaning of this Act;¹ and the provisions of this Act (subject to such exceptions, limitations and restrictions as may be specified in the notification) shall accordingly extend to that substance in like manner as if it were included in the definition of the term "explosive" in this Act.

Procedure for making, publication and confirmation of rules.

18. (1) An authority making rules under this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made in such manner as the Central Government, from time to time, by notification in the Official Gazette, prescribes.²

(3) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(4) The authority making the rules shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) A rule made under this Act shall not take effect ³[* *] until it has been published in the Official Gazette ³[* *].

(6) The publication in the Official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made, and, if it requires sanction, that it has been duly sanctioned.

(7) All powers to make rules conferred by this Act may be exercised from time to time as occasion requires.⁴

LEG. REF.

¹ Picric acid with certain exceptions has been declared to be an explosive within the meaning of this Act, see Gazette of India, 1926, Pt. I, p. 1264.

² For mode prescribed, see Gazette of India, 1927, Pt. I, p. 769.

³ Omitted by A.O., 1937.

⁴ Temporary amendment of sec. 18, Act IV of 1884.—During the continuance of this Ordinance, sub-secs. (1), (2), (3) and (4) of sec. 18 of the said Act shall be deemed to be omitted. (Gazette of India, Extraordinary, 2nd June, 1945, pp. 467-468; Ord. XVIII of 1945.)

THE EXPLOSIVE SUBSTANCES ACT (VI OF 1908).

[See also Act XXXV of 1939.]

[8th June, 1908.]

An Act further to amend the law relating to explosive substances.

WHEREAS it is necessary further to amend the law relating to explosive substances; It is hereby enacted as follows:—

Short title, extent and application. 1. (1) This Act may be called **THE EXPLOSIVE SUBSTANCES ACT, 1908.**

(2) It extends to the whole of British India and applies also to—

(a) all native Indian subjects of His Majesty in any place without and beyond British India;

(b) all other British subjects within the territories of any native prince or chief in India.

2. In this Act the expression “explosive substance” shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement.

3. Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to ten years, to which fine may be added.

Punishment for causing explosion likely to endanger life or property. 4. Any person who unlawfully and maliciously—
Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property.

(a) does any act with intent to cause by an explosive substance or conspires to cause by an explosive substance, an explosion in British India of a nature likely to endanger life or to cause serious injury to property; or

(b) makes or has in his possession or under his control any explosive

SEC. 2.—A gramophone needle can scarcely be regarded as a lethal weapon, 36 Cr.L.J. 1037=156 I.C. 972.

SEC. 3.—What constitutes offence under the section, see 11 Cr.L.J. 222=6 I.C. 51=20 M.L.J. 657. “Malice” in the legal acceptance of the word is not confined to personal spite against individuals but consists in a conscious violation of the law to the prejudice of another. In its legal sense it means a wrongful act done intentionally without just cause or excuse. It is in the legal sense that the word “maliciously” is used in sec. 3. 121 I.C. 726=31 Cr.L.J. 290=1930 Lah. 266. See also 1928 Lah. 272.

SEC. 4, CL. (b).—Where in pursuance of a scheme to use bombs against the police the accused was shown to have made a bomb apparently to use it for a test or experiment, *held*, that the accused was guilty under sec. 4 (b). 34 Cr.L.J. 1222=57 C.L.J. 213=1933 Cal. 747 (S.B.). Where the portion of a house in which an article is found is not in the exclusive possession of any one member of the joint family, but is used by, or accessible to, all the members of the family there is no presumption that the article is in the possession or control of any person other

than the house master or the head of the family. But it is open to the prosecution to prove that the possession was with some other member of the family and that member would then be liable to account for it. 9 Lah. 531=29 Cr.L.J. 481=1928 Lah. 272. Not only does the term “possession” imply knowledge, but the expression “maliciously” as used in sec. 4, connotes intention. But neither knowledge, nor intention as, to the use to be made of an object, can be imputed to a person who is not conscious of its existence. 9 Lah. 531=29 Cr.L.J. 481=A.I.R. 1928 Lah. 272. It cannot be said from the presence of mansal stains on a man’s wearing apparel that he either made or had in his possession or under his control an explosive substance with intent by means thereof to endanger life or cause serious injury to property in British India and conviction under sec. 4 (b) is not under those circumstances sustainable. 132 I.C. 185=32 Cr.L.J. 818=A.I.R. 1931 Lah. 408. Possession must be conscious and intelligent possession and not merely the physical presence of the accused in proximity or even in close proximity of the offending object. These are the important elements which go to

substance with intent by means thereof to endanger life, or cause serious injury to property in British India, or to enable any other person by means thereof to endanger life or cause serious injury to property in British India; shall whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished with transportation for a term which may extend to twenty years, to which fine may be added, or with imprisonment for a term which may extend to seven years to which fine may be added.

5. Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circum-

Punishment for making or possessing explosives under suspicious circumstances.

stances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his

possession or under his control for a lawful object, be punishable with transportation for a term which may extend to fourteen years, to which fine may be added, or with imprisonment for a term which may extend to five years, to which fine may be added.

LEG. REF.

AMENDMENT IN BENGAL: INSERTION OF NEW SECTION 5-A IN ACT VI OF 1908.—After sec. 5 of the Explosive Substances Act, 1908, the following section shall be inserted, namely:—

“5-A. Notwithstanding anything contained in sec. 3, sec. 4 or sec. 5 if an offence under any of these sections is tried by Commissioners appointed under the Bengal Criminal Law Amendment Act, 1925, or by a special Magistrate under the Bengal Suppression of Terrorist Outrages Act, 1932, any person found guilty of such offence shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to 14 years, to which fine may be added.” (Bengal Act XXI of 1932, Sec. 5).

make up an offence under sec. 4 (b) (A.I.R. 1928 Lah. 272, Rel.) A.I.R. 1934 Lah. 718.

SECS. 4 (b) AND 5: SANCTION UNDER SEC. 4 (b)—CHARGE AND CONVICTION UNDER SEC. 5—LEGALITY.—The fact that sanction of the Local Government is obtained only for a prosecution under sec. 4 (b) does not make an alternative charge under sec. 5 and conviction thereon illegal. It is competent to the Sessions Judge under sec. 236, Cr. P. Code, to frame a charge under sec. 5 as well. Even if no charge has been framed under sec. 5, the accused can well be convicted under sec. 5, by reason of the provisions of sec. 237, Cr. P. Code. 1934 A.L.J. 1088=1934 All. 982. In a charge under sec. 4 (b) possession of explosive to be punishable must also be possession with knowledge and assent. Any part of any apparatus, machine etc., used or adapted for causing any explosive substance is included in the term ‘explosive substance’ as used in sec. 4 (b). 42 C. 957; 19 C.W.N. 676; 16 Cr.L.J. 497;

29 I.C. 513; 21 Cr.L.J. 331. See also A.I.R. 1928 Lah. 272. On this section, see also 20 M.L.J. 657=6 I.C. 51.

SECS. 4 AND 5.—A, who was a clerk in an Ordinance Depot, was charged with committing dacoity with other accused persons. There was little reason to doubt that a hand grenade which was found in a bag at the place where dacoity was committed was stolen and came into the possession of the dacoits through A, held, that the mere finding of the hand grenade in a bag at the scene of offence would not justify a finding that A was the possessor of it on the night when the dacoity was committed or a conviction of A and the other accused for the substantive offences under secs. 4 and 5. A. I.R. 1944 Sind 83 (F.B.)=45 Cr.L.J. 598.

SECS. 5 AND 6.—It is immaterial under what section of the Act an arrest is made, if in fact the arrest is justifiable, and the officer making the arrest can call to his aid any statute which justifies his action, irrespective of whether or not it was present to his mind when he made the arrest. 40 C. 898=23 I.C. 25=18 C.W.N. 185. (On appeal from 13 Cr.L.J. 65=13 I.C. 721=16 C.W.N. 145). Where explosive articles are found in a house in such a place or places as several persons living in the house may have access, the presumption is that the manager of the family has the control or possession of them. Even that is only a presumption easily rebutted. 40 C. 898. See also 1944 Lah. 339. Temporary residence in a house containing explosive articles, even with the knowledge of their existence there, is not possession within the meaning of sec. 5. Conspiracy to possess connotes some act of possession or attempted possession. 106 I. C. 545=29 Cr.L.J. 49=A.I.R. 1928 Cal. 27. The accused person had pointed out and was a mere tool for disclosing the existence of some explosives from places of which he had no exclusive possession. Held, that it was for the prosecution to show that from the facts it could be inferred that these articles

6. Any person who by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any offence under this Act shall be punished with the punishment provided for the offence.

Restriction on trial of offences.

7. No Court shall proceed to the trial of any person for an offence against this Act except with the consent of ¹[* *] the Central Government.

THE INDIAN EXTRADITION ACT (XV OF 1903).

Year.	No.	Short title.	Amendments.
1903	XV	The Indian Extradition Act, 1903.	Repealed in part and amended, X of 1914. Amended, I of 1913; XVI of 1922; VIII of 1930.

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LEG. REF.

¹ The words "Local Government or" omitted by A.O., 1937.

were in control and possession of the accused. 130 I.C. 652=32 Cr.L.J. 585=A.I.R. 1931 Lah. 50. See also 1944 Lah. 339.

SEC. 6: OFFENCE UNDER—INGREDIENTS.—Under sec. 6, the intention to procure, counsel, aid, abet or to be accessory to the commission of an offence is a necessary ingredient. Ordinarily, it is the primary intention of the accused that must be taken into consideration in determining his guilt. 35 Cr.L.J. 752=148 I.C. 745=A.I.R. 1934 Lah. 583.

SEC. 7.—An order of consent to a prosecution under the Explosive Substances Act which purports to be made by His Excellency the Governor is an order of the Local Government for purposes of sec. 6 and is a valid order of consent. The executive authority in the Province is vested in the Governor, and the question whether he has consulted the ministers or not in the matter is not a question that can be canvassed in Courts of law. 1938 M.W.N. 1171. The consent under sec. 7 should state briefly the facts which constitutes the offences and authorise the trial of the accused person upon the facts as constituting, in the opinion of the consenting authority, an offence

under one or the other sections of the Act. 21 Cr.L.J. 230=55 I.C. 102=31 P.R. (Cr.) 1919. The Court has to decide finally whether upon the facts stated in the order of consent a particular offence has been committed and the mere fact that the consent for prosecution of an offence under one section of the Act is given, is in itself no bar to conviction of the accused person upon the same facts of another offence under another section 21 Cr.L.J. 230=55 I.C. 102=31 P.R. (Cr.) 1919. Under sec. 7, it is not necessary that the sanction of the Government for a prosecution under the Act should be obtained before taking cognisance of the case or enquired into by the committing magistrates. Sanction obtained when the case proceeds to trial in the Sessions Court is sufficient; 1934 A.L.J. 1088=1934 All. 982. First complaint withdrawn for want of sanction—Fresh complaint after sanction good. 39 C. 119. The failure to obtain necessary consent of Government as required by sec. 7 does not invalidate the commitment proceedings conducted by a Magistrate for an offence under sec. 4 and exclusively triable by the Sessions Court as the commitment proceedings are only an "inquiry" as defined in Cl. (k) of sec. 4 of the Cr. P. Code. 50 Bom. 695=28 Bom.L.R. 1290=1927 Bom. 21.

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THE FIRST SCHEDULE.—EXTRADITION OFFENCES.

THE SECOND SCHEDULE.—ENACTMENTS REPEALED. (*Repealed*).

THE INDIAN EXTRADITION ACT (XV OF 1903)¹

[4th November, 1903.

An Act to consolidate and amend the law relating to the Extradition and Rendition of Criminals.

WHEREAS it is expedient to provide for the more convenient administration in British India of the Extradition Acts, 1870,² and 1873² and of the Fugitive Offenders Act, 1881²;

And whereas it is also expedient to amend the law relating to the extradition of criminals in cases to which the Extradition Acts, 1870 and 1873, do not apply;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called THE INDIAN EXTRADITION ACT, 1903.

LEG. REF.

¹ For Statement of Objects and Reasons, see Gazette of India, 1901, Pt. V, p. 24; for Report of Select Committee, see *ibid.*, 1903, Pt. V, p. 469; for Proceedings in Council, see *ibid.*, Pt. VI, pp. 151, 163 and 177.

² Coll. Stat., Vol. I.

SEC. 1: CONSTRUCTION OF THE ACT.—The

Act being a penal enactment must be strictly construed in favour of the accused wherever such construction can be reasonably justified. 31 Bom.L.R. 62=53 Bom. 149=30 Cr.L.J. 772=1929 Bom. 81. See also 47 Cal. 37=53 I.C. 147. The provisions of this Act are meant to insure that the arrest and detention of persons alleged to have committed offences outside British territory should conform to a certain procedure, and the sec-

(2) It extends¹ to the whole of British India (including British Baluchistan, the Santhal Parganas and the Pargana of Spiti); and

(3) It shall come into force on such day as the Central Government by notification in the Official Gazette, may direct.²

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “European British subject” means a European British subject as defined by the Code of Criminal Procedure for the time being in force;

(b) “extradition offence” means any such offence as is described in the first schedule;

(c) “Foreign State” means a State to which, for the time being, the Extradition Acts, 1870,³ and 1873,³ apply;

(d) “High Court” means the High Court as defined by the Code of Criminal Procedure for the time being in force;

(e) “Offence” includes any act wheresoever committed which would, if committed in British India, constitute an offence; and

(f) “rules” include prescribed forms.

LEG. REF.

¹ This Act has been declared to be in force in the Khondmals District by the Khondmals Laws Regulation, 1936 (IV of 1936) and in the Angul District under sec. 3 and Sch. of the Angul Laws Regulation, 1936 (V of 1936).

² The Act has been brought into force from the 1st June, 1904, see *Gazette of India*, 1904, Pt. I, p. 364.

³ Coll. Stat., Vol. I.

tions of the Act dealing with that procedure must be construed strictly in favour of the subject. 62 C. 399=39 C.W.N. 285=1935 Cal. 122.

APPLICABILITY OF THE ACT.—The Act has no application to a case where British Indian subjects resident within the original jurisdiction of the High Court commit offences outside British India. 35 C.W.N. 1082. The Act does not apply to a case of extradition from Berar to the Hyderabad State, which is governed solely by the treaty between the State and the Government of India. 77 I.C. 234=25 Cr.L.J. 346=1924 Nag. 313. As to the applicability of the Act to the East Indian possessions of France, see the cases cited on the point under sec. 2, *infra*.

EXTRADITION—WHEN ALLOWED—OFFENCES FOR WHICH IT CAN BE DEMANDED.—The policy of extradition law is to secure offenders guilty of only grave crimes and not purely local crimes or slight offences. The act complained of must be a “crime” according to the criminal law of both countries; and no person should be extradited whose deed is not a crime according to the criminal law of the State which is asked to extradite as well as of the State which demands extradition. The word “crime” denotes something more than a mere breach of a legal rule. 12 Mys. L.J. 328=39 Mys.H.C.R. 485 (F.B.).

HYDERABAD AND BERAR—SURRENDER OF ACCUSED IS TO BE MADE ON REQUISITION BEING SENT THROUGH COMMISSIONER OF BERAR.

When an accused person is arrested in Berar by or at the instance of Nizam's Police he is kept by the Berar Police till a requisition is received by the District Magistrate for his surrender. This requisition is sent by the Nizam's authority, the Talukdar, to the District Magistrate through the Commissioner of Berar, together with the evidence of criminality. The District Magistrate on receiving the requisition from the Commissioner surrenders the accused persons. On no account may he comply with a requisition made direct to him by the Nizam's authorities. No time limit is laid down and there is no necessity of a warrant from the Political Agent. 77 I.C. 234=25 Cr.L.J. 346=1924 Nag. 313.

SEC. 2: The East Indian possessions of France are not a “Foreign State” and Chap. II of this Act does not apply to those possessions. Extradition in such cases is governed by the Treaty of 1815 between Great Britain and France. Article (ix) of the Treaty of 1815 remains unaffected by Art. (xvi) of the Treaty of 1876 and a British Indian subject may on requisition by the Governor of Pondicherry for instance be surrendered for the offence of theft committed therein without any preliminary procedure being adopted. The Treaty of 1815 having provided that the surrender should be on demand, a more elaborate procedure cannot be superimposed by the unilateral act of one of the high contracting parties. Nor is it open to a Municipal Court to say that the accused should be surrendered with a certain amount of procedure. 53 M. 1023=59 M.L.J. 278=1930 M. 981=1930 M.W.N. 381; (47 C. 37, Foll. See also 48 C. 328).

CHAPTER II.¹

SURRENDER OF FUGITIVE CRIMINALS IN CASE OF FOREIGN STATES.

3. (1) Where a requisition is made to the Central Government ²[* *] by the Government of any Foreign State for the surrender of a fugitive criminal of that State, who is in or who is suspected of being in British India, the Central Government ²[* *] may, if it thinks fit, issue an order to any Magistrate who would have had jurisdiction to inquire into the crime if it had been an offence committed within the local limits of his jurisdiction, directing him to inquire into the case.

(2) The Magistrate so directed shall issue a summons or warrant for the arrest of the fugitive criminal according as the case appears to be one in which a summons or warrant would ordinarily issue.

(3) When such criminal appears or is brought before the Magistrate, the Magistrate shall inquire into the case in the same manner and have the same jurisdiction and powers, as nearly as may be, as if the case were one triable by the Court of Session or High Court, and shall take such evidence as may be produced in support of the requisition and on behalf of the fugitive criminal, including any evidence to show that the crime of which such criminal is accused or alleged to have been convicted is an offence of a political character or is not an extradition crime.

(4) If the Magistrate is of opinion that a *prima facie* case is made out in support of the requisition, he may commit the fugitive criminal to prison to await the orders of the Central Government ²[* *].

(5) If the Magistrate is of opinion that a *prima facie* case is not made out in support of the requisition, or if the case is one which is bailable under the provisions of the Code of Criminal Procedure for the time being in force, the Magistrate may release the fugitive criminal on bail.

(6) The Magistrate shall report the result of his inquiry to the Central Government ²[* *] and shall forward, together with such report, any written statement which the fugitive criminal may desire to submit for the consideration of the Government.

LEG. REF.

¹ Chapter II has been declared to have effect in British India, as if it were part of the Extradition Act, 1870 (33 & 34 Vict., c. 52); see Order in Council, dated the 7th March, 1904, *Gazette of India*, 1904, Pt. I, p. 363.

² Words "or the Local Government, as the case may be" omitted by A.O., 1937.

SEC. 3.—Chapter: II.—Applicability. See 53, M. 1028. See also 48 Cal. 328=63 I.C. 819.

N.B.—The following rulings, although some of them are under the older and repealed enactments may be referred to with advantage:—

CL. (1).—Where the accused foreign subjects, but who had only resided for about three years in British territory, committed dacoity in a foreign state, *held*, that they were not liable to be tried by British Courts:

Cr. C. M.—I—71

37. P.R. 1881, Cr. [R. 1 P.R. 1885, Cr.]

Government to whom the foreign state has made the requisition can only issue the order for inquiry to the Magistrate but further functions must be done strictly according to the statute and cannot be delegated. 39 Cal. 164=15 C.W.N. 1053=12 Cr.L.J. 505=12 I.C. 273.

CL. (3).—A Magistrate acting under the Extradition Act is not subject to any appellate or revisional jurisdiction. He makes an inquiry and reports the results to Government. 38 C. 547=15 C.W.N. 737=12 Cr.L. J. 323=10 I.C. 618.

CL. (5).—The Act provides for bail to be furnished by persons accused of certain crimes, and the matter is one which is governed by the Procedure in the Cr. P. Code. The High Court has the fullest discretion in the matter. 15 C.W.N. 736=12 Cr.L.J. 358=10 I.C. 958.

(7) If the Central Government ¹[* *] is of opinion that such report or written statement raises an important question of law, it may make an order referring such question of law to such High Court as may be named in the order, and the fugitive criminal shall not be surrendered until such question has been decided.

(8) If, upon receipt of such report and statement or upon the decision of any such question, the Central Government ¹[* *] is of opinion that the fugitive criminal ought to be surrendered, it may issue a warrant for the custody and removal of such criminal and for his delivery at a place and to a person to be named in the warrant.

(9) It shall be lawful for any person to whom a warrant is directed in pursuance of sub-section (8), to receive, hold in custody and convey the person mentioned in the warrant to the place named in the warrant, and, if such person escapes out of any custody to which he may be delivered in pursuance of such warrant, he may be re-taken as a person accused of an offence against the law of British India may be re-taken upon an escape.

(10) If such a warrant as is prescribed by sub-section (8) is not issued and executed in the case of any fugitive criminal, who has been committed to prison under sub-section (4), within two months after such committal, the High Court may, upon application made to it on behalf of such fugitive criminal and upon proof that reasonable notice of the intention to make such application has been given to the Central Government ¹[* *] order such criminal to be discharged, unless sufficient cause is shown to the contrary.

4. (1) Where it appears to any Magistrate of the first class or any Magistrate specially empowered by the ²[Central Government] in this behalf that a person within the local limits of his jurisdiction is a fugitive criminal of a Foreign State, he may, if he thinks fit, issue a warrant for the arrest of such person, on such information or complaint and on such evidence as would, in his opinion, justify the issue of a warrant if the crime of which he is accused or has been convicted had been committed within the local limits of his jurisdiction.

(2) The Magistrate shall forthwith report the issue of a warrant under this section to the ²[Central Government].

(3) A person arrested on a warrant issued under this section shall not be detained more than two months unless within that period the Magistrate receives an order made with reference to such person under section 3, sub-section (1).

(4) In the case of a person arrested or detained under this section the provisions of the Code of Criminal Procedure for the time being in force relating to bail shall apply in the

LEG. REF.

¹ Vide footnote 2, p. 561.

² Substituted for 'Local Government' by A.O., 1937.

CL. (7).—Detention of a fugitive criminal pending the consideration of the report of the investigating Magistrate by the Government is not illegal. The High Court's power

to issue a writ of *habeas corpus* is not taken away by sec. 3 (6) and (7) of the Extradition Act but where neither the arrest nor the detention is within its jurisdiction the High Court cannot issue *habeas corpus*. 46 Cal. 52=20 Cr.L.J. 257=50 I.C. 17; 50 I.C. 618. See also 1938 M.W.N. 1161; 1939 A.W.B. (H.C.) 737; 66 I.A. 222=(1939) 2 M.L.J. 406 (P.C.).

same manner as if such person were accused of committing in British India the crime of which he is accused or has been convicted.

5. (1) If the Central Government ¹[*] is of opinion that the crime of which any fugitive criminal of a Foreign State is accused or alleged to have been convicted is of a political character, it may, if it think fit, refuse to issue any order under section 3, sub-section (1).

(2) The Central Government ²[*] may also at any time stay any proceedings taken under this Chapter and direct any warrant issued under this Chapter to be cancelled and the person for whose arrest such warrant has been issued to be discharged.

6. The expressions "the Police Magistrate" and "the Secretary of State" in section 3 of the Extradition Act, 1870,³ shall be read as referring respectively to the Magistrate directed to inquire into a case under section 3 of this Act, and to the Central Government

⁴[*].

CHAPTER III.

SURRENDER OF FUGITIVE CRIMINALS IN CASE OF STATES OTHER THAN FOREIGN STATES.

7. (1) Where an extradition offence has been committed or is supposed to have been committed by a person, not being a European British subject, in the territories of any State not being a Foreign State, and such person escapes into or is in British India, and the Political Agent in or for such State issues a warrant, addressed to the District Magis-

LEG. REF.

¹ The words "or any Local Government" omitted by A.O., 1937.

² The words "or the Local Government" omitted by *ibid.*

³ Coll. Stat., Vol. I.

⁴ The words "or the Local Government, as the case may be" omitted by A.O., 1937.

SEC. 6.—See 26 M. 607=1 Weir 13; 1 Weir 757=20 Cr.L.J. 241=46 C. 31=49 I.C. 913. The procedure before the Political Agent in cases falling under Ch. III of the Extradition Act takes the place of the preliminary inquiry and other proceedings provided in Ch. II of that Act in the case of criminals whose extradition to foreign state is required. In the case of a warrant issued by the Political Agent, it is only right to presume that the Political Agent has complied with the rules—the rules having the force of law—before issuing the warrants. The fact that the warrant does not state or show on the face of it that the rules framed for the procedure have been obeyed or that the warrant merely states that so and so stands charged with offences, is no ground for presuming that the rules have not been duly complied with or that no enquiry as prescribed by the rules has been made. A person arrested and detained under such a warrant cannot be said to be illegally or improperly detained within the meaning of sec. 491,

Cr. P. Code, so as to entitle him to be set at liberty. 1938 M.W.N. 1304.

SEC. 7.—See 5 M. 23=1 Weir 1. Art. V of the Treaty of the East India Company with Nepal does not exclude the operation of sec. 7 of the Act. The article does not take away the discretion of the respective Governments in respect of surrender of subjects. 12 Pat. 347=145 I.C. 274=34 Cr. L.J. 932=1933 Pat. 295. A warrant of extradition signed by an officer who has not been empowered to do so is unlawful. 25 Cr. L.J. 687=81 I.C. 175=1923 P. 112. A warrant of extradition signed by the Assistant British Envoy of Nepal Court is not valid where the officer is not empowered as a Political Agent within sec. 7. 81 I.C. 175=25 Cr.L.J. 687=1925 Pat. 112. A person who has committed an extradition offence in a state cannot be arrested in British India without a warrant from the Political Agent for such State. If he is so arrested, his detention would be illegal, and the Court can set him at liberty under sec. 491 (1) (b) Cr. P. Code. 41 P.L.R. 339.

CONTENTS OF WARRANT.—No form of warrant is prescribed by the Extradition Act or the rules. It is enough if the extradition warrant clearly describes the offences with which the accused person is charged, and it is not necessary that it should state, when they were committed. If a warrant directs the delivery of the accused person to a front-

trate of any district in which such person is believed to be, ¹[or if such person is believed to be in any Presidency-town to the Chief Presidency Magistrate of such town], for his arrest and delivery at a place and to a person or authority indicated in the warrant, such Magistrate shall act in pursuance of such warrant and may give directions accordingly.

(2) A warrant issued as mentioned in sub-section (1) shall be executed in the manner provided by the law for the time being in force with reference to the execution of warrants, and the accused person, when arrested, shall ²[be produced before the District Magistrate or Chief Presidency Magistrate, as the case may be, who shall record any statement made by him; such accused person shall then], unless released in accordance with the provisions of this Act, be forwarded to the place and delivered to the person or authority indicated in the warrant.

LEG. REF.

¹ These words were inserted by sec. 2 of the Indian Extradition (Amendment) Act, 1913 (I of 1913).

² These words were inserted by sec. 2 of the Indian Extradition (Amendment) Act, 1913 (I of 1913).

tier police station of a native state, there is sufficient indication of the authority to whom the delivery is to be made. An undated warrant is not illegal, although the better practice is to date it. 66 I.A. 222 = I.L.R. (1939) Mad. 744 = A.L.R. 1939 P.C. 213 = (1939) 2 M.L.J. 406 (P.C.).

WARRANT — LEGALITY — CONDITIONS. — Under sec. 7 there are three conditions precedent for the issue of a legal warrant: (1) the offence must be an extradition offence, that is, one of those given in Sch. 1, Extradition Act; (2) the accused must not be a European British subject; and (3) the offence must have been committed or must be supposed to have been committed by the accused in the territories of the State. Without all these three conditions being fulfilled the Political Agent would have no authority to issue a warrant for the arrest of any person who has either escaped into or is in British India, and the arrest of such a person in pursuance of such a warrant would be equally illegal. 56 All. 409 = 1934 A.L.J. 556 = 35 Cr.L.J. 1296 = 1934 All. 148; 29 S. L.R. 60 = 1935 Cr.C. 1307 = 1935 Sind 244. The High Court can in such a case quash the proceedings under sec. 491, Cr. P. Code, and order the arrested person to be set at liberty. (*Ibid.*) Where a warrant issued under sec. 7 of the Act directed that a certain person in British India should be arrested and delivered to the frontier police station of a native state for production before a certain District Magistrate of that State, and a High Court in British India ordered stay of execution of the warrant and issued a writ of *habeas corpus* on an application made on behalf of the arrested person. *Held*, that the District Magistrate mentioned in the warrant had *locus standi* to file an application for the quashing of the order of the High Court, although he was not a party to the application for the issue of the writ of

habeas corpus. I.L.R. (1939) Mad. 744 = 66 I.A. 222 = 50 L.W. 48. See also A.L.R. 1939 P.C. 213 = (1939) 2 M.L.J. 406 (P.C.). If it is proved that a prisoner arrested in British India under a warrant issued by the Political Agent in a Native State under sec. 7 of the Extradition Act, in respect of an offence alleged to have been committed by him in that State, was in British India at the time at which the offence with which he is charged is said to have been committed that would be a good defence to the charge. It is not, however, relevant to the question whether the custody in which he is detained is legal or illegal. The arrested person cannot on that ground claim to be set at liberty as being illegally or improperly detained. 1938 M.W.N. 1304. When a warrant issued by the Political Agent under sec. 7 of the Extradition Act is sent to the Chief Presidency Magistrate of a Presidency Town, the Chief Presidency Magistrate has no option in the matter but to execute the warrant. He is obliged to order the arrest of the person for whom the warrant was issued and his custody of such person is perfectly legal and proper. The fact that there are defects in the warrant, namely, that it is not dated that the direction in it is to surrender the prisoner to the Frontier Police Station in the Native State without definitely naming a specific place, or that it does indicate the officer to whom the prisoner is to be handed over, is not a matter of any importance such as to render the warrant or the arrest and detention thereunder illegal or improper, though they might be points upon which the Magistrate might make a reference and report to the Government under sec. 8-A of the Extradition Act 1938 M.W.N. 1304. The Extradition Act does not authorise the District Magistrate himself to inquire into the legality, much less the propriety, of the warrant and then to refuse to execute it on the ground that in his opinion the warrant had been wrongly issued. The endorsement of the District Magistrate on the extradition warrant forwarding it to the Superintendent of Police or the arrest made under the directions of the Superintendent of police would therefore not be any proceeding of an inferior criminal Court

(3) The provisions of the Code of Criminal Procedure for the time being in force in relation to proclamation and attachment in

Proclamation and attachment in case of persons absconding.

sary modifications, apply where any warrant has been received by a District Magistrate¹ [or Chief Presidency Magistrate] under this section as if the warrant had been issued by himself.

LEG. REF.

¹ These words were inserted by sec. 2 of the Indian Extradition (Amendment) Act, 1913 (I of 1913).

and would merely be an executive act, and the High Court would therefore not have jurisdiction to interfere with the proceeding on the revisional side. 56 All. 409=1934 A.L.J. 556=35 Cr.L.J. 1296=1934 All. 148. See also 42 Cal. 793=19 C.W.N. 221; 16 Cr. L.J. 31. Where the applicant was clearly well defined to ensure identity and the place at which and the authority to whom delivery was to be made were also mentioned and also the Court of the Magistrate in which the initial complaint was pending, held, that the warrant was not wanting in particulars required by law to be stated. 134 L.C. 594=32 Cr.L.J. 1243=1931 Oudh 394.

The law relating to offences and to criminal procedure in force in British India has been declared to apply to all subjects of His Majesty for the purposes of any power or jurisdiction exercised under the Indian (Foreign Jurisdiction) Order in Council, 1902, see Gazette of India, 1904 Pt. I, p. 365. Sec. 8 of the Act of 1879 extends to European British subjects in States in India in alliance with His Majesty the law relating to offences and the criminal procedure for the time being in force in British India. This section, as distinguished from sec. 4, is an enactment and not a declaration. It is an entirely independent provision and ought not to be read so as to restrict the powers of the Governor-General which are declared by sec. 4 and which may be delegated to his officers under sec. 6. It is by virtue of sec. 8 that an European British subject can be tried in Mysore for an offence against the I. P. Code. The law which is extended to *European British subjects in Mysore* by virtue of sec. 8 is not so extended to the exclusion of all other law. 26 M. 607=1 Weir 13; 1 Weir 757. Sec. 8 of Act XXI of 1879 extends, to all British subjects Native or European, in Native States, the law relating to offences and criminal procedure for the time being in force in British India. The High Court of Bombay has the power, in the case of a European British subject, of transferring a case from the Cantonment Magistrate acting either as justice of the Peace and as a first class Magistrate, or as a District Magistrate, with the increased powers given to him by Act I of 1884, to itself or to any Criminal Court of equal or superior jurisdiction. 9 B. 333. [R., 14 B. 160; 2 B. 480.]

The Civil and Sessions Judge, as well as the District Magistrate, of the Civil and

Military Station, Bangalore, though they are appointed Justices of the Peace in the State of Mysore, are by virtue of their office justices of the peace in the *Civil and Military Station of Bangalore*, by virtue of Act XXI of 1879; they are also Magistrates of the first class, and both their Courts are subordinate to the High Court under the same enactment. The Civil and Military Station of Bangalore is not British territory, but a foreign territory belonging to Mysore. The Code of Criminal Procedure is in force there in common with other Acts by virtue of declarations made by the Governor-General in Council in exercise of the powers conferred upon him by Act XXI of 1879. 12 M. 39=1 Weir 10. Excepting in the case of a European British subject, the Political Agent for the Bhopal State may, at the request of the State, issue a warrant for the arrest of any person who has committed, or is supposed to have committed in the Bhopal State an offence under sec. 409, Penal Code (which is one of the offences mentioned in the schedule), and, on such person being forwarded it will be the duty of the political Agent to decide whether the accused shall be tried by him or be made over to the State Court for trial. It matters not whether a complaint against the accused has been made in the Political Agent's Court or not and the Magistrate to whom the warrant is directed is bound, under the provisions of sec. 12 of the Act to execute it and has no authority to question the authority or discretion of the Political Agent to issue it; a Deputy Commissioner, therefore, was held to have acted legally in ordering a warrant for the arrest of a Native Indian subject of His Majesty, issued by the Political Agent for the Bhopal State, to be executed. 5 O.C. 55. Sec. 7 lays down that the Magistrate to whom the warrant is addressed shall act in pursuance thereof and does not require him to take evidence; hence it is no part of his duty to ascertain whether the warrant issued under sec. 7 was a legal warrant. [3 P.R. (Or.) 1909, Rel. on.] 7 Lah. 159=27 Cr. L.J. 755=1926 Lah. 411. Amenability of Native Indian subject to British Courts for offences committed beyond India. See 39 P. R. 1878 (Or.). A Justice of the Peace, appointed under sec. 6 of the Foreign Jurisdiction and Extradition Act, 1879, has power to try an European British subject for an offence against the provisions of the *Mysore Mines Regulations*, the offence being solely against the law of Mysore, but not coming within any of the provisions of the Penal Code. 26 M. 607=1 Weir 13; 1 Weir 757. All British subjects, European and

Native, in British India, may be dealt with in respect of offence committed in any Native State as if such offences had been committed in any place within British India in which such subject "may be or may be found." In re-enacting the provision in sec. 9 of Act XXI of 1879, the Legislature omitted the words "may be" and retained only the words "may be found". *Held*, that looking to the purposes of these Acts and to the fact that the words "may be" "may be found", really mean one and the same thing, the alteration in the recent Act was merely to avoid redundancy and the expression "found" used in it must be taken to mean, not where a person is discovered but where he is actually present. Where a person charged with the offence of theft in a dwelling-house in *Rajputana*, being found in *Sindh* territory, as other Native State, was brought from that place to Ahmedabad, and was charged before the Courts there, *held*, that those Courts had jurisdiction to try him. Where it was proved that a place in British territory was the home of the accused's parents, and that he himself was born and educated there, and that he only went 1½ years previously to a Native State for purposes of trade, living, during that time, sometimes in British territory and sometimes in the Native State, *held*, that there was a legal presumption in favour of the accused being a Native Indian subject of Her Majesty, and therefore, amenable to the jurisdiction of the British Courts. 6 B. 622. (F. 13 B. 147.) Act XXI of 1879 admits of proceedings being taken in British India, regarding offences committed in Foreign States only on condition that the person charged is a Native Indian subject of Her Majesty and that the Political Agent of the Foreign State has given his sanction to proceedings being taken in British territory. 5 M. 23=1 Weir 1; [R. 13 M. 423; 24 B. 287; 1 B. L.R. 678; 2 Weir 148.] The Political Agent has no power to cancel the certificate already granted and the subsequent order for the trial of the accused in the Native State must be set aside. R. 3 of the Rules under the Indian (Foreign Jurisdiction) Order in Council, 1902 and under sec. 23 of the Extradition Act, do not control sec. 188, Cr. P. Code. The rule contains a reminder to Political Agents of their duty to consider the advisability of issuing certificate prior to issuing any warrant. A certificate under sec. 188, Cr. P. Code, can be issued even after a warrant has already gone out. 14 Bom.L.R. 377=13 Cr.L.J. 537=15 I.C. 809. Sec. 7 applies only to *extradition offences* and an extradition offence is any offence described in the first Schedule of the Act. Absconding from Jail is not one of the offences mentioned in that schedule. Therefore sec. 7 has no application and warrant issued to the District Magistrate of the place where the absconder is living to arrest him is illegal and the arrest also is illegal. 1 Pat. 57=3 Pat.L.T. 786=66 I.C. 517=23 Cr.L.J. 293. *The procedure for requisition-*

ing the surrender of any person accused of having committed any offence, not necessarily an extradition crime, is laid down in sec. 9 of the Act; but the requisition in such a case has to be made to the Government of India or to any local Government. No such requisition having been made in the present case the warrant and arrest were both held to be illegal. 1 Pat. 57=3 Pat.L.T. 786=66 I.C. 517=23 Cr.L.J. 293. A fugitive criminal arrested under sec. 7 of the Act can invoke the action of Government under sec. 15 of the Act. 42 Cal. 793=19 C.W.N. 221=16 Cr.L.J. 31=26 I.C. 335.

REVISION.—Where the Magistrate directed the surrender of the accused on a procedure unknown to Extradition Act, the order is open to revision by the High Court. 41 Cal. 400=14 Cr.L.J. 673=18 C.W.N. 869=21 I. C. 993. *See also* 53 Bom. 149=1929 Bom. 81. The Chief Court has no power to interfere in respect of a warrant issued by a political Agent of a Native State under sec. 7 of Act XV of 1903, on the grounds either (1) that there is no *prima facie* case against the petitioner or (2) that the circumstances, under which that officer was originally moved, do not justify him to exercise his power under the said section. 9 Cr. L.J. 3=3 P. R. 1909. *See also* 56 A. 409=1934 A.L.J. 556=1934 A. 148.

BAIL.—Neither the Code of Criminal Procedure nor any provision in the Extradition Act authorizes a Magistrate to hold a person to bail to appear before a tribunal in a state to which the Act applies. The Magistrate could bind over the prisoner to appear before himself, and then, when the prisoner had surrendered to his bail, after receiving the warrant from the Political Agent for the State, could proceed to execute it under sec. 7, cl. (2), or, if the warrant have been duly endorsed by the political agent under sec. 80 (1) could bind the prisoner over to appear at the time and place indicated in the warrant. In this case, the warrant had not been so endorsed by the Political Agent. 33 C. 1032=4 Cr.L.J. 366.

PRACTICE AS TO REVISION BY HIGH COURT.—In all cases where enquiries are held by Magistrates with a view of extraditing accused persons, it would be desirable that the accused should, if possible, be present thereat. Sec. 15 of Act XV of 1903 ousts the jurisdiction of the High Court to enquire into the propriety of a warrant, but leaves open the question of the High Court's power to interfere with a Magistrate's action, if it was proved that such action was consequent upon a warrant issued by a Political Agent which was plainly illegal. *Per Aston, J.*—There is no provision in Act XV of 1903, or in the Code of Criminal Procedure or in any other law, making an enquiry by a competent British Court in British India into the truth of the accusation, whether, in the presence of the accused or otherwise, a condition precedent to the issue and execution of the warrant of a Political Agent under sec. 7 of Act XV of 1903. 7 Bom.L.R. 463

8. (1) Where a Political Agent has directed by endorsement on any such warrant that the person for whose arrest it is issued may be released on executing a bond with sufficient sureties for his attendance before a person or authority indicated in this behalf in the warrant at a specified time and place, the Magistrate to whom the warrant is addressed shall on such security being given release such person from custody.

(2) When security is taken under this section, the Magistrate shall certify the fact to the Political Agent who issued the warrant, and shall retain the bond.

(3) If the person bound by any such bond does not appear at the time and place specified, the Magistrate may, on being satisfied as to his default, issue a warrant directing that he be re-arrested and handed over to any person authorized by the Political Agent to take him into custody.

(4) In the case of any bond executed under this section, the Magistrate may exercise the powers conferred by the Code of Criminal Procedure for the time being in force in relation to taking a deposit in lieu of the execution

=2 Cr.L.J. 439. Where a warrant is issued by a Political Agent under sec. 7 its execution by the District Magistrate in accordance with the Act is an executive act, and the High Court cannot interfere in revision with such execution. The power of the Court to interfere otherwise than by way of revision, *e.g.*, under sec. 491, Cr. P. Code, is untouched by this decision. 42 C. 793=26 I.C. 385=19 C.W.N. 221. But see 53 B. 149 below. Execution by the District Magistrate (or the Chief Presidency Magistrate) in British India of a warrant under sec. 7 of Extradition Act is not an executive act. The Magistrate has judicially to consider the matter and decide whether the warrant can be executed according to law and the order of the Magistrate is subject to the revisional powers of the High Court. The order can also be interfered with under sec. 561-A. On proper proceedings being taken High Court can also interfere under sec. 491. 53 B. 149=31 Bom.L.R. 62=30 Cr.L.J. 772=1929 B. 81 (42 C. 793. *Held*, too widely stated. 7 Bom.L.R. 463; 41 C. 400 and 1922 P. 442, *Rel. on*.)

SECS. 7 AND 8: 'APPLICABILITY AND SCOPE—OFFENCE UNDER SEC. 395, I. P. CODE—PROCEDURE—MAGISTRATE IF BOUND TO REPORT TO LOCAL GOVERNMENT.—Sec. 7 (2) of the Extradition Act prescribes the way in which warrants in connection with an extradition offence referred to in sec. 7 (1) shall be executed. In the case of a warrant under sec. 395, I. P. Code, the offence being an extradition offence, sec. 7 (2) applies. Sec. 8 does not apply to the case, because that section does not distinctly specify that the procedure laid down therein is for an extradition offence. It only provides that in either of these cases the Magistrate, if he feels inclined to do, may report the case to the Local Government. 15 P.L.T. 493=1934 P. 553.

SECS. 7 AND 8-A: ISSUE OF WARRANT—

QUESTION IF CONDITIONS WERE COMPLIED WITH WHEN CAN BE RAISED.—Where a warrant is issued by the Agent of the Government of India under sec. 7 of the Extradition Act directing that a certain person in British India should be arrested and delivered to the Police of a Native State the question whether the conditions laid down by the Act and the rules for the issue of the warrant were complied with would not be properly the subject of inquiry by the High Court on an application under sec. 491, Cr. P. Code, but should be raised before the Magistrate in British India before whom the person arrested is produced on an application to him to report to the Local Government under sec. 8-A of the Extradition Act. I.L.R. (1939) Mad. 744=66 I.A. 222=A.L.R. 1939 P.C. 213=(1939) 2 M.L.J. 406 (P.C.).

SEC. 8.—Where a person was arrested upon a warrant issued by a Political Agent, under the Indian Extradition Act and was placed before a Magistrate and such Magistrate passed an order releasing him on bail and directing him to appear before the Political Agent on a certain date, although there was no endorsement on the warrant, giving the Magistrate power to pass such an order. *Held*, that in the absence of such an endorsement under sec. 8 of the Act, the Magistrate had no authority to pass such an order. 7 C.L.J. 171=12 C.W.N. 602=7 Cr.L.J. 198. The offence of cheating is an extradition offence so far as British India is concerned notwithstanding its omission from Art. 4 of the Treaty between the British Government and the Hyderabad State. A British Indian Magistrate to whom a warrant has been addressed under sec. 7 of the Act has no power to admit to bail a person arrested under it apart from the provisions of secs. 8 and 8-A. 43 B. 310=20 B.L.R. 1009=20 Cr.L.J. 34=48 I.C. 674. See also 77 I.C. 234=25 Cr. L.J. 346=1924 N. 313.

of a bond and with respect to the forfeiture of bonds and the discharge of sureties.

8-A.¹ Notwithstanding anything contained in section 7, sub-section (2),

Power to report case for or in section 8, when an accused person arrested in accordance with the provisions of section 7 is produced before the District Magistrate or Chief Presidency Magistrate, as the case may be, and the statement (if any) of such accused person has been recorded, such Magistrate may, if he thinks fit, before proceeding further report the case to the ²[Central] Government and, pending the receipt of orders on such report, may detain such accused person in custody or release him on his executing a bond with sufficient sureties for his attendance when required.

9. Where a requisition is made to the Central Government ³[* *]

Requisitions by States not by or on behalf of any State not being a Foreign State, for the surrender of any person accused of having committed an offence in the territories of such State, such requisition shall (except in so far as relates to the taking of evidence to show that the offence is of a political character or is not an extradition crime) be dealt with in accordance with the procedure prescribed by section 3 for requisitions made by the Government of any Foreign State as if it were a requisition made by any such Government under that section:

Provided that, if there is a Political Agent in or for any such State, the requisition shall be made through such Political Agent.

10. (1) If it appears to any Magistrate of the first class or any Magistrate

LEG. REF.

¹ Sec. 8-A was inserted by sec. 3 of the Indian Extradition (Amendment) Act, 1913 (I of 1913).

² Substituted for 'Local' by A.O., 1937.

³ Words 'or to any Local Government' omitted by *ibid.*

SEC. 8-A: SCOPE—DISCRETION UNDER—FAILURE TO REPORT—IF ILLEGAL.—It is discretionary with the Magistrate under sec. 8-A to report the matter to the Local Government. If he is inclined to hold an enquiry, he may do so and then, if he thinks fit, may report the matter to the Local Government. The failure to report does not make the procedure of the Magistrate illegal. 15 Pat.L. T. 493=1934 Pat. 553. If the person whose extradition is sought is a British subject in whose favour the discretion under the Treaty might possibly be exercised by the Local Government he should raise the point before the District Magistrate who would then refer the matter for the orders of the Local Government. 12 Pat. 347=34 Cr.L.J. 932=1933 Pat. 295. See 43 Bom. 310 and 77 I.C. 234 (Nag.) cited under sec. 8. See also 1938 M.W.N. 1304.

SEC. 9.—The East Indian possessions of France are not a foreign State. They are excluded from the Treaty arrangements of 1876. The provisions of Chapter II of the Extradition Act do not apply to fugitive criminals of Chandranagore. The procedure for the extradition from British India of a fugitive criminal from Chandranagore is to be summary. No preliminary inquiry is ne-

cessary before his extradition. This is in accordance with the Treaty of 1815. 47 C. 37=30 C.L.J. 24=20 Cr.L.J. 739=53 I.C. 147. See also 53 Mad. 1023=A.I.R. 1930 Mad. 981=59 M.L.J. 278. Extradition under any condition is an invasion of the common law right, and when there is a treaty followed by a statute recognising the authority, the procedure is to be in accordance with the Treaty and Statute and no further condition can be imposed by the Courts. (*Ibid.*) A conviction in British India for an offence committed outside its limits is good under sec. 9 of Act XXI of 1879.—(Per Garth, C.J. *Pontifex and Morris, JJ.*) 8 C. 985 (F. B.) [R. 9 C. 288; 16 Cal. 667]. Procedure for requisitioning surrender—To whom to be made—See 66 I.C. 517.

SEC. 10: APPLICABILITY AND SCOPE.—A Magistrate has power to issue a warrant under sec. 10 when neither a warrant nor a requisition has been received. But an essential ingredient of that procedure is that there must be a warrant. When that procedure is not followed, and when the arrest is effected on nothing except the order of a Magistrate, such arrest is illegal. Even if the arrest were by the police on their own responsibility, the provision in sec. 23 must be followed and the detention must be made subject to the restrictions laid down by sec. 10; otherwise the arrest and detention would be illegal and the person arrested and detained must be released on an application made by him under sec. 491, Cr. P. Code. 62 C. 399=39 C.W.N. 285=A.I.R. 1935 Cal. 122=155 I.C. 537. Under sec. 10 of the Act,

Power to Magistrate to issue warrants of arrest in certain cases.

empowered by the ¹[Central] Government in this behalf that a person within the local limits of his jurisdiction is accused or suspected of having committed an offence in any State not being a Foreign State and that such person may lawfully be surrendered to such State, or that a warrant may be issued for his arrest under section 7, the Magistrate may, if he thinks fit, issue a warrant for the arrest of such person on such information or complaint and on such evidence as would, in his opinion, justify the issue of a warrant if the offence had been committed within the local limits of his jurisdiction.

(2) The Magistrate shall forthwith report the issue of a warrant under

Issue of warrant to be reported forthwith.

this section, if the offence appears or is alleged to have been committed in the territories of a State for which there is a Political Agent, to such Political Agent and in other cases to the ¹[Central] Government.

(3) A person arrested on a warrant issued under this section shall not,

Limit of time of detention of person arrested.

without the special sanction of the ¹[Central] Government, be detained more than two months, unless within such period the Magistrate receives an order made with reference to such person in accordance with the procedure prescribed by section 9, or a warrant for the arrest of such person under section 7.

(4) In the case of a person arrested or detained under this section, the

Bail.

provisions of the Code of Criminal Procedure for the time being in force relating to bail shall apply in the same manner as if such person were accused of committing in British India the offence with which he is charged.

11. (1) A person accused of an offence committed in British India, not

Surrender of person accused of, or undergoing sentence for, offence in British India.

being the offence for which his surrender is asked, or undergoing sentence under any conviction in British India, shall not be surrendered in compliance with a warrant issued by a Political Agent under section 7 or a requisition made by or on behalf of any State not being a Foreign State under section 9, except on the condition that such person be re-surrendered to the Central Government ²[* *], on the termination of his trial for the offence for which his surrender has been asked:

Provided that no such condition shall be deemed to prevent or postpone the execution of a sentence of death lawfully passed.

LEG. REF.

¹ Substituted for 'Local' by A.O., 1937.

² Words 'or the Local Government, as the case may be' omitted by A.O., 1937.

jurisdiction is distinctly conferred on the Magistrates in British India to make preliminary enquiries and to take evidence on the information given or complaint laid in regard to offences alleged to have been committed by Native Indian or British subjects of His Majesty within and beyond the limits of British India not being in a Foreign State as defined in that Act and to order warrant to issue for the arrest of such accused persons. 8 Bom.L.R. 507=4 Cr.L.J. 49. Magistrate has power to grant bail to an accused who has been arrested in pursuance of sec. 54 (7) of the Cr. P. Code, whom he has been asked to retain in custody, by the District Magistrate of a Native State. 26 Bom.L.R. 584=26 Cr.L.J. 948=1925

Bom. 104.

Per *Fawcett, J.*—As sec. 57 (7) does not apply to arrests in Bombay, when the accused is arrested without warrant in Bombay, he must be deemed to have been arrested under sec. 33 (g). But even in such a case under sec. 23 of the Extradition Act, the Magistrate has power to grant bail. (*ibid.*) When no extension has been asked for or obtained from Government, under sub-sec. (3), the continued detention of persons arrested becomes illegal, and they are therefore entitled to be discharged from custody on their applying for a writ under the nature of *habeas corpus*. 16 Pat.L.T. 551=36 Cr.L.J. 1500=1935 Pat. 419.

SEC. 11.—An accused person who received in British territory property stolen in the commission of a dacoity in the Indore State cannot be surrendered under the warrant of the Political Agent at Indore. 14 P.R. 1873 (Cr.).

(2) On the surrender of a person undergoing sentence under a conviction

Suspension of sentence on surrender. in British India, his sentence shall be deemed to be suspended until the date of his re-surrender, when it shall revive and have effect for the portion thereof which was unexpired at the time of his surrender.

12. The provisions of this Chapter with reference to accused persons

Application of Chapter to convicted persons. shall, with any necessary modifications, apply to the case of a person who, having been convicted of an offence in the territories of any State not being a Foreign State, has escaped into or is in British India before his sentence has expired.

13. Every person who is accused or convicted of abetting or attempting

Abetment and attempt. to commit any offence shall be deemed, for the purposes of this Chapter, to be accused or convicted of having committed such offence, and shall be liable to be arrested and surrendered accordingly.

14. It shall be lawful for any person to whom a warrant is directed in

Lawfulness of custody and re-taking under warrant issued under Chapter. pursuance of the provisions of this Chapter, to receive, hold in custody and convey the person mentioned in the warrant, to the place named in the warrant, and, if such person escapes out of any custody to which he may be delivered in pursuance of such warrant, he may be re-taken as a person accused of an offence against the law of British India may be re-taken upon an escape.

15. The Central Government ¹[*.*] may, by order, stay any proceed-

Power of Government to stay proceedings and discharge of person in custody. ings taken under this Chapter, and may direct any warrant issued under this Chapter to be cancelled, and the person for whose arrest such warrant has been issued to be discharged.

16. The provisions of this Chapter shall apply to an offence or to an

Application of Chapter to offences committed before its commencement. extradition offence, as the case may be, committed before the passing of this Act, and to an offence in respect of which a Court of British India has concurrent jurisdiction.

17. (1) In any proceedings under this Chapter, exhibits and depositions

Receipt in evidence of exhibits, depositions and other documents. (whether received or taken in the presence of the person against whom they are used or not) and copies thereof, and official certificates of facts and judicial documents stating facts, may, if duly authenticated, be received as evidence.

(2) Warrants, depositions or statements on oath which purport to have been issued, received or taken by any Court of Justice outside British India, or copies thereof, and certificates of, or judicial documents stating the fact of, conviction before any such Court, shall be deemed duly authenticated,—

(a) if the warrant purports to be signed by a Judge, Magistrate, or officer of the State where the same was issued or acting in or for such State;

(b) if the depositions or statements or copies thereof purport to be certified, under the hand of a Judge, Magistrate or officer of the State where the same were taken, or acting in or for such State, to be the original depositions or statements or to be true copies thereof, as the case may require;

(c) if the certificate of, or judicial document stating the fact of, a conviction purports to be certified by a Judge, Magistrate or officer of the State where the conviction took place or acting in or for such State;

(d) if the warrants, depositions, statements, copies, certificates and judicial documents, as the case may be, are authenticated by the oath of some witness or by the official seal of a minister of the State where the same were respectively issued, taken or given.

(3) For the purposes of this section, "warrant" includes any judicial document authorizing the arrest of any person accused or convicted of an offence.

18. Nothing in this Chapter shall derogate from the provisions of any treaty for the extradition of offenders, and the procedure provided by any such treaty shall be followed in any case to which it applies, and the provisions of this Act shall be modified accordingly.

CHAPTER IV.¹

RENDITION OF FUGITIVE OFFENDERS IN HIS MAJESTY'S DOMINIONS.

19. For the purpose of applying and carrying into effect in British India the provisions of the Fugitive Offenders Act, 1881,² the following provisions are hereby made:—

(a) the powers conferred on "Governors" of British possessions¹ [shall be powers of the Central Government];

LEG. REF.

¹ An Order in Council, dated 7th March, 1904, has declared that this Chapter shall be recognized and given effect to throughout His Majesty's Dominions and on the high seas as if it were a part of the Fugitive Offenders Act, 1881 (41 and 45 Vict., c. 69).

² Coll. Stat., Vol. I.

³ Substituted for 'may be exercised by any Local Government' by A.O., 1937.

SEC. 18: SCOPE OF.—There is no derogation of the rights of the parties to the treaty by allowing one Government with the consent of the other to obtain extradition of a criminal who has committed an offence not mentioned in the treaty. A Government or a State is entitled if it so wishes, to hand over persons subject to the law of another

State at the request of that State. In such a case there is no derogation to the Sovereign rights of either power. All that sec. 18 provides is that the Act shall not work against the will of either party so as unduly to impose any liability on such party. It does not prevent their co-operation in a friendly action according to the comity of nations. 20 S.L.R. 128=27 Cr.L.J. 37=A. I.R. 1926 Sind 126. Sec. 18 provides that if some special procedure has been arranged by treaty, it may be followed; but if the Government should choose to exercise the powers given by the Act no Municipal Court could interfere on the ground that the Government had undertaken to act otherwise by treaty. The words "shall not be bound" in Act. V of the Treaty between the East India Company and Nepal mean that each Govern-

(b) the powers conferred on a "Superior Court" may be exercised by any Judge of a High Court;

(c) the powers conferred on a "Magistrate" may be exercised by any Magistrate of the first class or by any Magistrate empowered by the ²[Central] Government³ in that behalf; and

(d) the offences committed in British India to which the Act applies are piracy, treason, and any offence punishable under the Indian Penal Code with rigorous imprisonment for a term of twelve months or more or with any greater punishment.

CHAPTER V.

OFFENCES COMMITTED AT SEA.

20. Where the Government of any State outside India makes a requisition

Requisition for surrender
in case of offence committed
at sea.

for the surrender of a person accused of an offence committed on board any vessel on the high seas which comes into any port of British India, the ²[Central] Government and any Magistrate having jurisdiction

such port and authorized by the ²[Central] Government⁴ in this behalf may exercise the powers conferred by this Act.

CHAPTER VI.

EXECUTION OF COMMISSIONS ISSUED BY CRIMINAL COURTS OUTSIDE BRITISH INDIA.

21. The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in any country or place outside British India in like

Executions of commissions
issued by Criminal Courts
outside British India.

manner as it may be obtained in any civil matter under the provisions of the Code of Civil Procedure

for the time being in force with respect to commissions, and the provisions of that Code relating thereto shall be construed as if the term "suit" included a criminal proceeding:

Provided that this section shall not apply when the evidence is required for a Court or tribunal in any State outside India other than a British Court and the offence is of a political character.

CHAPTER VII.

SUPPLEMENTAL.

Power to make rules.

22. (1) The Central Government may make rules⁵ to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the removal of prisoners accused or in custody under this Act, and their control and maintenance until such time as they are handed over to the persons named in the warrant as are entitled to receive them;

LEG. REF.

² Substituted for 'Local' by *Ibid.*

³ For notification by the Government of Madras in respect of the City of Madras, see Mad. R. and O.; by the Govt. of Bombay see Bom. Govt. Gazette, 1912, Pt. I, p. 982; by the Govt. of Bengal, see Calcutta Gazette, 1915, Pt. I, p. 190; and Local Rules and Orders.

⁴ For authorising the Chief Presidency Magistrate, Calcutta, see Cal. Gazette, 1925, Pt. I, p. 190.

⁵ For rules, see Gazette of India, 1904, Pt. I, p. 364, Genl. R. and O.

ment retains a right to exercise its discretion in the matter of the surrender of its subjects. 12 Pat. 347=34 Cr.L.J. 932=1933 P. 295.

SEC. 19, CL. (c) empowers only a first class Magistrate or any Magistrate empowered by the Local Government in that behalf to enforce the provision of the Fugitive Offenders Act. 1910 M.W.N. 568=11 Cr.L.J. 622=8 I.C. 301.

SEC. 22.—See 8 I.C. 301=11 Cr.L.J. 622=1910 M.W.N. 568.

(b) the seizure and disposition of any property which is the subject of, or required for proof of, any alleged offence to which this Act applies;

(c) the pursuit and arrest in British India, by officers of the Government or other persons authorized in this behalf, of persons accused of offences committed elsewhere; and

(d) the procedure and practice to be observed in extradition proceedings.

(3) Rules made under this section shall be published in the Official Gazette and shall thereupon have effect as if enacted by this Act.

23. Notwithstanding anything in the Code of Criminal Procedure, 1898,

Detention of persons arrested under section 54, clause *seventhly*, Act V of 1898.

any person arrested without an order from a Magistrate and without a warrant, in pursuance of the provisions of section 54, clause *seventhly*, of the said Code, may, under the orders of a Magistrate within the local limits of whose jurisdiction such arrest was made, be detained in the same manner and subject to the same restrictions as a person arrested on a warrant issued by such Magistrate under section 10.

24. [Repeals.] Repealed by section c and Sch. II of the Repealing and Amending Act, 1914 (X of 1914).

THE FIRST SCHEDULE.

EXTRADITION OFFENCES.

[See section 2, clause (b), and Chapter III (Surrender of fugitive criminals in case of States other than Foreign States).]

[The sections referred to are the sections of the Indian Penal Code.]

Frauds upon creditors (section 206).

Resistance to arrest (section 224).

Offences relating to coin and stamps (sections 230 to 263-A).

Culpable homicide (sections 299 to 304).

Attempt to murder (section 307).

Thagi (sections 310, 311).

Causing miscarriage, and abandonment of child (sections 312 to 317).

Causing hurt (sections 323 to 333).

Wrongful confinement (sections 347, 348).

Kidnapping and slavery (sections 360 to 373).

Rape and unnatural offences (sections 375 to 377).

Theft, extortion, robbery, etc. (sections 378 to 414).

SEC. 22 (3).—Rules made under sec. 22 (3) by the Governor-General in Council and published in the *Gazette of India* must be treated as if they are sections enacted by the Act itself. 134 I.C. 594=32 Cr.L.J. 1243=1931 O. 394. Rule No. 3 of the "Rules for the apprehension, demand and surrender of persons charged with heinous crimes" contained in the treaty with Jumna State, published in the Chief Court's Book Circular XXXIV (c) does not confer a lawful authority upon the District Magistrate as such to take proceedings and pass an order upon an application by a Foreign State for extradition of a subject of that State. Under that rule, it is competent for the Government to give direction to its executive officers notwithstanding that they may be Magistrates. 21 P.R. 1886, Cr. (R.), 4 P.R. 1870, Cr. (F.) 18 C.W.N. 869=41 C. 400=14 Cr.L.J. 673; Rel., 21 I.C. 993. Where an offence has been registered in Khairpur State and State Police Officer lodges information of offence at a Sind Police Station. Sind Police Officers cannot enter a house and search either person or property without the intervention of a Magistrate, nor can they hand over the property, searched, to, the State police with-

out first handing it over to the Magistrate. 30 S.L.R. 210=37 Cr.L.J. 1068=1936 Sind 153. Where it is suggested that the true object of the extradition is to charge the accused person with political offences which would not be extraditable, a bogus trial of the offences in respect of which the extradition is made falls within R. 7 of the Rules framed under sec. 22 of the Extradition Act, and makes it the duty of the Political Agent in such an event, to demand the restoration of the prisoner to his custody. 66 I.A. 223=I.L.R. (1939) Mad. 744=A.I.R. 1939 P.C. 213=(1939) 2 M.L.J. 406 (P.C.).

SEC. 23: APPLICABILITY—ARREST WITHOUT WARRANT.—Sec. 23 of the Extradition Act refers only to cases of persons arrested under sec. 54, cl. 7 of the Cr. P. Code, that is, persons arrested not only without a warrant but also without an order from a Magistrate. 39 C.W.N. 285=62 C. 399=36 Cr.L.J. 794=1935 C. 122.

POWER TO GRANT BAIL.—Magistrate has power to grant bail to an accused who has been arrested in pursuance of sec. 54 (7) of the Cr. P. Code, whom he has been asked to retain in custody, by the District Magistrate of a Native State. 1925 Bom. 104.

Cheating (sections 415 to 420).

Fraudulent deeds, etc. (sections 421 to 424).

Mischief (sections 425 to 440).

Lurking house-trespass (sections 443, ¹[444]).

Forgery, using forged documents, etc. (sections 463 to 477-A).

²[Desertion from any unit of (Indian States Forces)³ declared by the Central Government, by notification in the Official Gazette, to be a unit desertion from which is an extradition offence.]

Piracy by law of nations.

Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

Assault on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.

Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

Any offence against any section of the Indian Penal Code or against any other law which may, from time to time, be specified by the Central Government by notification in the Official Gazette either generally for all States or specially for any one or more States.

THE SECOND SCHEDULE.

[*Enactments repealed*]. *Repealed by the Repealing and Amending Act, 1914 (X of 1914).*

THE EXTRADITION ACT, 1870 (33 AND 34 VIC., C. 52).

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SCHEDULES.

[9th August, 1870.]

*An Act for amending the Law relating to the extradition of Criminals.*⁴

[Preamble.]

PRELIMINARY.

Short title.

1. This Act may be cited as THE EXTRADITION ACT, 1870.

Where arrangement for surrender of criminals made, Order in Council to apply Act.

2. Where an arrangement has been made with any foreign state with respect to the surrender to such state of any fugitive criminals. Her Majesty may by Order in Council, direct that this Act shall apply in the case of such foreign state.

LEG. REF.

¹ These figures were substituted for the figures "446" by sec. 2 and Sch. I of the Repealing and Amending Act, 1914 (X of 1914).

² These words were substituted by sec. 2 of the Indian Extradition (Amendment) Act, 1922 (XVI of 1922).

³ Substituted by Act VIII of 1930.

⁴ Extended by Act IX of 1895, sec. 2.

Her Majesty may, by the same or any subsequent order, limit the operation of the order and restrict the same to fugitive criminals who are in or suspected of being in the part of Her Majesty's dominions specified in the order, and render the operation thereof subject to such conditions, exceptions and qualifications as may be deemed expedient.

Every such order shall recite or embody the terms of the arrangement, and shall not remain in force for any longer period than the arrangement.

Every such order shall be laid before both Houses of Parliament within six weeks after it is made, or, if Parliament be not then sitting, within six weeks after the then next meeting of Parliament, and shall also be published in the London Gazette.

Restrictions on surrender of criminals.

3. The following restrictions shall be observed with respect to the surrender of fugitive criminals:

(1) A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character or if he prove to the satisfaction of the police magistrate or the court before whom he is brought on *habeas corpus* or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character;

(2) A fugitive criminal shall not be surrendered to a foreign state unless provision is made by the law of that state or by arrangement, that the fugitive criminal shall not, until he has been restored or had an opportunity of returning to Her Majesty's dominions, be detained or tried in that foreign state for any offence committed prior to his surrender other than the extradition crime proved by the facts on which the surrender is grounded;

(3) A fugitive criminal who has been accused of some offence within English jurisdiction not being the offence for which his surrender is asked, or is undergoing sentence under any conviction in the United Kingdom, shall not be surrendered until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise;

(4) A fugitive criminal shall not be surrendered until the expiration of fifteen days from the date of his being committed to prison to await his surrender.

Provisions of arrangement for surrender.

4. An Order in Council for applying this Act in the case of any foreign state shall not be made unless the arrangement—

(1) provides for the determination of it by either party to it after the expiration of a notice not exceeding one year; and

(2) is in conformity with the provisions of this Act, and in particular with the restrictions on the surrender of fugitive criminals contained in this Act.

5. When an order applying this Act in the case of any foreign state has

Publication and effect of order.

been published in the London Gazette, this Act, after the date specified in the order, or if no date is specified, after the date of the publication, shall, so long as the order remains in force, but subject to the limitations, restrictions, conditions, exceptions, and qualifications, if any, contained in the order, apply in the case of such foreign state. An Order in Council shall be conclusive evidence that the arrangement therein referred to complies with the requisitions of this Act and that this Act applies in the case of the foreign state mentioned in the order, and the validity of such order shall not be questioned in any legal proceedings whatever.

SEC. 3.—A subject of a state other than the state claiming surrender or the state on which the claim for surrender is made is liable to extradition. (1882) 9 Q.B.D. 93; (1882) 10 Q.B.D. 76. It is not necessary that the "fugitive" should be physically present in the country in which the crime is com-

mitted. (1884) 53 L.J. (M.C.) 157; (1923) 1 K.B. 24; (1881) 46 L.T. 595 (N). "Discharged"—Meaning of. See (1907) 2 K.B. 861; (1898) 14 T.L.R. 252.

SEC. 3 (2).—See (1872) 42 L.J. (Q.B.) 17; (1902) 18 T.L.R. 231.

6. Where this Act applies in the case of any foreign state, every fugitive criminal of that state who is in or suspected of being

Liability of criminal to surrender.

in any part of Her Majesty's dominions, or that part which is specified in the order applying this Act, (as the case may be,) shall be liable to be apprehended and surrendered in manner provided by this Act, whether the crime in respect of which the surrender is sought was committed before or after the date of the order, and whether there, is or is not any concurrent jurisdiction in any court of Her Majesty's dominions over that crime.

7. A requisition for the surrender of a fugitive criminal of any foreign state, who is in or suspected of being in the United

Order of Secretary of State for issue of warrant in United Kingdom if crime is not of a political character.

Kingdom, shall be made to Secretary of State by some person recognised by the Secretary of State as a diplomatic representative of that foreign state. A Secretary of State may, by order under his hand and seal, signify to a police magistrate that such requisition has been made, and require him to issue his warrant for the apprehension of the fugitive criminal.

If the Secretary of State is of opinion that the offence is one of a political character, he may, if he thinks fit, refuse to send any such order, and may also at any time order a fugitive criminal accused or convicted of such offence to be discharged from custody.

8. A warrant for the apprehension of a fugitive criminal, whether accused or convicted of crime, who is in or suspected of being in the United Kingdom, may be issued—

Issue of warrant by police magistrate, justice, etc.

(1) by a police magistrate on the receipt of the said order of the Secretary of State, and on such evidence as would in his opinion justify the issue of the warrant if the crime had been committed or the criminal convicted in England; and

(2) by a police magistrate or any justice of the peace in any part of the United Kingdom, on such information or complaint and such evidence or after

SEC. 6.—*See* 36 and 37 Vic., c. 60, sec. 2. The crime must be within the treaty under which application for surrender is made: [(1877) 3 Q.B.D. 42; (1896) 1 Q.B. 509]; it must be against the general law. [(1865) 6 B. & S. 522] and it must be a crime under the Extradition Acts. [(1896) 1 Q.B. 509]. Piracy by a Chinese on Board a French Ship was held not to justify surrender of the culprit to China. [(1873) L.R. 5 P.O. 179].

SEC. 7.—*See* (1896) 1 Q.B.D. 230 (as to discretion of Secretary of State).

SEC. 8.—Before issue of warrant there must be some evidence but very little will do. (1882) 9 Q.B.D. 701 (706). Per *Jessel, M.B.*, (1912) 3 K.B. 424 (accused arrested in England on a charge from which he had already been discharged in India).

"APPREHENSION" includes *detention* of a person already in custody. (1882) 9 Q.B.D. 701 C.A. The warrant should be in the prescribed form. It need not describe the offence with great strictness, but the charge may be mentioned in general terms. (1878) 4 Ex. D. 63; (1883) 48 L.T. 120; (1881) 46 L.T. 595 (N.). As to who should make requisition for warrant, *see* (1912) 2 K.B. 578. As to arrest without warrant, *see* (1882) 9 Q.B.D. 701 (C.A.). Magistrate has power to adjourn the hearing and remand. *See* (1905)

A.C. 128 (P.C.); (1901) 1 K.B. 764.

POLITICAL OFFENCES.—As a general rule a fugitive criminal may not be surrendered if the offence for which his extradition is demanded is one of a political character. This expression (*offence of a political character*) is to be interpreted as meaning that fugitive criminals are not to be surrendered for extradition crimes if those crimes were incidental to or formed part of political disturbances. (1891) 1 Q.B. 149. The decision of the Magistrate upon this point is subject to review by the Court on an application for *habeas corpus*. (*Ibid.*); (1902) 71 L.J. (K. B.) 935. A bare statement by the accused that he is a political refugee, unsupported by any evidence is not sufficient to entitle the Court to order a writ of *habeas corpus*. (1916) 2 K.B. 742. Crimes committed by anarchists are not regarded as political offences, as, in order to constitute an offence of a political character, there must be two or more parties in the State each seeking to impose the Government of their own choice on the other, and the act done must be committed not for private or personal reasons but in pursuance of that subject. (1894) 2 Q.B. 415; Hals. Laws of England, 2nd Edn., Vol. XIV, p. 583; (note).

such proceedings as would in the opinion of the person issuing the warrant justify the issue of a warrant if the crime had been committed or the criminal convicted in that part of the United Kingdom in which he exercises jurisdiction.

Any person issuing a warrant under this section without an order from a Secretary of State, shall forthwith send a report of the fact of such issue together with the evidence and information or complaint, or certified copies thereof, to a Secretary of State, who may, if he thinks fit, order the warrant to be cancelled, and the person who has been apprehended on the warrant to be discharged.

A fugitive criminal, when apprehended on a warrant issued without the order of a Secretary of State, shall be brought before some person having power to issue a warrant under this section, who shall by warrant order him to be brought and the prisoner shall accordingly be brought before a police magistrate.

A fugitive criminal apprehended on a warrant issued without the order of a Secretary of State shall be discharged by the police magistrate, unless the police magistrate, within such reasonable time as, with reference to the circumstances of the case, he may fix receives from a Secretary of State an order signifying that a requisition has been made for the surrender of such criminal.

9. When a fugitive criminal is brought before the police magistrate, the police magistrate shall hear the case in the same manner, and have the same jurisdiction and powers, as near as may be, as if the prisoner were brought before him charged with an indictable offence committed in England.

Hearing of case and evidence of political character of crime.

mitted in England.

The police magistrate shall receive any evidence which may be tendered to show that the crime of which the prisoner is accused or alleged to have been convicted is an offence of a political character or is not an extradition crime.

10. In the case of a fugitive criminal accused of an extradition crime, if the foreign warrant authorizing the arrest of such criminal is duly authenticated, and such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, justify the committal for trial of the prisoner if the crime of which he is accused had been committed in England, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged.

In the case of a fugitive criminal alleged to have been convicted of an extradition crime, if such evidence is produced as (subject to the provisions of

SEC. 9.—Mere omission to give formal proof of the Order in Council which contained nothing that could assist the prisoner does not entitle the prisoner to release. (1914) 1 K.B. 77. *See also* (1877) 3 Q.B.D. 42. Identity of the person who has been arrested with the person accused must be established by evidence which the Magistrate can accept. (1866) 2 Ch. App. 47 (L.C.); (1907) 2 K.B. 157 at p. 164. As to the necessity of *prima facie* proof of guilt, *see* (1885) 58 L.J. (M.C.) 42; (1913) 48 L.J. 371 (Hals. Laws of England, 2nd Ed., Vol. XIV, p. 532); (1911) 2 K.B. 82. It is the duty of the Magistrate to hear evidence given on behalf of the accused. (1903) 20 T.L.R. 121; and the accused may himself give evidence. (1900) Times, April 30. The accused person may call evidence of his nationality when that question is material. (1888) 58 L.J. (M.C.) 42; (1907) 5 Sol. Jo. 571; also evidence of *alibi*. (Clarke's Law of Extradition, 4th Ed., p. 252 cited in Hals. Laws of England, 2nd Ed., Vol. XIV, p. 533). As to the power

of Magistrate to impound goods, *see* (1894) 1 Q.B. 420; (1902) 2 K.B. 312. As to rules of procedure and evidence in trial of offenders surrendered by a foreign state, *see* (1886) 16 Cox. C. C. 107. As to the procedure where demand for an offender is made by more than one state, *see* (1900) Times, April 30 (*R. v. Kams*). The Magistrate before whom a fugitive criminal is brought may admit him to bail pending the inquiry. (1898) 2 Q.B. 615. "This inherent power to admit to bail is historical, and has long been exercised by the Court; and if the legislature had meant to curtail or circumscribe this well-known power, their intention would have been carried out by express enactment." Per Lord Russell in *Ibid.* *See also* (1895) Times, March 14; (1908) Times, November 18 (also power to remand and admit to bail as many times as necessary). *See also* (1922) 128 L.T. 113.

SEC. 10.—As to discharge after committal, *see* (1912) 3 K.B. 190.

this Act) would according to the law of England, prove that the prisoner was convicted of such crime, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged.

If he commits such criminal to prison, he shall commit him to the Middlesex House of Detention, or to some other prison in Middlesex, there to await the warrant of a Secretary of State for his surrender, and shall forthwith send to a Secretary of State a certificate of the committal, and such report upon the case as he may think fit.

Surrender of fugitive to foreign state by warrant of Secretary of State.

11. If the police magistrate commits a fugitive criminal to prison, he shall inform such criminal that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of *habeas corpus*.

Upon the expiration of the said fifteen days, or, if a writ of *habeas corpus* is issued, after the decision of the Court upon the return to the writ, as the case may be, or after such further period as may be allowed in either case by a Secretary of State, it shall be lawful for a Secretary of State, by warrant under his hand and seal, to order the fugitive criminal, if not delivered on the decision of the Court, to be surrendered to such person as may in his opinion be duly authorized to receive the fugitive criminal by the foreign state from which the requisition for the surrender proceeded, and such fugitive criminal shall be surrendered accordingly.

It shall be lawful for any person to whom such warrant is directed and for the person so authorized as aforesaid to receive, hold in custody, and convey within the jurisdiction of such foreign state the criminal mentioned in the warrant; and if the criminal escapes out of any custody to which he may be delivered on or in pursuance of such warrant, it shall be lawful to re-take him in the same manner as any person accused of any crime against the laws of that part of Her Majesty's dominions to which he escapes may be re-taken upon an escape.

12. If the fugitive criminal who has been committed to prison is not surrendered and conveyed out of the United Kingdom within two months after such committal, or if a writ of *habeas corpus* is issued, after the decision of the Court upon the return to the writ, it shall be lawful for any judge of one of Her Majesty's Superior Courts at Westminster, upon application made to him by or on behalf of the criminal, and upon proof that reasonable notice of the intention to make such application has been given to a Secretary of State, to order the criminal to be discharged out of custody unless sufficient cause is shown to the contrary.

Discharge of persons apprehended if not conveyed out of United Kingdom within two months.

Superior Courts at Westminster, upon application made to him by or on behalf of the criminal, and upon proof that reasonable notice of the intention to make such application has been given to a Secretary of State, to order the criminal to be discharged out of custody unless sufficient cause is shown to the contrary.

13. The warrant of the police magistrate issued in pursuance of this Act may be executed in any part of the United Kingdom in the same manner as if the same had been originally issued or subsequently indorsed by a justice of the peace having jurisdiction in the place where the same is executed.

Execution of warrant of police magistrate.

14. Depositions or statements on oath taken in a foreign state and copies of such original depositions or statements and foreign certificates of or judicial documents stating the fact of a conviction, may, if duly authenticated, be received in evidence in proceedings under this Act.

Depositions to be evidence.

SEC. 11.—A plea that the demand for surrender is not made in good faith or in the interests of justice can only be addressed to the Secretary of State and the Court will not permit arguments on that point. (1896) 1 Q.B. 108 at p. 115. As to procedure in case of a fugitive criminal charged with two offences, one of which alone is an extradition crime, *see* (1902) 18 T.L.R. 231. As

to contents of the warrant of committal, *see* (1892) 8 T.L.R. 283; (1896) 1 Q.B. 509; 35 L. Jo. 173; (1902) 18 T.L.R. 231. Application for writ of *habeas corpus* may be made by the prisoner to test the validity of his commitment. (1882) 9 Q.B.D. 93; (1885) 16 Q.B.D. 487 (492); (1914) 1 K.B. 77. But *see also* 66 I.A. 222=(1939) 2 M.L.J. 406 (P.C.); (1896) 1 Q.B. 509.

15. Foreign warrants and depositions or statements on oath, and copies thereof, and certificates of or judicial documents stating the fact of a conviction, shall be deemed duly authenticated for the purposes of this Act if authenticated in manner provided for the time being by law or authenticated as follows:—

(1) If the warrant purports to be signed by a judge, magistrate, or officer of the foreign state where the same was issued;

(2) If the depositions or statements or the copies thereof purport to be certified under the hand of a judge, magistrate, or officer of the foreign state where the same were taken to be the original depositions or statements, or to be true copies thereof, as the case may require, and

(3) If the certificate of or judicial document stating the fact of conviction purports to be certified by a judge, magistrate, or officer of the foreign state where the conviction took place; and if in every case the warrants, depositions, statements, copies, certificates, and judicial documents (as the case may be) are authenticated by the oath of some witness or by being sealed with the official seal of the minister of justice, or some other minister of state: And all courts of justices, and magistrates shall take judicial notice of such official seal and shall admit the documents so authenticated by it to be received in evidence without further proof.

Crimes committed at Sea.

16. Where the crime in respect of which the surrender of a fugitive criminal is sought was committed on board any vessel on the high seas which comes into any port of the United Kingdom, the following provisions shall have effect:

(1) This Act shall be construed as if any stipendiary magistrate in England or Ireland, and any sheriff or sheriff substitute in Scotland, were substituted for the police magistrate throughout this Act, except the part relating to the execution of the warrant of the police magistrate:

(2) The criminal may be committed to any prison to which the person committing him has power to commit persons accused of the like crime:

(3) If the fugitive criminal is apprehended on a warrant issued without the order of a Secretary of State, he shall be brought before the stipendiary magistrate, sheriff, or sheriff substitute who issued the warrant, or who has jurisdiction in the port where the vessel lies, or in the place nearest to that port.

Fugitive Criminals in British Possessions.

17. This Act, when applied by Order in Council, shall, unless it is otherwise provided by such order, extend to every British possession in the same manner as if throughout this Act the British possession were substituted for the United Kingdom or England, as the case may require, but with the following modifications, namely:

(1) The requisition for the surrender of a fugitive criminal who is in or suspected of being in British possession may be made to the Governor of that British possession by any person recognised by that governor as a consul-general, consul, or vice-consul, or (if the fugitive criminal has escaped from a colony or dependency of the foreign state on behalf of which the requisition is made) as the Governor of such colony or dependency:

(2) Nor warrant of a Secretary of State shall be required, and all powers vested in or acts authorized or required to be done under this Act by the police magistrate and the Secretary of State or either of them, in relation to the surrender of a fugitive criminal, may be done by the Governor of the British possession alone:

(3) Any prison in the British possession may be substituted for a prison in Middlesex:

(4) A judge of any court exercising in the British possession the like powers as the Court of Queen's Bench exercises in England may exercise the power of discharging a criminal when not conveyed within two months out of such British possession.

18. If by any law or ordinance, made before or after the passing of this Act by the legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in or suspected of being in such British possession, Her Majesty may, by the Order in Council applying this Act in the case of any foreign state, or by any subsequent order, either

suspend the operation within any such British possession of this Act, or of any part thereof so far as it relates to such foreign state, and so long as such law or ordinance continues in force there, and no longer;

or direct that such law or ordinance, or any part thereof, shall have effect in such British possession, with or without modifications and alterations, as if it were part of this Act.

General Provisions.

19. Where, in pursuance of any arrangement with a foreign state, any person accused or convicted of any crime which, if committed in England, would be one of the crimes described in the first schedule to this Act, is surrendered by that foreign state, such person shall not, until he has been restored or had an opportunity of returning to such foreign state, be triable or tried for any offence committed prior to the surrender in any part of Her Majesty's dominions other than such of the said crimes as may be proved by the facts on which the surrender is grounded.

20. The forms set forth in the second schedule to this Act, or forms as near thereto as circumstances admit, may be used in all matters to which such forms refer, and in the case of a British possession may be so used, *mutatis mutandis*, and when used shall be deemed to be valid and sufficient in law.

21. Her Majesty may, by Order in Council, revoke or alter, subject to the restrictions of this Act, any Order in Council made in pursuance of this Act, and all the provisions of this Act with respect to the original order shall (so far as applicable) apply, *mutatis mutandis*, to any such new order.

22. This Act (except so far as relates to the execution of warrants in the Channel Islands) shall extend to the Channel Islands and Isle of Man in the same manner as if they were part of the United Kingdom; and the Royal Courts of the Channel Islands are hereby respectively authorized and required to register this Act.

23. Nothing in this Act shall affect the lawful powers of Her Majesty or of the Governor-General of India ¹[or, as the case may be, of the Governor of Burma] ²[* * *] to make treaties for the extradition of criminals with Indian native states, or with other Asiatic States conterminous with British India ¹[or with Burma] or to carry into execution the provisions of any such treaties made either before or after the passing of this Act.

24. The testimony of any witness may be obtained in relation to any cri-

LEG. REF.

¹ Inserted by the Govt. of India (Adap. of

Acts of Parliament) Order, 1937.

² The words 'in Council' omitted by *ibid*.

Power of foreign state to obtain evidence in United Kingdom.

criminal matter pending in any Court or tribunal in a foreign state in like manner as it may be obtained in relation to any civil matter under the Foreign Tribunals Evidence Act, 1856;

and all the provisions of that Act shall be construed as if the term civil matter included a criminal matter, and the term cause included a proceeding against a criminal: Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

25. For the purposes of this Act, every colony, dependency, and constituent part of a foreign state and every vessel of that state, shall (except where expressly mentioned as distinct in this Act) be deemed to be within the jurisdiction of and to be part of such foreign state.

Definition of terms.

26. In this Act, unless the context otherwise requires,—

The term “British possession” means any colony, plantation, island, territory, or settlement within Her Majesty’s dominions, and not within the United Kingdom, the Channel Islands and Isle of Man; and all colonies, plantations, islands, territories, and settlements under one legislature, as hereinafter defined, are deemed to be one British possession:

The term “legislature” means any person or persons who can exercise legislative authority in a British possession, and where there are local legislatures as well as a central legislature means the central legislature only:

The term “governor” means any person or persons administering the Government of British possession, ¹[* * *]:

The term “extradition crime” means a crime which, if committed in England or within English jurisdiction, would be one of the crimes described in the first schedule to this Act:

The terms “conviction” and “convicted” do not include or refer to a conviction which under foreign law is a conviction for contumacy, but the term “accused person” includes a person so convicted for contumacy:

The term “fugitive criminal” means any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign state who is in or is suspected of being in some part of Her Majesty’s dominions; and the term “fugitive criminal of a foreign state” means a fugitive criminal accused or convicted of an extradition crime committed within the jurisdiction of that state:

The term “Secretary of State” means one of Her Majesty’s Principal Secretaries of State:

The term “police magistrate” means a chief magistrate of the metropolitan police courts, or one of the other magistrates of the metropolitan Police Court in Bow Street.

The term “justice of the peace” includes in Scotland any sheriff, sheriff’s substitute, or magistrate:

The term “warrant” in the case of any foreign state, includes any judicial document authorizing the arrest of a person accused or convicted of crime.

Repeal of Acts.

27. The Acts specified in the third schedule to this Act are hereby repealed

as to the whole of Her Majesty's dominions; and this Act (with the exception of anything contained in it which is inconsistent with the treaties referred to in the Acts so repealed), shall apply (as regards crimes committed either before or after the passing of this Act) in the case of the foreign states with which those treaties are made, in the same manner as if an Order in Council referring to such treaties had been made in pursuance of this Act and as if such order had directed that every law and ordinance which is in force in any British possession with respect to such treaties should have effect as part of this Act. [* * *].

FIRST SCHEDULE.[²]

LIST OF CRIMES.

The following list of crimes is to be construed according to the law existing in England, or in a British possession (as the case may be), at the date of the alleged crime, whether by common law or by statute made before or after the passing of this Act:

Murder, and attempt and conspiracy to murder.

Manslaughter.

Counterfeiting and altering money and uttering counterfeit or altered money.

Forgery, counterfeiting, and altering and uttering what is forged or counterfeited or altered.

Embezzlement and larceny.

Obtaining money or goods by false pretences.

Crimes by bankrupts against bankruptcy law.

Fraud by a bailee, banker, agent, factor, trustee, or director, or member, or public officer of any company made criminal by any Act for the time being in force.

Rape, Abduction, Child stealing, Burglary and housebreaking, Arson, Robbery with violence. Threats by letter or otherwise with intent to extort. Piracy by law of nations. Sinking or destroying a vessel at sea, or attempting or conspiring to do so. Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm. Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

SECOND SCHEDULE.

FORM OF ORDERS OF SECRETARY OF STATE TO THE POLICE MAGISTRATE.

To the chief magistrate of the metropolitan police courts or other magistrate of the metropolitan police court in Bow Street [or the stipendiary magistrate at _____].

WHEREAS, in pursuance of an arrangement with _____, referred to in an Order of Her Majesty in Council dated the _____ day of _____, requisition has been made to me, _____ one of Her Majesty's Principal Secretaries of State, by _____, the diplomatic representative of _____ for the surrender of _____, late of _____ accused [or convicted] of the commission of the crime of _____ within the jurisdiction of _____

Now I hereby, by this my order under my hand and seal, signify to you that such requisition has been made, and require you to issue your warrant for the apprehension of such fugitive, provided that the conditions of the Extradition Act, 1870, relating to the issue of such warrant, are in your judgment complied with.

Given under the hand and seal of the undersigned, one of Her Majesty's Principal Secretaries of State, this _____ day of _____ 18 _____.

FORM OF WARRANT OF APPREHENSION BY ORDER OF SECRETARY OF STATE.

Metropolitan police district, [or county or borough of _____] to wit.

To all and each of the constables of the metropolitan police force [or of the county or borough of _____],

LEG. REF.

¹ Rep. by 46 and 47 Vic., c. 39 (S.L.R.).

² By sec. 8 of 36 and 37 Vict., c. 60, this Act is to be construed as if there were included in this schedule the list of crimes contained in the schedule to that Act. By sec. 28 of 36 and 37 Vict., c. 88, certain slave trade offences are also to be deemed to be inserted.

FIRST SCHEDULE.—Taking a bill of exchange for money won by cheating at cards amounts to "obtaining money by false pre-

tence". (1912) 3 K.B. 424; but winning money by the three-card trick is not. (1912) 3 K.B. 568. These crimes must be construed according to the law existing in England or in the British possession (as the case may be) at the date of the alleged crime. (1902) 18 T.L.R. 231. As to the applicability of the Act to special crimes, see (1877) 3 Q.B.D. 42. A person extradited on a particular charge is triable for any other extradition crime provable by the party upon which his surrender is grounded. (1880) 15 Ch. D. 435 (C.A.). See also (1931) 1 K.B. 527 (C.O.A.).

WHEREAS the Right Honourable one of Her Majesty's Principal Secretaries of State, by order under his hand and seal, hath signified to me that requisition hath been duly made to him for the surrender of late of [] , accused [or convicted] of the commission of the crime of [] within the jurisdiction of [] : This is therefore to command you in Her Majesty's name forthwith to apprehend the said [] pursuant to the Extradition Act, 1870, wherever he may be found in the United Kingdom, or Isle of Man, and bring him before me or some other [*magistrate sitting in this court] to show cause why he should not be surrendered in pursuance of the said Extradition Act, for which this shall be your warrant.

Given under my hand and seal at [*Bow Street, one of the police courts of the metropolis] this [] day of [] 18 [] .

J. P.

*Note.—Alter as required.

FORM OF WARRANT OF APPREHENSION WITHOUT ORDER OF SECRETARY OF STATE.

Metropolitan police district, [or county or borough of []] To all and each of the constables of the metropolitan police force [or of the country or borough of []] to wit.

WHEREAS it has been shown to the undersigned, one of Her Majesty's justices of the peace in and for the metropolitan police district [or the said county or borough of []] that [] late of [] , is accused [or convicted] of the commission of the crime of [] within the jurisdiction of [] : This is therefore to command you in Her Majesty's name forthwith to apprehend the said [] , and to bring him before me or some other magistrate sitting at this court [or one of Her Majesty's justices of the peace] in and for the county [or borough of []] to be further dealt with according to law, for which this shall be your warrant.

Given under my hand and seal at Bow Street, one of the police courts of the metropolis [or []] in the county or borough [] aforesaid] this [] day of [] 18 [] .

J.P.

FORM OF WARRANT FOR BRINGING PRISONER BEFORE THE POLICE MAGISTRATE.

County [or borough of []] To [] constable of the police force of [] and to all other peace officers in the said county [or borough of []] to wit.

WHEREAS [] late of [] , accused [or alleged to be convicted] of the commission of the crime of [] within the jurisdiction of [] has been apprehended and brought before the undersigned; one of Her Majesty's justices of the peace in and for the said county [or borough of []] : And whereas by the Extradition Act, 1870, he is required to be brought before the chief magistrate of the metropolitan police court, or one of the police magistrates of the metropolis sitting at Bow Street, within the metropolitan police district [or the stipendiary magistrate for []] : This is therefore to command you, the said constable, in Her Majesty's name forthwith to take and convey the said []

to the metropolitan police district [or the said []] , and there carry him before the said chief magistrate or one of the police magistrates of the metropolis sitting at Bow Street within the said district [or before a stipendiary magistrate sitting in the said []] , to show cause why he should not be surrendered in pursuance of the Extradition Act, 1870, and otherwise to be dealt with in accordance with law, for which this shall be your warrant.

Given under my hand and seal at [] in the county [or borough] aforesaid, this [] day of [] 18 [] .

J.P.

FORM OF WARRANT OF COMMITTAL.

Metropolitan police district, [or the county or borough of []] To [] , one of the constables of the metropolitan police force, [or of the police force of the county or borough of []] and to the keeper of the []

Be it remembered, that on this [] day of [] in the year of our Lord [] , late of [] , is brought before me []

the chief magistrate of the metropolitan police courts [or one of the police magistrates of the metropolis], sitting at the police court in Bow Street, within the metropolitan police district [or a stipendiary magistrate for []] , to show cause why he should not be surrendered in pursuance of the Extradition Act, 1870, on the ground of his being accused [or convicted] of the commission of the crime of [] within the jurisdiction of []

and for as much as no sufficient cause has been shown to me why he should not be surrendered in pursuance of the said Act:

This is therefore to command you, the said constable in Her Majesty's name forthwith to convey and deliver the body of the said [] into the custody of the said keeper of the [] at [] , and you, the said keeper, to receive the said:

into your custody, and him there safely to keep until he is thence delivered pursuant to the provisions of the said Extradition Act, for which this shall be your warrant.

Given under my hand and seal at Bow Street, one of the police courts of the metropolis, [or at the said] this day of 18 J.P.

FORM OF WARRANT OF SECRETARY OF STATE FOR SURRENDER OF FUGITIVE.

To the keeper of and to

WHEREAS, late of accused [or convicted] of the commission of the crime of within the jurisdiction of was delivered into the custody of you the keeper of, by warrant dated, pursuant to the Extradition Act, 1870:

Now I do hereby, in pursuance of the said Act, order you, the said keeper, to deliver the body of the said into the custody of the said, and I command you, the said, to receive the said into your custody, and to convey him within the jurisdiction of the said, and there place him in the custody of any person or persons appointed by the said to receive him, for which this shall be your warrant.

Given under the hand and seal of the undersigned, one of Her Majesty's Principal Secretaries of State, this day of

THIRD SCHEDULE.

Year and Chapter.	Title.
6 & 7 Vict., c. 75	.. An Act for giving effect to a convention between Her Majesty and the King of the French for the apprehension of certain offenders.
6 & 7 Vict., c. 76	.. An Act for giving effect to a treaty between Her Majesty and the United States of America for the apprehension of certain offenders.
8 & 9 Vict., c. 120	.. An Act for facilitating execution of the treaties with France and the United States of America for the apprehension of certain offenders.
25 & 26 Vict., c. 70	.. An Act for giving effect to a convention between Her Majesty and the King of Denmark for the mutual surrender of criminals.
29 & 30. Vict, c. 121	.. An Act for the amendment of the law relating to treaties of extradition.

THE EXTRADITION ACT, 1873 (36 & 37 VIC., C. 60).

Effect of Subsequent legislation.—

Am. 58 & 59 Vict., c. 33.

Ext. (B.I.), Act XV of 1903.

[5th August, 1873.

*An Act to amend the Extradition Act, 1870.*¹

[*Preamble.*]

1. This Act shall be construed as one with the Extradition Act, 1870 (in this Act referred to as the principal Act) and the principal Act, and this Act may be cited together as the Extradition Act, 1870 and 1873, and this Act may be cited alone as the Extradition Act, 1873.

Construction of Act and short title. 33 & 34 Vict., c. 52.

Explanation of S. 6 of 33 & 34 Vict., c. 52.

2. Whereas by section 6 of the principal Act it is enacted as follows:

"Where this Act applies in the case of any foreign state, every fugitive "criminal of that state who is in or suspected of being in any part of Her "Majesty's dominions, or that part which is specified in the order applying this "Act (as the case may be), shall be liable to be apprehended and surrendered "in manner provided by this Act, whether the crime in respect of which the "surrender is sought was committed before or after the date of the order, and "whether there is or is not any concurrent jurisdiction in any Court of Her "Majesty's dominions over that crime".

LEG. REF.

¹ Extended by Act IX of 1895, sec. 2.

And whereas doubts have arisen as to the application of the said section to crimes committed before the passing of the principal Act, and it is expedient to remove such doubts, it is therefore hereby declared that—

a crime committed before the date of the order includes in the said section a crime committed before the passing of the principal Act, and the principal Act and this Act shall be construed accordingly.

3. [Recital.]

Every person who is accused or convicted of having counselled, procured, commanded, aided, or abetted the commission of any extradition crime, or of being accessory before or after the fact to any extradition crime, shall be deemed for the purposes of the principal Act and this Act to be accused or convicted of having committed such crime, and shall be liable to be apprehended and surrendered accordingly.

Explanation of S. 14 of 33 & 34 Vict., c. 52, as to statements on oath including affirmations.

such affirmations.

4. * * * The provisions of the principal Act relating to depositions and statements on oath taken in a foreign state, and copies of such original depositions and statements do and shall extend to affirmations taken in a foreign state, and copies of

5. Secretary of State may, by order under his hand and seal, require, a police magistrate or a justice of the peace to take evidence for the purposes of any criminal matter pending in any Court or tribunal in any foreign state; and the police, magistrate or a justice of the peace, upon the receipt of such order, shall take the evidence of every witness appearing before him for the purpose in like manner as if such witness appeared on a charge against some defendant for an indictable offence, and shall certify at the foot of the depositions so taken that such evidence was taken before him, and shall transmit the same to the Secretary of State; such evidence may be taken in the presence or absence of the person charged, if any, and the fact of such presence or absence shall be stated in such deposition.

Any person may, after payment or tender to him of a reasonable sum for his costs and expenses in this behalf, be compelled, for the purposes of this section, to attend and give evidence and answer questions and produce documents, in like manner and subject to the like conditions as he may in the case of a charge preferred for an indictable offence.

Every person who wilfully gives false evidence before a police magistrate or justice of the peace under this section shall be guilty of perjury.

Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

6. The jurisdiction conferred by section sixteen of the principal Act on a stipendiary magistrate, and a sheriff or sheriff substitute, shall be deemed to be in addition to; and not in derogation or exclusion of, the jurisdiction of the police magistrate.

7. For the purposes of the principal Act and this Act a diplomatic representative of a foreign state shall be deemed to include any person recognized by the Secretary of State, as a Consul-General of that state, and a Consul or Vice-Consul shall be deemed to include any person recognized by the Governor of a British possession as a Consular Officer of a foreign state.

8. The principal Act shall be construed as if there were included in the first schedule to that Act the list of crimes contained in the schedule to this Act.

SCHEDULE. LIST OF CRIMES.

The following list of crimes is to be construed according to the law existing in England or in a British possession (as the case may be) at the date of the alleged crime whether by common law or by statute made before or after the passing of this Act:

Kidnapping and false imprisonment.

Perjury, and subornation of perjury, whether under common or statute law.

Any indictable offence under the Larceny Act, 1861, or any Act amending or substituted for the same, which is not included in the first schedule to the principal Act.

Any indictable offence under the Malicious Damage Act, 1861, or any Act amending or substituted for the same, which is not included in the first schedule to the principal Act.

Any indictable offence under the Forgery Act, 1861, or any Act amending or substituted for the same, which is not included in the first schedule to the principal Act.

Any indictable offence under the Coinage Offences Act, 1861, or any Act amending or substituted for the same, which is not included in the first schedule to the principal Act.

Any indictable offence under the Offences Against the Person Act, 1861, or any Act amending or substituted for the same, which is not included in the first schedule to the principal Act.

Any indictable offence under the laws for the time being in force in relation to bankruptcy which is not included in the first schedule to the principal Act.

THE EXTRADITION ACT, 1895 (58 & 59 VIC., C. 33).

An Act to amend the Extradition Acts, 1870 and 1873, so far as respects the Magistrate by whom and the Place in which the case may be heard and the Criminal held in custody.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. (1) Where a fugitive criminal has been apprehended in pursuance of a warrant under section 8 of the Extradition Act, 1870, and a Secretary of State on representation made by or on behalf of the Criminal is of opinion that his removal for the purpose of his case being heard at Bow street will be dangerous to his life or prejudicial to his health, the Secretary of State, if it appears to him consistent with the Order in Council under the Extradition Act, 1870, applicable to the case, may in his discretion by order, stating the reasons for such opinion, direct the case to be heard before such Magistrate as is named in the order, and at the place in the United Kingdom at which the criminal was apprehended, or for the time being is.

(2) The Magistrate may be, if the place is in England, a metropolitan police magistrate or a stipendiary magistrate, and if it is in Scotland, a sheriff or sheriff substitute, and if it is in Ireland, any stipendiary magistrate, and the magistrate hearing the case in pursuance of the order shall for that purpose be deemed to be a police magistrate within the meaning of the Extradition Act, 1870, and also shall have the same jurisdiction, duties and powers, as near as may be, and may commit to the same prison as if he were a magistrate for the county, borough, or place in which the hearing takes place.

(3) Provided that, when the fugitive criminal is committed to prison to await his surrender, the committing magistrate, if of opinion that it will be dangerous to the life or prejudicial to the health of the prisoner to remove him to prison, may order him to be held in custody at the place in which he for the time being is, or any other place named in the order to which the magistrate thinks he can be removed without danger to his life or prejudice to his health, and while so held he shall be deemed to be in legal custody, and the Extradition Acts 1870 and 1873, shall apply to him as if he were in the prison to which he is committed, and the forms of warrant used under the said Acts may be varied accordingly.

2. This Act may be cited as the Extradition Act, 1895, and shall be construed together with the Extradition Acts, 1870 and 1873 and those Acts and this Act may be cited collectively as the Extradition Acts, 1870 to 1895.

Short title and construction.

THE EXTRADITION ACT, 1906 (6 EDW. 7, C. 15).

An Act to include Bribery amongst Extradition Crimes.

WHEREAS a Convention has been concluded between His Majesty and the President of the United States for including in the list of crimes on account of which extradition may be granted certain offences, and amongst others bribery:

AND WHEREAS it is provided by the said Convention that it shall come into force within ten days after publication in conformity with the laws of the high contracting parties:

And whereas bribery is not at present included in the list of crimes in the first schedule to the Extradition Act, 1870 and the said Convention cannot be published in conformity with the laws of the United Kingdom until bribery is so included:

Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Addition of bribery to list of extradition crimes.

The Extradition Act, 1870, shall be construed as if bribery were included in the list of crimes in the First Schedule to that Act.

This Act may be cited as the Extradition Act, 1906; and the Extradition Acts, 1870 to 1895, and this Act may be cited together as the Extradition Acts, 1870 to 1906.

Short title.

THE EXTRADITION ACT, 1932 (22 & 23 GEO. 5, C. 39).

An Act to include offences in relation to dangerous drugs, and attempts to commit such offences, among extradition crimes.

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. The Extradition Act, 1870, shall be construed as if offences against any enactment for the time being in force relating to dangerous drugs, and attempts to commit such offences, were included in the list of crimes in the First Schedule to that Act.

Amendment of 33 & 34 Vict., c. 52, Schedule 1.

2. This Act may be cited as the Extradition Act, 1932, and the Extradition Acts, 1870 to 1906, and this Act may be cited together as the Extradition Acts, 1870 to 1932.

Short title and citation.

THE FACTORIES ACT (XXV OF 1934).

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THE FACTORIES ACT (XXV OF 1934).

[Am. Acts XI of 1935; VIII of 1936; XVII of 1940; Madras Act VI of 1941; Acts XVI of 1941, XIV of 1944 and III of 1945; and Rep. in part by Act XX of 1937].

[20th August, 1934.

An Act to consolidate and amend the Law regulating labour in factories.

WHEREAS it is expedient to consolidate and amend the Law regulating labour in factories; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called THE FACTORIES ACT, 1934.

SEC. 1: OBJECT OF THE ACT.—The object of the Act is to protect human beings from being subjected to unduly long hours of bodily strain or manual labour. It also provides that employees should work in healthy and sanitary conditions so far as the manufacturing process will allow and that precautions should be taken for their safety and for the prevention of accidents. In order to obtain the informations necessary to ensure that its objects are carried out, the Local Government are empowered to appoint inspectors, to call for returns, and to see that the prescribed registers are duly kept. This is part of the machinery which enables the authorities to maintain effective supervision, and it is undoubtedly important that there should be substantial compliance with these provisions of the Act. 38 C.W.N. 1008=152 I.C. 556=1934 C. 730 (*Per McNair, J.*). At the same time, it should not be forgotten that the Act is sanctioning interference with the ordinary rights of the citizen and that the inquisitorial powers which are given should be used with tact and circumspection. 38 C.W.N. 1008=152 I.C. 556=1934 C. 730 (*Per MacNair, J.*).

CONSTRUCTION OF THE ACT.—The provisions of the Act have to be construed in favour of the employee and strictly in favour of the employer. 152 I.C. 556=38 C.W.N. 1008=1934 C. 730. "A law which is enacted for the benefit of the employee should not be used merely for the purpose of harassing the employer. The launching of a test case in respect of an infringement of provisions which are not generally available, the meaning of which is doubtful to the authorities themselves and which the factory management honestly complied with as they understood them, asking for further enlightenment from the authorities without getting any, is to be strongly deprecated." (*Ibid.*) "I am fully alive to the great importance of Factory Acts being properly enforced for the protection of workmen, and I have no doubt that in India it is particularly necessary that their beneficial provisions should be carried out. On the other hand one must also bear in mind that the employers' position has to be considered too. It may be that without any negligence on their part defects will exist in their factories, but if they are to be proceeded against in a Criminal Court for alleged negligence then it would seem only fair that the matter should be clearly

brought home to them. That I have no doubt is the reason why the Legislature has distinctly specified what the inspector has to do. Whether a particular accused in any case was negligent or not does not concern this question of general principle on the construction of the Act". 85 I.C. 226=26 Bom. L.R. 1245=1925 B. 143=26 Cr.L.J. 492.

CRITICISM ON THE DRAFTING OF THE ACT (XII of 1911).—"We desire to point out to the authorities concerned that it will be difficult to uphold prosecutions under many of the sections of this Act, unless they are amended, especially in cases of factories to which exemptions have been granted". (*Per Mallick, J.*) 35 C.W.N. 1108. "The Act is carelessly and loosely drawn. It seems to consist mainly of parts of the English Act taken from their context and patched together. It is a penal statute, and as such it is essential that its terms should be clear, definite and unambiguous. On the contrary, it is difficult—if not impossible for a lawyer still less a layman, to understand many of its provisions." (*Ibid.*) 35 C.W.N. 1108. "There are many provisions in the Act which are confused and ambiguous, and the rules and forms provided do not tally with the requirements of the sections. The truth seems to be that the application of the Act to special factories has never been properly thought out. Drastic redrafting and amendment of this important Act seem to be required urgently." (*Ibid.*) 35 C.W.N. 1108.

APPLICATION OF THE ACT TO CROWN FACTORIES.—Crown factories had from the beginning been brought under the operation of the Act, which followed in this respect the British law on the subject. This had been another subject of discussion when the Bill was introduced, and the conclusion to which the Committee had come on full consideration was, that Crown factories should be brought within the scope of the Act, but that the power to exempt them temporarily, in cases of emergency, should be reserved to the Government. It was quite necessary that such power should be reserved in order to avoid great inconvenience and mischief. It would be sufficient to instance the case of the Mint, and of the powder and gun manufacturing in time of war, to show the necessity for such a provision. (Proceedings in Council. *Fort St. George Gazette*, 4th May, 1881).

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) It shall come into force on the 1st day of January, 1935.

Definitions.

2. [Cf. Old Act, section 2 and section 156, English Act.] In this Act, unless there is anything repugnant in the subject or context,—

(a) "adolescent" means a person who has completed his fifteenth but has not completed his seventeenth year;

(b) "adult" means a person who has completed his seventeenth year;

(c) "child" means a person who has not completed his fifteenth year;

(d) "day" means a period of twenty-four hours beginning at midnight;

(e) "week" means a period of seven days beginning at midnight on Saturday night;

(f) "power" means electrical energy, and any other form of energy which is mechanically transmitted and is not generated by human or animal agency;

(g) "manufacturing process" means any process—

(i) for making, altering, repairing, ornamenting, finishing or packing, or otherwise treating any article or substance with a view to its use, sale, transport delivery or disposal, or

(ii) for pumping oil, water or sewage, or

(iii) for generating, transforming or transmitting power;

(h) "worker" means a person employed, whether for wages or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work whatsoever incidental to or connected with the manufacturing process or connected with the subject of the manufacturing process, but does not include any person solely employed in a clerical capacity in any room or place where no manufacturing process is being carried on;

(j) "factory" means any premises including the precincts thereof whereon twenty or more workers are working, or were working on any day of the

SEC. 2, CL. (a): "ADOLESCENT".—The expression used in the English Act is "young person" which expression is defined to mean a person who has ceased to be a child and is under the age of eighteen years. (English Act, sec. 156). The Indian Law fixes the age at seventeen.

SEC. 2, CL. (b): "ADULT".—Under the English Act, a person would be an adult only after completing his eighteenth year.

CL. (c): "CHILD".—ENGLISH ACT.—The expression "child" has been defined by the English Act as follows:—"The expression 'child' means a person who is under the age of fourteen years and who has not, being of the age of thirteen years obtained the certificate of proficiency or attendance at school mentioned in Part III of this (English Act) Act." (Sec. 156).

CL. (d): "DAY".—ENGLISH LAW.—Under the English Act, the expression "night" has been defined to mean the period between nine o'clock in the evening and six o'clock in the succeeding morning (Sec. 156).

CL. (f): "ANY OTHER FORM OF ENERGY WHICH IS MECHANICALLY TRANSMITTED".—These words must be construed *ejusdem generis* with electric, steam or water power and do not include hand power. [Wilmut v. Paton, (1902) 1 K.B. 237].

CL. (g): "PROCESS".—"Process" has been

defined by the English Act as including the use of any locomotive (Sec. 156).

"MANUFACTURING PROCESS".—These words merely refer to the particular business carried on and do not necessarily refer to the production of some article. So that laundries, carpet beating or bottle washing works, etc., are factories within the Act if mechanical power is used [Owner v. Cottingham Sanitary Steam Laundry Co., Ltd., (1910) 74 J.P. 219; Johnstone v. Lalonde Bros. and Parhal, (1912) 2 K.B. 218. See also Royal Masonic Institution for Boys v. Parkes, (1912) 3 K.B. 212 and Patterson v. Hunt (1909) 73 J.P. 496]. Putting ginned cotton into bales and having it pressed must be considered work connected with the manufacturing process and the men engaged in the work must be deemed to be employed in the factory. 143 I.C. 772=1933 N. 283.

CL. (h): "WORKER".—Of the definition of "Workmen" in the Indian Workmen's Compensation Act, Sec. 2, cl. (a).

CL. (j): "FACTORY".—The definition in this cl. (j) applies to the term 'factory' used in sec. 9 (3) of Cotton Ginning and Pressing Factories Act, 1925. 1937 M.W.N. 1335. See also I.L.R. (1937) Nag. 88 =1937 Nag. 311. By a factory is meant premises where anything is done towards the making or finishing of an article up to the

preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on,

but does not include a mine subject to the operation of the Indian Mines Act, 1923;

(k) "machinery" includes all plant whereby power is generated, transformed, transmitted or applied;

(l) "occupier" of a factory means the person who has ultimate control over the affairs of the factory:

stage when it is ready to be sold or is in a suitable condition to be put on the market. 109 I.C. 599=8 L. 666=29 P.L.R. 234=29 Cr.L.J. 583=A.I.R. 1928 L. 78. See also 1 N.L.R. 115. A factory includes everything, machine rooms, sheds, godowns, yards. If within these premises or precincts mechanical power is used in aid of any process for altering for transport or sale of any article, then these premises or precincts are a factory. 50 M. 834=1927 M. 345=52 M.L.J. 207. The drying yard used for drying ground-nuts, where machinery for decorticating the ground-nuts was working is a part of factory, although there is no connexion with machinery or any work incidental to the manufacturing process. (*Ibid.*)

RAILWAY WORKSHOPS are 'factories'. 119 I.C. 722=1929 Lah. 573. A *Gurhal Ghar* is a 'factory', even though the engine shed is a separate building and less than twenty persons are employed therein, but over twenty persons are employed in the *Gurhal Ghar* inclusive of those employed on the crushers and those employed in the boiling shed, and these latter must be said to be employed both "on the premises, and within the precincts of the *Gurhal Ghar*." 32 Bom.L.R. 329=1930 Bom. 162=31 Cr.L.J. 1094.

TWO OR MORE BUILDINGS entirely separate from each other may in certain circumstances form part of one and the same factory. See *L. C. C. and Tuffs*, in re, (1903) 86 J.P. 29; *Hoyle v. Gram*, (1862), 12 C.B. 124.

"USE OF POWER IN PART OF BUILDING."—Every part of the premises unless specially exempted forms part of a factory, although power may only be used in one part [*Taylor v. Hickes*; *Hardcastle v. Jones*, (1862) 3 B. and S. 153; *Palmer's Shipbuilding Co. v. Chaytor*, (1869) 4 Q.B. 209; But see *Vines v. Inglis*, (1915) S.C. 18]. The definition of "factory" is intended not to cover merely individual business in any premises but is intended to denote any premises as a composite whole with a central source of power, i.e., either steam, water, or other electrical or mechanical power. 57 B. 150=35 Bom. L.R. 83=1933 Bom. 109.

"WORKPLACE" is not defined either in this Act or in the English Act, but in *Bennett v. Hardinge*, (1900) 2 Q.B. 397, Channel, J., said:—"I think that a workplace must be a place where some work is being perpetually or permanently done, I do not say that the mere presence of workmen in repairing a private house would make it a workplace."

N.B.—"The Act mainly deals with labour employed in what may be described as peren-

nial factories (i.e.), excluding those which deal mainly with agricultural products in the raw state, and work for part of the year only; and all those establishments which either use no mechanical power or, using power, employ less than 20 persons. These also are excluded from the definition of "factories". See Whitley Commission Rep., p. 6.

PERSONS EMPLOYED IN THE FACTORY.—A person who works in a factory, whether for wages or not, may be deemed to be employed in that factory. Where it is shown that certain persons were engaged in the factory in one of the ways specified in sec. 2 (2) [of the old Act of 1911] it must be presumed they were 'employed' in the factory. 61 Cal. 332=35 Cr.L.J. 1401=38 C. W.N. 801=1934 Cal. 546. See sec. 2, cl. (2) of the old Act, XII of 1911. Persons employed merely for selling the manufactured articles do not come within the definition of "employed" in that factory even though they happen to occupy a room at the factory for the sake of convenience. 109 I. C. 599=8 L. 666=29 P.L.R. 234=29 Cr.L. J. 583=1928 Lah. 78. It is not correct to say that the Factories Act affects only manual labourers. 152 I.C. 566=38 C.W. N. 1008=A.I.R. 1934 Cal. 730.

POWER.—See sec. 2, cl. (j) *supra*.

SECS. 2 (j) AND 5.—The Notification of the Central Provinces Government No. 202-2644 VII, dated 17th January 1939, which declares that all places in Central Provinces, wherein manufacturing process is carried on with the aid of power and wherein on any one day of the twelve months preceding the date of the notification ten or more workers were employed, to be factories under the Factories Act is *intra Vires* of the power given to the Provincial Government by sec. 5 (1) of the Factories Act. The notification is not universal but selective and it does not render sec. (5) (j) of the Act nugatory inasmuch as the Act applies to the whole of British India while the notification applies only to Central Provinces. 1941 N.L.J. 471=I.L.R. (1942) N. 402=A.I.R. 1941 Nag. 337.

SEC. 2 (k): ENGLISH ACT.—Under the English Act the expression "machinery" includes any driving strap or band (sec. 156). The expression "*mill-gearing*" comprehends every shaft, whether upright, oblique or horizontal, and every wheel, drum or pulley or other appliance by which the motion of the first moving power is communicated to any machine appertaining to a manufacturing process. (*Ibid.*)

CL. (l): [See also Notes under sec. 70

Provided that where the affairs of a factory are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory;

(m) where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such sets is called a "relay," and the period or periods for which it works is called a "shift"; and

(n) "prescribed" means prescribed by rules made by the Provincial Government under this Act.

References to time of day. 3. [Cf. S. 51, Old Act.] References to time of day in this Act or references—

(a) in British India, ¹[* *] to Indian Standard time, which is five and a half hours ahead of Greenwich Mean Time, and

(b) ²[* * * * *]

4. (1) For the purposes of this Act, a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, the decortication of ground-nuts, the manufacture of coffee, indigo, lac, rubber, sugar (including *gur*) or tea, or any manufacturing process which is incidental to or connected with any of the aforesaid processes, is a seasonal factory:

Seasonal factories. Provided that the Provincial Government may, by notification in the Official Gazette, declare any such factory in which manufacturing processes are ordinarily carried on for more than one hundred and eighty working days in the year, not to be a seasonal factory for the purposes of this Act.

LEG. REF.

¹ Words 'excluding Burma' omitted by A. O., 1937.

² Cl. (b) of sec. 3 omitted by *ibid.*

infra]. "Occupier."—The word "occupier" in general means a person who occupies the factory either by himself or his agent. He may be an owner, he may be a lessee or even a mere licensee, but he must have the right to occupy the property and dictate how it is to be managed. 55 B. 366=32 Cr.L.J. 1063 (1)=33 Bom.L.R. 309=1931 B. 308. See also Rat. 902. The definition of "occupier" in the Act is not an exhaustive definition and there is nothing in it which in any way limits the normal meaning of the word "occupier" as indicating a person who is in actual possession and control of a factory. 50 B. 34=27 Bom.L.R. 1405=27 Cr.L.J. 165=1926 B. 57. The word "*Munim*" as commonly used does connote agency, and persons dealing with the chief authority in charge of the factory where it is situated would look upon him as the agent of the owner or occupier. If there is a special contract of service or agency between him and his master, he must prove it. 19 N.L.J. 247. The word "occupier" bears the same meaning in this Act as it bears in similar enactments in England, that is, a person who regulates a factory and controls the work that is done there. 20 I.C. 144=14 Cr.L.J. 384=15 Bom.L.R. 328. The question who is the occupier of a factory must depend among others, upon these considerations, namely:—Who alone has the right of using the factory for the purposes for

which it is constructed and worked; who has the right of regulating and controlling it; whose is the predominant possession or general superintendence over it. 10 Bom.L.R. 38=7 Cr.L.J. 44. The manager of a factory who resides in a part of the premises in which the factory is, is not an occupier of the factory within the meaning of the Act. 29 B. 423=7 Bom.L.R. 454; 2 Cr.L.J. 428.

OWNER'S LIABILITY.—Even if the accused, who is the owner of a factory, shows that he knows nothing about the management of the factory and that he has left the whole conduct of its affairs to a manager appointed by him for the purpose, he is not free from the liability imposed on him by sec. 41 (a) of the Factories Act. 55 B. 366=32 Cr.L.J. 1063 (1)=33 Bom.L.R. 309=1931 B. 308. In order to fix liability on any person other than the occupier of a factory, it is incumbent upon the latter to give the strictest proof of circumstances exonerating himself, and it is plain on the face of the section that the burden of proving absence of knowledge or consent on his part lies entirely upon him. 25 C. 454.

SEC. 3.—"The general acceptance of standard time has rendered a modification of sec. 51 (1) desirable." (Statement of Objects and Reasons).

SEC. 4: THIS SECTION IS NEW.—"The Labour Commission recommended differential treatment for seasonal and non-seasonal factories in the matter of adult hours and in other respects. This clause is based on their recommendation." (Statement of Objects and Reasons.)

(2) The Provincial Government may, by notification in the Official Gazette, declare any specified factory in which manufacturing processes are ordinarily carried on for not more than one hundred and eighty working days in the year and cannot be carried on except during particular seasons or at times dependent on the irregular action of natural forces, to be a seasonal factory for the purposes of this Act.

[5. (1) The Provincial Government may, by notification in the Official Gazette, declare that all or any of the provisions of this Act applicable to factories shall apply to any place wherein a manufacturing process is being carried on or is ordinarily carried on whether with or without the use of power whenever ten or more workers are working therein or have worked therein on any one day of the twelve months immediately preceding.

(2) A notification under sub-section (1) may be made in respect of any one such place or in respect of any class of such places or generally in respect of all such places.

(3) Notwithstanding anything contained in clause (j) of section 2, a place, to which all or any of the provisions of this Act applicable to factories are for the time being applicable in pursuance of a declaration under sub-section (1), shall, to the extent to which such provisions are so made applicable but not otherwise, be deemed to be a factory.] (*Substituted by Act XVI of 1941*).

6. [Cf. S. 53, Old Act.] The Provincial Government may, by order in writing, direct that the different departments or branches of a specified factory shall be treated as separate factories for all or any of the purposes of this Act.

SEC. 5.—*See* 1941 N.L.J. 471=1941 Nag. 337, cited under sec. 2 *supra*.

SEC. 6: EXTENT OF A FACTORY.—Subject to certain specified exceptions the area of the factory or workshop is the whole space contained within its walls. *Back v. Dick*, (1906) A.C. 325. "In the case of factoriesetc., the walls or fences built around the factory.....fix the boundaries and determine the area." *Back v. Dick*, (1906) A.C. 325, *per* Lord Atkinson, at p. 334.

MORE THAN ONE FACTORY IN A SINGLE BUILDING.—More than one factory or workshop may be contained in a single building or group of buildings; and different parts of the same building may constitute separate factories or workshops. (*See* 14 Hals. Laws of England, pp. 559-570.) "I cannot help thinking that we should be in great difficulties if we were to hold that the mere fact of one factory overlapping another caused them to be within the same curtilage." *Per* Kennedy, J., in *Brass v. London County Council*, (1924) 2 K.B. 336. In *Vines v. Inglis*, (1915) S.C. (J.) 18; 24 Digest 902 (b), a building consisted of a retail shop on the ground floor a millinery room in which no mechanical power was used on the next floor, and a non-textile factory for dress-making on the top floor, in which mechanical power was used, but not in respect of the millinery work. It was held that the mill-

nery room was not a factory. A part of a factory may, under circumstances, be declared for the purposes of the Act to be a separate factory or workshop. [English Factories Act, 1901, sec. 149, cl. (2).] Different branches or departments of work carried on in the same factory or workshop shall, for all or any of the purposes of the Act, be treated as if they were different factories or workshops. (English Factories Act, 1901, sec. 150).

SEPARATE BUILDINGS CONSTITUTING SAME FACTORY.—Separate buildings, even though, a considerable distance apart, may, if used for one continuous manufacturing process, constitute a single factory or workshop. [English Factories Act, 1901, sec. 149, cl. (4).] The place where the product of a factory is delivered, even if directly connected with the place of production, is not necessarily a part of the factory. *Spacey v. Dowlais*, (1905) 2 K.B. 879 (C.A.).

ROOMS USED SOLELY FOR SLEEPING PURPOSES.—Rooms used solely for sleeping purposes and places within the precincts of a factory solely used for some purpose other than the manufacturing process are excluded from the operation of the Factories Act. [English Factories Act, 1901, sec. 149, cl. (4). *Lewis v. Gilbertson*, (1904) 91 L.T. 377.]

7. Where the Provincial Government is satisfied that, following upon a change of occupier of a factory or in the manufacturing processes carried on therein, the number of workers for the time being working in the factory is less than twenty and is not likely to be twenty or more on any day during the ensuing twelve months, it may, by order in writing, exempt such factory from the operation of this Act:

Power to exempt on a change in the factory. Provided that any exemption so granted shall cease to have effect on and after any day on which twenty or more workers work in the factory.

8. [Cf. Ss. 56 and 57, Old Act.] In any case of public emergency the ¹[Provincial Government] may, by notification in the Official Gazette, exempt any factory from any or all of the provisions of this Act for such period as he may think fit.

9. [Cf. S. 33, Old Act.] (1) Before work is begun in any factory after the commencement of this Act, or before work is begun in any seasonal factory each season, the occupier shall send to the Inspector a written notice containing—

- (a) the name of the factory and its situation,
- (b) the address to which communications relating to the factory should be sent,
- (c) the nature of the manufacturing processes to be carried on in the factory,
- (d) the nature and the amount of the power to be used, [*]²
- (e) the name of the person who shall be the manager of the factory for the purposes of this Act,
- ²[; and
- (f) such other particulars as may be prescribed for the purposes of this Act.]

(2) Whenever another person is appointed as manager, the occupier shall send to the Inspector a written notice of the change, within seven days from the date on which the new manager assumes charge.

(3) During any period for which no person has been designated as manager of a factory under this section, or during which the person designated does not manage the factory, any person found acting as manager, or, if no such person is found, the occupier himself, shall be deemed to be the manager of the factory for the purposes of this Act.

CHAPTER II.

THE INSPECTING STAFF.

10. [Cf. S. 4, Old Act.] (1) The Provincial Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act within such local limits as it may assign to them respectively.

(2) The Provincial Government may, by notification as aforesaid, appoint any person to be a Chief Inspector, who shall, in addition to the powers conferred on a Chief Inspector under this Act, exercise the powers of an Inspector throughout the province.

I.E.G. REF.

¹ Substituted for 'Governor-General in Council' by A.O., 1937.

² The word "and" omitted and cl. (f) added by Act XIV of 1944.

SEC. 7: STATEMENT OF OBJECTS AND REASONS.—"This is a new clause designed to enable the Local Government to exempt

from the Act premises which by reason of a change in their use should no longer be treated as factories."

SEC. 8: STATEMENT OF OBJECTS AND REASONS.—Exceptional power given under this section is intended only for a serious general emergency such as might be caused by a war.

(3) No person shall be appointed to be an Inspector under sub-section (1) or a Chief Inspector, under sub-section (2) or, having been so appointed, shall continue to hold office, who is or becomes directly or indirectly interested in a factory or in any process or business carried on therein or in any patent or machinery connected therewith.

(4) Every District Magistrate shall be an Inspector for his district.

(5) The Provincial Government may also, by notification as aforesaid, appoint such public officers as it thinks fit to be additional Inspectors for all or any of the purposes of this Act, within such local limits as it may assign to them respectively.

(6) In any area where there are more Inspectors than one, the Provincial Government may, by notification as aforesaid, declare the powers which such Inspectors shall respectively exercise, and the Inspector to whom the prescribed notices are to be sent.

(7) Every Chief Inspector and Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code and shall be officially subordinate to such authority as the Provincial Government may specify in this behalf.

11. [Cf. S. 5, Old Act.] Subject to any rules made by the Provincial Government in this behalf, an Inspector may, within the local limits for which he is appointed,—

(a) enter, with such assistants (if any), being persons in the ¹[service of the Crown] or of any municipal or other public authority, as he thinks fit, any place which is, or which he has reason to believe to be, used as a factory or capable of being declared to be a factory under the provisions of section 5;

(b) make such examination of the premises and plant and of any prescribed registers, and take on the spot or otherwise such evidence of any persons as he may deem necessary for carrying out the purposes of this Act; and

(c) exercise such other powers as may be necessary for carrying out the purposes of this Act:

Provided that no one shall be required under this section to answer any question or give any evidence tending to criminate himself.

12. [Cf. Ss. 6 to 8, Old Act.] (1) The Provincial Government may appoint such registered medical practitioners as it thinks fit to be certifying surgeons for the purposes of this Act within such local limits as it may assign to them respectively.

(2) A certifying surgeon may authorise any registered medical practitioner to exercise any of his powers under this Act:

Provided that a certificate of fitness for employment granted by such authorized practitioner shall be valid for a period of three months only, unless it is confirmed by the certifying surgeon himself after examination of the person concerned.

Explanation.—In this section a “registered medical practitioner” means any person registered under the medical Act, 1858, or any subsequent enactment amending it, or under any Act of any legislature in British India providing for the maintenance of a register of medical practitioners, and includes, in any area where no such register is maintained, any person declared by the Provincial Government, by notification in the Official Gazette, to be a registered medical practitioner for the purposes of this section.

CHAPTER III.

HEALTH AND SAFETY.

13. [Cf. Ss. 9 (a) and 37 (2) (e), Old Act and S. 1, English Act.] Every

LEG. REF.

¹ Substituted for ‘employment of Government’ by A. O., 1937.

—Only registered medical practitioners may be appointed as certifying surgeons.

SEC. 13: REPORT OF SELECT COMMITTEE.

SEC. 12: REPORT OF SELECT COMMITTEE.

—Local Government is given discretion to make or not to make detailed provision by

Cleanliness. factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and shall be cleansed at such times and by such methods as may be prescribed, and these methods may include lime-washing, or colour-washing, painting, varnishing, disinfecting and deodorising.

14. [Cf. Ss. 9 (c), 10 and 37 (2) (e), Old Act and Ss. 1, 7 and 74, English Act.] (1) Every factory shall be ventilated in accordance with such standards and by such methods as may be prescribed.

(2) Where gas, dust or other impurity is generated in the course of work, adequate measures shall be taken to prevent injury to the health of workers.

(3) If it appears to the Inspector that in any factory gas, dust or other impurity generated in the course of work is being inhaled by the workers to an injurious extent, and that such generation or inhalation could be prevented by the use of mechanical or other devices, he may serve on the manager of the factory an order in writing, directing that mechanical or other devices for preventing such generation or inhalation shall be provided before a specified date, and shall thereafter be maintained in good order and used throughout working hours.

(4) The Provincial Government may make rules for any class of factories requiring mechanical or other devices to be provided and maintained for preventing the generation or inhalation of gas, dust or other impurities, which may be injurious to workers and specifying the nature of such devices.

Artificial humidification. 15. [Cf. Ss. 9 (d), 12 and 37 (2) (g), Old Act and Ss. 90-96, English Act.] (1) The Provincial Government may make rules—

(a) prescribing standards for the cooling properties of the air in factories in which the humidity of the air is artificially increased;

(b) regulating the methods used for artificially increasing the humidity of the air; and

(c) directing prescribed tests for determining the humidity and cooling properties of the air to be carried out and recorded.

(2) In any factory in which the humidity of the air is artificially increased, the water used for the purpose shall be taken from a public supply or other source of drinking water, or shall be effectively purified before it is so used.

(3) If it appears to the Inspector that the water used in a factory for increasing humidity which is required to be effectively purified under subsection (2) is not effectively purified, he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

16. [Cf. S. 6, English Act.] If it appears to the Chief Inspector or to an Inspector specially authorized in this behalf by the Provincial Government that the cooling properties of the air in any factory are at times insufficient to secure workers against injury

rules for the time and methods of cleansing a factory.

SEC. 16: STATEMENT OF OBJECTS AND REASONS.—“This is based on a recommendation of the Labour Commission who give in their report the previous history of the legislative proposals for protecting workers against the effects of excessive heat.”

ENGLISH LAW.—In textile factories other than cotton factories 600 cubic feet of fresh air per hour per individual are required to be supplied.—*St. R. & O. Rev.*, 1902, Vol. IV.

REASONABLE TEMPERATURE.—This is a question of fact and may vary with the circum-

stances of the particular case. See *Deane v. Barnes*, (1901) 65 J.P. 235; *Peter v. Plowden*, (1903) 67 J.P. 152. In *Bennet v. Hardinge*, (1900) 2 Q.B. 397, Channel, J., said: “It seems to me that the phrase ‘workers in attendance’ means persons who are in fact on the premises for any substantial period, and I do not think that they are any the less in attendance on the premises because they are there as customers. It does not seem to me that the purpose or object for which they are there affects the matter one way or the other.”

to health or against serious discomfort, and that they can be to a great extent increased by measures which will not involve an amount of expense which is unreasonable in the circumstances, the Chief Inspector may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

17. [Cf. Ss. 1 and 3, English Act and Ss. 9 (b) and 37 (2) (f), Old Act.]

Overcrowding. In order that no room in a factory shall be crowded during working hours to a dangerous extent or to an extent which may be injurious to the health of the workers, the proportion which the number of cubic feet of space in a room and the number of superficial feet of its floor area bears to the number of workers working at any time therein shall not be less than such standards as may be prescribed either generally or for the particular class of work carried on in the room.

Lighting.

18. [Cf. S. 11, Old Act.] (1) A factory shall be sufficiently lighted during all working hours.

(2) If it appears to the Inspector that any factory is not sufficiently lighted, he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

(3) The Provincial Government may make rules requiring that all factories of specified classes shall be lighted in accordance with prescribed standards.

19. [Cf. S. 75, English Act and Ss. 14 and 37 (2) (i), Old Act.] (1) In

Water. every factory a sufficient supply of water fit for drinking shall be provided for the workers at suitable places.

(2) The supply required by sub-section (1) shall comply with such standards as may be prescribed.

(3) In every factory ¹[* * *] a sufficient supply of water suitable for washing shall be provided for the use of workers, at suitable places and with facilities for its use, according to such standards as may be prescribed.

20. [Cf. S. 9, English Act and Ss. 13 and 37 (2) (h), Old Act.] For

Latrines and urinals. every factory sufficient latrines and urinals, according to the prescribed standards, shall be provided, for male workers and for female workers separately, of suitable patterns and at convenient places as prescribed, and shall be kept in a clean and sanitary condition during all working hours.

21. [Cf. S. 16, English Act and S. 15, Old Act.] In every factory the

Doors to open outwards. doors of each room in which more than twenty persons are employed shall, except in the case of sliding doors, be constructed so as to open outwards, or, where the door is between two rooms, in the direction of the nearest exit from the building, and no such door shall be locked or obstructed while any work is being carried on in the room.

LEG. REF.

¹ In sub-section (3) the words "in which any process involving contact by the workers with injurious or obnoxious substances is carried on" omitted by Act XIV of 1944.

SEC. 17: STATEMENT OF OBJECTS AND REASONS.—This combines the provisions of old sec. 9 (b) and sec. 37 (2) (f) with an addition enabling the Local Government to prescribe standards of floor space.

SEC. 18: STATEMENT OF OBJECTS AND REASONS.—Sub-cl. (1) and (2) reproduce

the substance of old sec. 11. In sub-cl. (3) it is proposed to enable the Local Governments to prescribe standards of lighting by rule for particular classes of factories.

SEC. 19: STATEMENT OF OBJECTS AND REASONS.—Sub-cl. (1) combines old secs. 14 and 37 (2) (i); sub-cl. (2) is new and is based on a recommendation of Labour Commission. The change made by the Select Committee is designed to ensure that drinking water is supplied whether standards are prescribed or not.

Precautions against fire. 22. [Cf. Ss. 16, 17 and 37 (2), Old Act.] In every factory such precautions against fire shall be taken as may be prescribed.

23. [Cf. S. 16, Old Act and S. 14, English Act.] (1) Every factory shall be provided with such means of escape in the case of fire [as may be prescribed.]¹

Means of escape. (2) If it appears to the Inspector that any factory is not so provided, he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

(3) The means of escape shall not be obstructed while any work is being carried on in the factory.

Fencing. 24. [Cf. S. 10, English Act and S. 18, old Act.] (1) In every factory the following shall be kept adequately fenced, namely:—

LEG. REF.

¹ Substituted by Act XIV of 1944.

SECS. 22 AND 23.—The expression “precautions against fire” in sec. 22 of the Factories Act mean precautions against the occurrence or outbreak of fire and would not cover precautions against the consequences of fire. Sec. 23 deals expressly with precautions against the consequences of fire by providing means of escape. Reading the two secs. 22 and 23 together, it is clear that the intention of the legislature was that in the case of precautions against the occurrence of fire, the matter should be dealt with by rules which would govern all factories, but that in dealing with precautions against the consequences of fire, it was recognised that all factories could not be dealt with in like manner, and sec. 23 therefore contains a general provision that provision shall be made for such means of escape as can be reasonably required in the circumstances of each factory, and then leaves it to the Inspector to determine whether such precautions have been taken, and if he thinks that the necessary provisions have not been made, he is given power to serve on the manager of a factory a notice, breach of which would amount to an offence under sec. 60 (a) (iii) of the Factories Act. There is no power under sec. 22 to make general rules covering the subject of means of escape against fire which is dealt with by sec. 23; and sec. 22 is not to be enforced by means of rules. R. 37 of the rules under the Act is therefore *ultra vires*, as it deals with a matter which does not fall under sec. 22 or under sec. 32, which is the rule making section, but deals with a matter falling under sec. 23 which does not enable rules to be made. Breach of R. 37 is not therefore an offence for which there can be a conviction. I.L.R. (1943) Bom. 92=44 Bom.L.R. 810=A.I.R. 1943 Bom. 5.

SEC. 23: ENGLISH LAW—FIRE.—Factories and workshops are to be furnished with a certificate that they are provided with such means of escape in case of fire as can reasonably be required. It is the duty of the district council to ascertain whether factories and workshops are provided with such

means of escape from fire and where necessary to require its provision. The County Court has jurisdiction, on application, to apportion the cost of complying with the requirement between the owner and the occupier of the factory or workshop in a just and equitable manner (sec. 14). See *Monk v. Arnold*, (1902) 1 K.B. 761; *Horne v. Franklin*, (1904) 2 K.B. 877; (1905) 1 K.B. 479 [Sec. 14, *English Factory and Workshop Act* (1901)].

SEC. 24: REPORT OF SELECT COMMITTEE.—Sub-cl. (3) has been expanded so as to apply to any fencing which may be required in pursuance of an order under sec. 26 (1) and to make it clear that fencing may be removed for necessary attention to machinery.

SAFETY PROVISIONS IN ENGLISH LAW.—The Act contains many most valuable provisions for securing the safety of the persons employed and also of the public. Thus, it is provided that in every factory every hoist or tangle and every fly-wheel directly connected with the steam, or water, or other mechanical power, whether in the engine house or not, and every part of any water-wheel or engine worked by such power, must be securely fenced. Every wheel-race not otherwise secured must be securely fenced close to the edge. All dangerous parts of the machinery must either be securely fenced or be in such position or of such construction as to be equally safe to every person as they would be if securely fenced. The fencing is to be maintained in an efficient state. [As to the extent of obligation to fence, see *Redgrave v. Lloyd*, (1895) 1 Q.B. 876 and *Hindle v. Britwistle*, (1897) 1 Q.B. 192. See also sec. 10, *English Factory and Workshop Act* (1901) and Rules.]

The fact that the machinery is so situated that there is little or no danger of accidents happening is no justification for not carrying out the requirements of a statute as to fencing [see *Doel v. Shepherd*, (1856) 25 L. J. Q.B. 124]; but it is only necessary to keep up the fence when the parts required to be fenced are in motion for some manufacturing process. [*Coe v. Platt*, (1851) 6 Ex. 252]; but the obligation to fence

- (a) every exposed moving part of a prime mover and every flywheel directly connected to a prime mover;
 (b) every hoist or lift, hoist-well, or lift-well, and every trap-door or similar opening near which any person may have to work or pass; and
 (c) every part of the machinery which the Provincial Government may prescribe.

(2) If it appears to the Inspector that any other part of the machinery in a factory is dangerous if not adequately fenced, he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

(3) All fencing required by or under this section or under sub-section (1) of section 26 shall be maintained in an efficient state at all times when the workers have access to the parts required to be fenced except where they are under repair or are under examination in connexion with repair or are necessarily exposed for the purpose of cleaning or lubricating or altering the gearing or arrangements of the machinery.

(4) Such further provisions as may be prescribed shall be made for the protection from danger of persons employed in attending to the machinery in a factory.

25. [Cf. Ss. 17-19, English Act.] If it appears to the Inspector that any building or part of a building, or any part of the ways,

Power to require specifications of defective parts or tests of stability.

machinery or plant in a factory is in such a condition that it may be dangerous to human life or safety, he may serve on the manager of the factory, an order in writing requiring him before a specified date—

(a) to furnish such drawings, specifications and other particulars as may be necessary to determine whether such building, ways, machinery or plant can be used with safety, or

(b) to carry out such tests as may be necessary to determine the strength or quality of any specified parts and to inform the Inspector of the results thereof.

26. [Cf. Ss. 17 to 19, English Act and 18-A, Old Act.] (1) If it appears

Safety of buildings and machinery.

to the Inspector that any building or part of a building or any part of the ways, machinery or plant in a factory is in such a condition that it is dangerous to

machinery is absolute [*Watkins v. Naval Colliery Co.*, (1921) A.C. 693; *Purcell v. Talbot (Clement), Ltd.*, (1914) 79 J.P. 1] and is unaffected by the fact that, with regard to some particular machine, it may be commercially impracticable or mechanically impossible to fence it securely [*Davies v. Owen (Thomas) & Co.*, (1919) 2 K.B. 39. See also *Jackson v. Milliner Motor Body & Co.*, (1911) 1 K.B. 546.]

Moreover, the defence of common employment is not applicable where the injury has been caused by the neglect of the employer to carry out his statutory obligations to fence his machinery [*Britton v. G. W. E.*, 7 Ex. 130] nor where the employer has failed to maintain or repair the fencing for his machinery [*Holmes v. Clarke*, (1863) 31 L. J. Ex. 356; *Groves v. Wimborne (Lord)*, (1898) 2 Q.B. 402], and in fact that the statute imposes a penalty for omission to fence does not bar an action for damages by the workman. (*Ibid.*) Sub-sec. (2) includes all machinery in a factory and it is for the Court to say if it is dangerous. [*Redgrave v. Lloyd*, (1895) 1 Q.B. 876.]

Machinery is dangerous if in the ordinary course of human affairs danger may reason-

ably be anticipated from the use of it without protection. [*Hindle v. Birtwistle*, (1897) 1 Q.B. 192.] See Encyclopaedia of the Laws of England, 2nd Ed., Title "Factories."

The numerous provisions in the Procedure Code for service of notices or orders are intended to make it certain that a particular process or an order of the Court is brought to the specific notice of the individual affected. A mere knowledge that proceedings may be instituted or something of that sort is not sufficient to take the place of the imperative directions in the Code as to service on the actual individual. The words in sec. 18 (2) "serve on the Manager an order in writing" mean that such an order as is referred to in Form O should be served definitely on the manager of the factory and that it should specify exactly what measures the manager is to take in order to remove the danger. But a mere note of a visit is not such an order as is contemplated therein. 85 I.C. 226=26 Bom. L.R. 1245=26 Cr.L.J. 482=1925 Bom. 143. As to the necessity for order or notice by Inspector. see 12 Bom.L.R. 225.

human life or safety, he may serve on the manager of the factory an order in writing specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

(2) If it appears to the Inspector that the use of any building or part of a building or of any part of the ways, machinery or plant in a factory involves imminent danger to human life or safety, he may serve on the manager of the factory an order in writing prohibiting its use until it has been properly repaired or altered.

27. [Cf. S. 13, English Act.] (1) No woman or child shall be allowed to

Restrictions on work near machinery in motion.

clean or oil any part of the machinery of a factory while that part is in motion under power, or to work between moving parts or between fixed and moving parts of any machinery which is in motion under power.

(2) The Provincial Government may, by notification in the Official Gazette, prohibit, in any specified factory or class of factories, the cleaning or oiling by any person of specified parts of machinery when these parts are in motion under power.

28. [Cf. Ss. 76 to 78, English Act and S. 19-A, Old Act.] (1) The Pro-

Power to exclude children.

vincial Government may make rules prohibiting the admission to any specified class of factories, or to specified parts thereof, of children who cannot be lawfully employed therein.

(2) If it appears to the Inspector that the presence in any factory or part of a factory of children who cannot be lawfully employed therein may be dangerous to them or injurious to their health, he may serve on the manager of the factory an order in writing directing him to prevent the admission of such children to the factory or any part of it.

29. [Cf. S. 20, Old Act and S. 24, English

Prohibition of employment of women and children near cotton-openers.

Act.] No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work:

Provided that, if the feed-end of a cotton-opener is in a room separated from the delivery end by a partition extending to the roof, or to such height as the Inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where the feed-end is situated.

30. [Cf. S. 34, Old Act and Ss. 19-22, English Act.] Where in any factory

SEC. 27: STATEMENT OF OBJECTS AND REASONS.—This is based on old sec. 19; but it is proposed to extend to the oiling of machinery the prohibition which at present applies to the cleaning of machinery and to extend it to work done between moving parts as well as between fixed and moving parts. As to what is cleaning machinery, see *Taylor v. Mark*, (1911) 1 K.B. 145.

SEC. 28: STATEMENT OF OBJECTS AND REASONS.—Sub-cl. (2) reproduces the substance of old sec. 19-A. In sub-cl. (1) it is proposed to give the Local Governments general powers to exclude non-working children with a view to their protection.

ENGLISH LAW.—A child is not allowed to clean, in a factory, any part of any machinery, or any place under any machinery, other than overhead mill-gearing, while it is in motion by the aid of steam, water or other mechanical power. A young person is not allowed to clean any dangerous part of machinery while it is so in motion. Neither a woman nor a young person is allowed to clean mill-gearing machinery when in mo-

tion. [Sec. 13, English Factory and Workshop Act, 1901; *Pearson v. Belgian Mill Co.*, (1896) 1 Q.B. 244.] A young person employed in a mill oiled part of the machinery during meal times, contrary to orders and for his own amusement. The occupier of the mill was held to have committed an offence. [*Prior v. Slaitheaitte Spinning Co.* (1898) 1 Q.B. 881. But see *Robinson v. Melville*, (1890) 17 R. 62. See also *Graves v. Duncan*, (1899) 1 F. 72.]

SEC. 29.—The provisions of the section are not fulfilled if there is a door made in a partition between the two portions of the room and that door is shown to be open at a particular time, or even although it is shut, yet it is not locked or other effective means taken to prevent its being opened by a woman or child wishing to get into the press room or prohibited area. 94 I.C. 949=50 B. 34=27 Bom.L.R. 1405=27 Cr.L.J. 165=1926 Bom. 57.

SEC. 30: "PERSONS" INCLUDES PLURAL—SINGLE ACCIDENT—SEVERAL INJURED—FALL-

Notice of certain accidents. an accident occurs which causes death, or which causes any bodily injury whereby any person injured is prevented from resuming his work in the factory during the forty-eight hours after the accident occurred, or which is of any nature which may be prescribed in this behalf, the manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed.

31. [Cf. S. 50, Old Act.] (1) The manager of a factory on whom an order in writing by an Inspector has been served under the provisions of this Chapter, or the occupier of the factory, may, within thirty days of the service of the order, appeal against it to the Provincial Government, or to such authority as the Provincial Government may appoint in this behalf; and the Provincial Government or appointed authority may, subject to rules made in this behalf by the Provincial Government, confirm, modify or reverse the order.

(2) The appellate authority, may, and if so required in the petition or appeal shall, hear the appeal with the aid of assessors, one of whom shall be appointed by the appellate authority and the other by such body representing the industry concerned as the Provincial Government may prescribe in this behalf:

Provided that if no assessor is appointed by such body, or if the assessor so appointed fails to attend at the time and place fixed for hearing the appeal, the appellate authority may, unless satisfied that the failure to attend is due to sufficient cause, proceed to hear the appeal without the aid of such assessor, or, if it thinks fit, without the aid of any assessor.

(3) In the case of an appeal against an order under section 16 the appellate authority shall, and in any other case except an appeal against an order under sub-section (2) of section 26 or sub-section (2) of section 28 the appellate authority may, suspend the order appealed against pending the decision of the appeal, subject however to such conditions as to partial compliance or the adoption of temporary measures as it may choose to impose in any case.

Power of Provincial Government to make rules to supplement this Chapter. 32. The Provincial Government may make rules—

(a) providing for any matter which, according to any of the provisions of this Chapter, is or may be prescribed;

(b) requiring the managers of factories to maintain stores of first-aid appliances and provide for their proper custody;

(c) providing against danger arising from the use of mechanical transport in factories, other than railways subject to the Indian Railways Act, 1890;

(d) prescribing the manner of the service of orders under this Chapter on managers of factories;

(e) regulating the procedure to be followed in presenting and hearing appeals under section 31, and the appointment and remuneration of assessors;

USE TO NOTIFY—SINGLE OFFENCE.—The word "person" includes the plural and consequently where as a result of a single accident more persons than one are injured the accident cannot be split up into as many persons injured and the notice contemplated is single notice of the accident which the manager is required to submit to the authorities and therefore contravention of this rule is one offence which cannot in its turn be split up into as many offences as the number of casualties. 31 Cr.L.J. 869=125 I.C. 380 =1930 Lah. 658. The duty to inform the authority under the Factories Act under sec. 34 is laid on the manager. It is therefore primarily the manager who is to be supposed to have contravened this provision of the

Act, but both the occupier and manager are made responsible jointly and severally for this contravention. A.I.R. 1930 Lah. 658.

MANAGER'S ABSENCE FROM DUTY NOT NOTIFIED.—LIABILITY FOR INFRINGEMENT.—Where the person, who is charged with offences under the Factories Act, was absent from his duties as manager at the time when the alleged infringements of the Act took place, he cannot be prosecuted for infringements of the Act which took place during his absence although the absence was not notified to the authorities as required by law, for which non-compliance the occupier could be held liable. 152 I.C. 506=38 C.W.N. 1008 =A.I.R. 1934 Cal. 730.

(f) regulating the exercise by Inspectors of their powers under this Chapter; and

(g) providing for any other matter which may be expedient in order to give effect to the provisions of this Chapter.

33. [Cf. Ss. 73-79, English Act.] (1) The Provincial Government may make rules requiring that in any specified factory, wherein more than one hundred and fifty workers are ordinarily employed, an adequate shelter shall be provided for the use of workers during periods of rest, and such rules may prescribe the standards of such

Additional power to make health and safety rules relating to—
shelters during rest,—

shelters.

rooms for children,—

(2) The Provincial Government may also make rules—

(a) requiring that in any specified factory, wherein more than fifty women workers are ordinarily employed, a suitable room shall be reserved for the use of children under the age of six years belonging to such women, and

(b) prescribing the standards for such rooms and the nature of the supervision to be exercised over the children therein.

(3) The Provincial Government may also make rules, for any class of certificates of stability,— factories and for the whole or any part of the province, requiring that work on a manufacturing process carried on with the aid of power shall not be begun in any building or part of a building erected or taken into use as a factory after the commencement of this Act, until a certificate of stability in the prescribed form, signed by a person possessing the prescribed qualifications, has been sent to the Inspector.

(4) Where the ¹[Provincial Government] is satisfied that any operation in a factory exposes any persons employed upon it to a serious risk of bodily injury, poisoning or disease, he may make rules applicable to any factory or class of factories in which the operation is carried on—

(a) specifying the operation and declaring it to be hazardous,

(b) prohibiting or restricting the employment of women, adolescents or children upon the operation,

(c) providing for the medical examination of persons employed or seeking to be employed upon the operation and prohibiting the employment of persons not certified as fit for such employment, and

(d) providing for the protection of all persons employed upon the operation or in the vicinity of the places where it is carried on.

CHAPTER IV.

RESTRICTIONS ON WORKING HOURS OF ADULTS.

34. [Cf. Old section 27.] No adult worker shall be allowed to work in a factory for more than fifty-four hours in any week, or, where the factory is a seasonal one, for more than

Weekly hours.

sixty hours in any week:

Provided that an adult worker in a non-seasonal factory engaged in work which for technical reasons must be continuous throughout the day may work for fifty-six hours in any week.

LEG. REF.

¹Substituted for "Governor-General in Council" by A.O., 1937.

Sec. 32 (g).—R. 55 of the Bombay Factory Rules, 1935, is not *ultra vires*. 45 Cr. L.J. 761=46 Bom.L.R. 455=A.I.R. 1944 Bom. 250.

Sec. 34: PERSONS EMPLOYED IN A FACTORY—MEANING OF.—Persons who are actually engaged in work in a factory in any

of the ways enumerated in sec. 2 must be presumed to be employed in the factory. 61 C. 332=35 Cr.L.J. 1401=38 C.W.N. 801=1934 C. 546.

"ALLOWED TO WORK IN A FACTORY".—The section is not confined to any act which the occupier himself has allowed, but it also includes an allowance by a servant or agent of the occupier. See *In re Crab Tree*, 85 L.T. 549.

35. [Cf. Old section 22.] (1) No adult worker shall be allowed to work in a factory on a Sunday unless—

(a) he has had or will have a holiday for a whole day on one of the three days immediately before or after that Sunday, and

(b) the manager of the factory has, before that Sunday or the substituted day, whichever is earlier,—

(i) delivered a notice to the office of the Inspector of his intention to require the worker to work on the Sunday and of the day which is to be substituted, and

(ii) displayed a notice to that effect in the factory:

Provided that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day.

(2) Notices given under sub-section (1) may be cancelled by a notice delivered to the office of the Inspector and a notice displayed in the factory not later than the day before the Sunday or the holiday to be cancelled, whichever is earlier.

(3) where, in accordance with the provisions of sub-section (1), any worker works on a Sunday and has had a holiday on one of the three days immediately before it, that Sunday shall, for the purpose of calculating his weekly hours of work, be included in the preceding week.

[35-A. (1) Where, as a result of the passing of an order or the making of a rule under the provisions of this Act exempting a factory or the workers therein from the provisions of section 35, a worker is deprived of any of the weekly holidays for which provision is made by sub-section (1) of that section, he shall be allowed, as soon as circumstances permit, compensatory holidays of equal number to the holidays so lost.

(2) The Provincial Government may make rules prescribing the manner in which the holidays, for which provision is made in sub-section (1), shall be allowed.]¹

36. [Cf. Old section 28.] No adult worker shall be allowed to work in a factory for more than ten hours in any day:

Provided that a male adult worker in a seasonal factory may work for eleven hours in any day.

37. [Cf. Old Act, section 21.] The periods of work of adult workers in a factory during each day shall be fixed either—

(a) so that no period shall exceed six hours, and so that no worker shall work for more than six hours before he has had an interval for rest of at least one hour;

or

(b) so that no period shall exceed five hours and so that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour, or for more than eight and a half hours before he has had at least two such intervals.

38. [New.] The periods of work of an adult worker in a factory shall be so arranged that, along with his intervals for rest under section 37, they shall not spread over more than

Spread over.

LEG. REF.

¹ Sec. 35-A inserted by Act III of 1945.

SECS. 36 AND 43.—Where an Inspector of Factories approves a system of working a particular factory, he has power under sec. 21 of General Clauses Act to cancel the approval. If an appeal is pending from the

order of cancellation it is not desirable to institute a criminal prosecution in respect of the factory having been worked in contravention during the pendency of the appeal. 59 I.C. 857=22 Cr.L.J. 153 (Lah.).

Sec. 37.—On this section see 44 Bom.L.R. 810=1943 Bom. 5 cited under sec. 22 *supra*.

thirteen hours in any day, save with the permission of the Provincial Government and subject to such conditions as it may impose, either generally or in the case of any particular factory. z

39. [Cf. Old Act, sections 26 and 36.] (1) There shall be displayed and correctly maintained in every factory in accordance with the provisions of sub-section (2) of section 76 a Notice of Periods for Work for adults and preparation thereof. Notice of Periods for Work for Adults showing clearly the periods within which adult workers may be required to work.

(2) The periods shown in the Notice required by sub-section (1) shall be fixed beforehand in accordance with the following provisions of this section and shall be such that workers working for those periods would not be working in contravention of any of the provisions of sections 34, 35, 36, 37 and 38.

(3) Where all the adult workers in a factory are required to work within the same periods, the manager of the factory shall fix those periods for such workers generally.

(4) Where all the adult workers in a factory are not required to work within the same periods, the manager of the factory shall classify them into groups according to the nature of their work.

(5) For each group which is not required to work on a system of shifts, the manager of the factory shall fix the periods within which the group may be required to work.

(6) Where any group is required to work on a system of shifts and the relays are not to be subject to predetermined periodical changes of shift, the

SEC. 39.—Sec. 39 (1) of the Act and B. 70 require that a notice of periods of work for adults in English and in the language of the majority of the workers shall be affixed at the main entrance of the factory. Displaying an incorrect notice is tantamount to not displaying notice prescribed and would be punishable as a breach of sec. 39 (1) and B. 70. 1942 N.L.J. 518=I.L.R. (1943) Nag. 38=1943 Nag. 79.

OBJECT OF THE SECTION.—The main object of the section is not to ensure that the manager and no one else should fix the hours but that the hours should be fixed and regular hours of employment are to be fixed; they are not to be subject to sudden or casual alteration at any one's discretion or caprice. 58 Bom. 137=35 Cr.L.J. 542=35 Bom.L.R. 1167=1934 Bom. 43.

SCOPE OF SECTION—CHANGING SYSTEM OF "SPECIAL HOURS"—LEGALITY.—A continuously changing system of hours "specified" is something altogether different from what is contemplated by a fixation of special hours. The former course is not permitted by the section. 134 I.C. 881=35 C.W.N. 1108=1931 C. 639.

WORK OUTSIDE FIXED HOURS.—Where men work during a time which is admittedly outside the time fixed for employment of each person employed in the factory, the owner of the factory is guilty under the section. 52 A. 444=31 Cr.L.J. 1220=1930 A.L.J. 459=1930 A. 214.

EXTRA WORK NOT DONE IN OR ABOUT FACTORY—PROHIBITION OF SECTION IF APPLIES.—Where the manager of an ice factory had fixed only 7½ hours a day for employees but it appeared that persons who had finished

their work used to take ice to ships in the docks when required. *Held*, that the extra work was not work done in or about the factory and that it did not fall within the prohibitory provisions of the Act. 134 I.C. 881=35 C.W.N. 1108=1931 C. 639. See also I.L.R. (1943) Nag. 38=1943 Nag. 79 (Displaying incorrect notice—Breach of rules.)

SECS. 39 AND 40.—This is based on sec. 36. In order to prevent the evasion of the Act, it is proposed to provide that changes should be notified to the Inspector before they are made, and that his previous sanction should be required if a change has to be made within a week of the previous change.

REPORT OF SELECT COMMITTEE.—We have re-drafted and re-arranged the provisions contained in cls. 40 and 41 of the Bill (secs. 39 and 40 of this Act) as introduced with a view to expressing more clearly the intention of those clauses. The latter part of sub-cl. (4), cl. 39, formerly sub-cl. (3) of cl. 40, has been omitted as not relevant to the preparation of the notice, and as covered by the provisions of cl. (41).

SECS. 39, 42 AND 60.—Failure to comply with old sec. 36 would not in itself amount to a breach of the provisions of this section or justify the conviction under sec. 60. 58 B. 137=35 Cr.L.J. 542=35 Bom.L.R. 1167=1934 B. 43. A factory which is exempt from the provisions of sec. 37 under the rules framed under sec. 43 (2) (d) cannot be held to be exempt also from the provisions of secs. 39 and 40. Therefore where there is a breach of the provisions of sec. 42 read with sec. 39, the fact that under the rules the factory is exempt from the provisions of

manager of the factory shall fix the periods within which each relay of the group may be required to work.

(7) Where any group is to work on a system of shifts and the relays are to be subject to predetermined periodical changes of shifts, the manager of the factory shall draw up a scheme of shifts whereunder the periods within which any relay of the group may be required to work and the relay which will be working at any time of the day shall be known for any day.

(8) The Provincial Government may make rules prescribing forms of the Notice of Periods for Work for Adults and the manner in which it shall be maintained.

40. [Cf. Old Act, section 36.] (1) A copy of the Notice referred to in sub-section (1) of section 39 shall be sent in duplicate to the Inspector within fourteen days after the commencement of this Act, or, if the factory begins work after the commencement of this Act, before the day on which it begins work.

(2) Any proposed change in the system of work in a factory which will necessitate a change in the Notice shall be notified to the Inspector in duplicate before the change is made, and except with the previous sanction of the Inspector, no such change shall be made until one week has elapsed since the last change.

41. [Cf. Old Act, sections 35 and 37 (2).] (1) The manager of every factory shall maintain a Register of Adult Workers showing—

- (a) the name of each adult worker in the factory;
- (b) the nature of his work;
- (c) the group, if any, in which he is included;
- (d) where his group works on shifts, the relay to which he is allotted; and
- (e) such other particulars as may be prescribed:

Provided that, if the Inspector is of opinion that any muster roll or register maintained as part of the routine of a factory gives in respect of any or all of the workers in the factory the particulars required under this section he may, by order in writing, direct that such muster roll or register shall to the corresponding extent be maintained in place of and be treated as the Register of Adult Workers in that factory:

Provided further that, where the Provincial Government is satisfied that the conditions of work in any factory or class of factories are such that there is no appreciable risk of contravention of the provisions of this Chapter in the case of that factory or factories of that class, as the case may be, the Provincial Government may, by written order, exempt, on such conditions as it may impose, that factory or all factories of that class, as the case may be, from the provisions of this section.

sec. 37 does not afford any defence to a prosecution under sec. 60 (b) (i). I.L.R. (1937) Bom. 175=38 Bom.L.R. 1181=38 Cr.L.J. 304=A.L.R. 1937 Bom. 52.

POWER OF CHANGING WORKING HOURS CANNOT BE EXERCISED BY MANAGER AFTER MILL STARTS WORKING.—The manager and he alone can change the working hours on complying with the conditions stated in old sec. 36 (3) of the Act, but that power of change cannot be exercised by the manager after the mill starts working on the period fixed by him. Any change subsequently made therein could not be covered by the change in the standing orders as contemplated by sec. 36 (3), but would be an unauthorised departure from the fixed period on a particular day. Although the hours fixed on the night in question were 12-30 A.M., to 5-30

A.M., the mills stopped working for about 15 minutes on account of a break-down and the manager extended the closing hour to 5-45 A.M., and issued an order to that effect and informed the workmen and the Inspector of Factories of that change and its reason, held, that the accused must be convicted under old sec. 41 (now sec. 60). 58 Bom. 137=35 Cr.L.J. 542=35 Bom.L.R. 1167=1934 B. 43.

SEC. 41.—The section is mandatory, and it makes the position clear that in the absence of an order by the Inspector, one register in a prescribed form of all persons employed and of the hours and nature of their employments must be kept. It cannot be supplemented by a time-sheet. 152 I.C. 566=38 C.W.N. 1008=1934 C. 730. See also 1942 N.L.J. 518 cited under sec. 60.

(2) The Provincial Government may make rules prescribing the form of the Register of Adult Workers, the manner in which it shall be maintained and the period for which it shall be preserved.

42. [Cf. section 26.] No adult worker shall be allowed to work otherwise than in accordance with the Notice of Periods for Work for Adults displayed under sub-section (1) of section 39 and the entries made beforehand against his name in the Register of Adult Workers maintained under section 41.

Hours of work to correspond with notice under Section 39 and Register under section 41.

43. [Cf. Old Act, sections 29, 30, 32 and 32-A.] (1) The Provincial Government may make rules defining persons who hold positions of supervision or management or are employed in a confidential position in a factory, and the provision of this Chapter¹ [other than the provisions of clause (b) of sub-section (1) of section 45 and the provisos to that sub-section] shall not apply to any person so defined.

Power to make rules exempting from restrictions.

(2) The Provincial Government may make rules for adult workers providing for the exemption, to such extent and subject to such conditions as may be prescribed in such rules,—

(a) of workers engaged on urgent repairs—from the provisions of sections, 34, 35, 36, 37 and 38;

(b) of workers engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of the factory—from the provisions of sections, 34, 36, 37 and 38;

(c) of workers engaged in work which is necessarily so intermittent that the intervals during which they do not work while on duty ordinarily amount to more than the intervals for rest required under section 37—from the provisions of sections 34, 36, 37 and 38;

(d) of workers engaged in any work which for technical reasons must be carried on continuously throughout the day—from the provisions of sections 34, 35, 36, 37 and 38;

(e) of workers engaged in making or supplying articles of prime necessity which must be made or supplied every day—from the provisions of section 35;

(f) of workers engaged in a manufacturing process which cannot be carried on except during fixed seasons—from the provisions of section 35;

(g) of workers engaged in a manufacturing process which cannot be

LEG. REF.

¹ Inserted by Act XI of 1935.

SEC. 42: REPORT OF THE SELECT COMMITTEE.—“The prohibition contained in this clause was contained by implication in cl. 60 of the Bill as introduced. We have inserted it explicitly in this new clause, and in cl. 57, the analogous clause relating to children, with a view to the simplification of cl. 60 relating to penalties”. It is no defence to a breach of the provisions of this section, that the factory has been exempted from the provisions of sec. 37 under rules framed under sec. 43 (2) (d). I.L.R. (1937) Bom. 175=38 Cr.L.J. 304=38 Bom.L.R. 1181=A.I.R. 1937 Bom. 52. See also 1938 N.L.J. 217=1938 Nag. 406=I.L.R. (1940) Nag. 257.

SEC. 43 (2) (d).—Exemption of a factory from provisions of sec. 37, under rules made under this clause, does not operate as ex-

emption under the provisions of secs. 39 and 40 also. Where, therefore, several hands are found working at a time shown as period of rest in the notice displayed under sec. 39 (1), there is clear breach of terms of sec. 42, and an offence under sec. 60 (b) (4) is committed. Exemption from provisions of sec. 37 is no valid defence. I.L.R. 1937 Bom. 175=38 Bom.L.R. 1181=38 Cr.L.J. 304=1937 Bom. 52. The provisions of R. 112 (c) (5) (1) and R. 112 (c) (5) (4) are not alternative in the sense that if the provisions of sub-R. 5 (4) are observed it is not necessary to observe the requirements of sub-R. 5 (1) of R. 112 (c) of Bihar and Orissa Factory Rules framed under sec. 43 of the Factories Act. The word “or” occurring between one sub-clause and another in R. 112 (c) cannot be interpreted in such a way as to make the sub-rules alternative. 1938 P.W.N. 903=40 Cr.L.J. 160=A.I.R. 1939 Pat. 163.

carried on except at times dependent on the irregular action of natural forces—from the provisions of section 35 and section 37; and

(h) of workers engaged in engine-rooms or boiler-houses—from the provisions of section 35.

(3) Rules made under sub-section (2) providing for any exemption may also provide for any consequential exemption from the provisions of sections 39 and 40 which the Provincial Government may deem to be expedient, subject to such conditions as it may impose.

(4) In making rules under this section the Provincial Government shall prescribe the maximum limits for the weekly hours of work for all classes of workers, and any exemption given, other than an exemption under clause (a) of sub-section (2), shall be subject to such limits.

(5) Rules made under this section shall remain in force for not more than three years.

44. [Cf. Old Act, section 30 (2).] (1) Where the Provincial Government

Power to make orders exempting from restrictions.

is satisfied that, owing to the nature of the work carried on or to other circumstances, it is unreasonable to require that the periods of work of any adult workers in any factory or class of factories should be fixed beforehand, it may, by written order, relax or modify the provisions of sections 39 and 40 in respect of such workers to such extent and in such manner as it may think fit, and subject to such conditions as it may deem expedient to ensure control over periods of work.

(2) The Provincial Government, or subject to the control of the Provincial Government the Chief Inspector, may, by written order, exempt, on such conditions as it or he may deem expedient, any or all of the adult workers in any factory, or group or class of factories, from any or all of the provisions of sections 34, 35, 36, 37, 38, 39 and 40, on the ground that the exemption is required to enable the factory or factories to deal with an exceptional press of work.

(3) Any exemption given under sub-section (2) in respect of weekly hours of work shall be subject to the maximum limits prescribed under sub-section (4) of section 43.

(4) An order under sub-section (2) shall remain in force for such period as it may specify, but in no case for more than two months from the date on which notice thereof is given to the manager of the factory.

45. [Cf. Old Act, sections 24, 51 (2) and 32-A.]

Further restrictions on the employment of women.

(1) The provisions of this Chapter shall, in their application to women workers in factories, be supplemented by the following further restrictions, namely:—

(a) no exemption from the provisions of section 36 may be granted in respect of any women; and

(b) no women shall be allowed to work in a factory except between 6 A.M. and 7 P.M.:

Provided that the Provincial Government may, by notification in the Official Gazette, in respect of any class or classes of factories and for the whole year or any part of it, vary the limits laid down in clause (b) to any span of thirteen hours between 5 A.M. and 7-30 P.M.:

SECS. 45 AND 54: TEMPORARY AMENDMENT OF SECS. 45 AND 54 ACT XXV OF 1934.—Until the termination of the hostilities in being at the commencement of this Act the first proviso to sub-sec. (1) of sec. 45 and the proviso to sub-sec. (3) of sec. 54 of the said Act shall have effect as if for the figures and letters "7-30 P.M." the figures and letters "8-30 P.M." had been substituted. (Act XIV of 1944, sec. 5.)

SEC. 45: GINNING FACTORIES.—All that the law authorises the Inspector to do in the case of a ginning factory is to express his opinion and not to issue orders. The Inspector has no right to issue a general prohibition against the employment of women at night without going into the question whether the staff is sufficient. 61 I.C. 225=19 A.L.J. 503=22 Cr.L.J. 369=1921 All. 229.

Provided further that, in respect of any seasonal factory or class of seasonal factories in a specified area, the Provincial Government may make rules imposing a further restriction by defining the period or periods of the day within which women may be allowed to work, such that the period or periods so defined shall lie within the span fixed by clause (b) or under the above proviso and shall not be less than ten hours in the aggregate.

(2) The Provincial Government may make rules providing for the exemption from the above restrictions, to such extent and subject to such conditions as it may prescribe, of women working in fish-curing or fish-canning factories where the employment of women beyond the said hours is necessary to prevent damage to or deterioration in any raw material.

(3) Rules made under sub-section (2) shall remain in force for not more than three years.

46. [New.] Where a worker works on a shift which extends over midnight, the ensuing day for him shall be deemed to be Special provision for night-shifts. for the period of twenty-four hours beginning when such shift ends, and the hours he has worked after midnight shall be counted towards the previous day:

Provided that the Provincial Government may, by order in writing, direct that in the case of any specified factory or any specified class of workers therein the ensuing day shall be deemed to be the period of twenty-four hours beginning when such shift begins and that the hours worked before midnight shall be counted towards the ensuing day.

47. [Cf. Old Act, section 31.] (1) Where a worker in any factory works for more than sixty hours in any week,

or where a worker in a factory other than a seasonal factory works for more than ten hours in any day, he shall be entitled in respect of the overtime worked to pay at the rate of one-and-a-half times his ordinary rate of pay.

(2) Where a worker in a factory other than a seasonal factory works for more hours in any week than are permitted under section 34, he shall be entitled, in respect of the overtime worked excluding any overtime in respect of which he is entitled to extra pay under sub-section (1), to pay at the rate of one-and-a-quarter times his ordinary rate of pay.

(3) Where any workers are paid on a piece rate basis, the Provincial Government in consultation with the industry concerned may, for the purposes of this section, fix time rates as nearly as possible equivalent to the average rate of earnings of those workers, and the rates so fixed shall be deemed to be the ordinary rates of pay of those workers for the purposes of this section.

(4) The Provincial Government may prescribe the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section.

48. No adult worker shall be allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed.

49. The Provincial Government may make rules providing that in any specified class or classes of factories work shall not be carried on by a system of shifts so arranged that more than one relay of workers is engaged in work of the ..Control of overlapping shifts.

SEC. 46: POWERS OF INSPECTOR.—An owner of a factory is prohibited from employing women for night work except with the opinion of the Inspector of Factories and one who does so, is guilty of an infringe-

ment of the Act. But the Inspector has no right to issue a general prohibition against the employment of women on night duty. 19 A.L.J. 503=22 Cr.L.J. 369=61 L. C. 225.

showing such particulars as may be prescribed and requiring such registers to be made available for examination by Inspectors.

(3) The Central Government may give directions to a Province as to the carrying into execution of the provisions of this section.

49-G. Where the Provincial Government is satisfied that the leave rules applicable to workers in a factory provide benefits substantially similar to those for which this Chapter makes provision, it may, by written order, exempt the factory from the provisions of this Chapter.] (Chapter IV-A, sections 49-A to 49-G, inserted by Act III of 1945.)

Exemption of factories from provisions of this Chapter.

CHAPTER V.

SPECIAL PROVISIONS FOR ADOLESCENTS AND CHILDREN.

Prohibition of employment of young children.

50. [Cf. section 62, Eng. Act.] No child who has not completed his twelfth year shall be allowed to work in any factory.

Non-adult workers to carry tokens giving reference to certificates of fitness.

51. [Cf. sections 62 and 63, Eng. Act.] No child who has completed his twelfth year and no adolescent shall be allowed to work in any factory unless—

(a) a certificate of fitness granted to him under section 52 is in the custody of the manager of the factory, and

(b) he carries while he is at work a token giving a reference to such certificate.

52. [Cf. sections 63 to 67, Eng. Act.] (1) A certifying surgeon shall, on

Certificates of fitness.

the application of any young person who wishes to work in a factory, or of the parent or guardian of such person, or of the manager of the factory in which such person wishes to work, examine such person and ascertain his fitness for such work.

(2) The certifying surgeon, after examination, may grant to such person, in the prescribed form,—

(a) a certificate of fitness to work in a factory as a child, if he is satisfied that such person has completed his twelfth year, that he has attained the prescribed physical standards (if any), and that he is fit for such work; or

(b) a certificate of fitness to work in a factory as an adult, if he is satisfied that such person has completed his fifteenth year and is fit for a full day's work in a factory.

(3) A certifying surgeon may revoke any certificate granted under subsection (2) if, in his opinion, the holder of it is no longer fit to work in the capacity stated therein in a factory.

(4) Where a certifying surgeon or a practitioner authorized under subsection (2) of section 12 refuses to grant a certificate or a certificate of the kind requested, or revokes a certificate, he shall, if so requested by any person

SEC. 52: MADRAS AMENDMENT.—For sub-sec. (1) of sec. 52 of the Factories Act, 1934, the following sub-section shall be substituted namely:—“(1) A certifying surgeon shall on the application of any young person or his parent or guardian accompanied by a document signed by the manager of a factory that such person will be employed therein if certified to be fit for work in a factory, or on the application of the manager of the factory in which any young person wishes to work, examine such person and ascertain his fitness for work in a factory.” (Madras Act VI of 1941).

REPORT OF SELECT COMMITTEE.—The changes in sub-cls. (2) and (3) are de-

signed to make it clear that the certificates relate to factory work generally and not to work in a particular factory. Even in the case of a child of fourteen there is need for a certificate. 31 Bom.L.R. 544=30 Cr.L.J. 793=1929 Bom. 272. On this section see also 58 Bom. 137=35 Cr.L.J. 542=35 Bom.L.R. 1167=1934 Bom. 43. Where children were employed for purposes of sorting groundnuts in a yard close to a room where machinery for decortication of groundnuts was used. Held, that the children were employed in a factory. 50 Mad. 834=28 Cr.L.J. 267=1927 Mad. 345=52 M.L.J. 207.

who could have applied for the certificate, state his reasons in writing for so doing.

53. [Cf. Ss. 63-67, Eng. Act.] (1) An adolescent who has been granted a certificate of fitness to work in a factory as an adult, under clause (b) of sub-section (2) of section 52, and who, while at work in a factory, carries a token giving reference to the certificate, shall be deemed to be an adult for all the purposes of Chapter IV.

(2) An adolescent who has not been granted a certificate of fitness to work in a factory as an adult, under sub-section (2) of section 52, shall, notwithstanding his age, be deemed to be a child for the purposes of this Act.

54. [Vide Old S. 23 (b), S. 1 (2) and S. 25 also Ss. 23-30 of the Eng. Act.] (1) No child shall be allowed to work in a factory for more than five hours in any day.

(2) The hours of work of a child shall be so arranged that they shall not spread over more than seven-and-a-half hours in any day.

(3) No child shall be allowed to work in a factory except between 6 A.M. and 7 P.M.:

Provided that the Provincial Government may, by notification in the Official Gazette, in respect of any class or classes of factories and for the whole year or any part of it, vary these limits to any span of thirteen hours between 5 A.M. and 7-30 P.M.

(4) The provisions of section 35 shall apply also to child workers, but no exemption from the provisions of that section may be granted in respect of any child.

(5) No child shall be allowed to work in any factory on any day on which he has already been working in another factory.

55. [Cf. S. 32, Eng. Act.] (1) There shall be displayed and correctly maintained in every factory, in accordance with the provisions of sub-section (2) of section 76, a Notice of Periods for Work for Children, showing clearly the periods within which children may be required to work.

(2) The periods shown in the Notice required by sub-section (1) shall be fixed beforehand in accordance with the method laid down for adults in section 39 and shall be such that children working for those periods would not be working in contravention of section 54.

(3) The provisions of section 40 shall apply also to the Notice of Periods for Work for Children.

(4) The Provincial Government may make rules prescribing forms for the Notice of Periods for Work for Children and the manner in which it shall be maintained.

56. [Cf. Ss. 39-41 *supra*.] (1) The manager of every factory in which children are employed shall maintain a Register of Child Workers showing—

- (a) the name of each child worker in the factory,
- (b) the nature of his work,
- (c) the group, if any, in which he is included,
- (d) where his group works on shifts, the relay to which he is allotted,
- (e) the number of his certificate of fitness granted under section 52, and
- (f) such other particulars as may be prescribed.

(2) The Provincial Government may make rules prescribing the form of the Register of Child Workers, the manner in which it shall be maintained, and the period for which it shall be preserved.

showing such particulars as may be prescribed and requiring such registers to be made available for examination by Inspectors.

(3) The Central Government may give directions to a Province as to the carrying into execution of the provisions of this section.

49-G. Where the Provincial Government is satisfied that the leave rules applicable to workers in a factory provide benefits substantially similar to those for which this Chapter makes provision, it may, by written order, exempt the factory from the provisions of this Chapter.] (Chapter IV-A, sections 49-A to 49-G, inserted by Act III of 1945.)

CHAPTER V.

SPECIAL PROVISIONS FOR ADOLESCENTS AND CHILDREN.

Prohibition of employment of young children.

50. [Cf. section 62, Eng. Act.] No child who has not completed his twelfth year shall be allowed to work in any factory.

Non-adult workers to carry tokens giving reference to certificates of fitness.

51. [Cf. sections 62 and 63, Eng. Act.] No child who has completed his twelfth year and no adolescent shall be allowed to work in any factory unless—

(a) a certificate of fitness granted to him under section 52 is in the custody of the manager of the factory, and

(b) he carries while he is at work a token giving a reference to such certificate.

52. [Cf. sections 63 to 67, Eng. Act.] (1) A certifying surgeon shall, on

Certificates of fitness.

the application of any young person who wishes to work in a factory, or of the parent or guardian of such person, or of the manager of the factory in which such person wishes to work, examine such person and ascertain his fitness for such work.

(2) The certifying surgeon, after examination, may grant to such person, in the prescribed form,—

(a) a certificate of fitness to work in a factory as a child, if he is satisfied that such person has completed his twelfth year, that he has attained the prescribed physical standards (if any), and that he is fit for such work; or

(b) a certificate of fitness to work in a factory as an adult, if he is satisfied that such person has completed his fifteenth year and is fit for a full day's work in a factory.

(3) A certifying surgeon may revoke any certificate granted under sub-section (2) if, in his opinion, the holder of it is no longer fit to work in the capacity stated therein in a factory.

(4) Where a certifying surgeon or a practitioner authorized under sub-section (2) of section 12 refuses to grant a certificate or a certificate of the kind requested, or revokes a certificate, he shall, if so requested by any person

SEC. 52: MADRAS AMENDMENT.—For sub-sec. (1) of sec. 52 of the Factories Act, 1934, the following sub-section shall be substituted namely:—“(1) A certifying surgeon shall on the application of any young person or his parent or guardian accompanied by a document signed by the manager of a factory that such person will be employed therein if certified to be fit for work in a factory, or on the application of the manager of the factory in which any young person wishes to work, examine such person and ascertain his fitness for work in a factory.” (Madras Act VI of 1941).

REPORT OF SELECT COMMITTEE.—The changes in sub-cls. (2) and (3) are de-

signed to make it clear that the certificates relate to factory work generally and not to work in a particular factory. Even in the case of a child of fourteen there is need for a certificate. 31 Bom.L.R. 544=30 Cr.L.J. 793=1929 Bom. 272. On this section see also 58 Bom. 137=35 Cr.L.J. 542=35 Bom.L.R. 1167=1934 Bom. 43. Where children were employed for purposes of sorting groundnuts in a yard close to a room where machinery for decortication of groundnuts was used. Held, that the children were employed in a factory. 50 Mad. 834=28 Cr.L.J. 267=1927 Mad. 345=52 M.L.J. 207.

who could have applied for the certificate, state his reasons in writing for so doing.

53. [Cf. Ss. 63-67, Eng. Act.] (1) An adolescent who has been granted a certificate of fitness to work in a factory as an adult, under clause (b) of sub-section (2) of section 52, and who, while at work in a factory, carries a token giving reference to the certificate, shall be deemed to be an adult for all the purposes of Chapter IV.

(2) An adolescent who has not been granted a certificate of fitness to work in a factory as an adult, under sub-section (2) of section 52, shall, notwithstanding his age, be deemed to be a child for the purposes of this Act.

54. [Vide Old S. 23 (b), S. 1 (2) and S. 25 also Ss. 23-30 of the Eng. Act.] (1) No child shall be allowed to work in a factory for more than five hours in any day.

(2) The hours of work of a child shall be so arranged that they shall not spread over more than seven-and-a-half hours in any day.

(3) No child shall be allowed to work in a factory except between 6 A.M. and 7 P.M.:

Provided that the Provincial Government may, by notification in the Official Gazette, in respect of any class or classes of factories and for the whole year or any part of it, vary these limits to any span of thirteen hours between 5 A.M. and 7-30 P.M.

(4) The provisions of section 35 shall apply also to child workers, but no exemption from the provisions of that section may be granted in respect of any child.

(5) No child shall be allowed to work in any factory on any day on which he has already been working in another factory.

55. [Cf. S. 32, Eng. Act.] (1) There shall be displayed and correctly maintained in every factory, in accordance with the provisions of sub-section (2) of section 76, a Notice of Periods for Work for Children, showing clearly the periods within which children may be required to work.

(2) The periods shown in the Notice required by sub-section (1) shall be fixed beforehand in accordance with the method laid down for adults in section 39 and shall be such that children working for those periods would not be working in contravention of section 54.

(3) The provisions of section 40 shall apply also to the Notice of Periods for Work for Children.

(4) The Provincial Government may make rules prescribing forms for the Notice of Periods for Work for Children and the manner in which it shall be maintained.

56. [Cf. Ss. 39-41 *supra*.] (1) The manager of every factory in which children are employed shall maintain a Register of Child Workers showing—

- (a) the name of each child worker in the factory,
- (b) the nature of his work,
- (c) the group, if any, in which he is included,
- (d) where his group works on shifts, the relay to which he is allotted,
- (e) the number of his certificate of fitness granted under section 52, and
- (f) such other particulars as may be prescribed.

(2) The Provincial Government may make rules prescribing the form of the Register of Child Workers, the manner in which it shall be maintained, and the period for which it shall be preserved.

57. [Cf. S. 32, Eng. Act.] No child shall be allowed to work otherwise than in accordance with the notice of Periods for Work for Children displayed under sub-section (1) of section 55 and the entries made beforehand against his name in the Register of Child Workers maintained under sub-section (1) of section 56.

Hours of work to correspond with Notice and Register.

Power to require medical examination.

58. [Vide S. 8-A of the Old Act.] Where an Inspector is of opinion—

(a) that any person working in a factory without a certificate of fitness is a child or an adolescent, or

(b) that a child or adolescent working in a factory with a certificate is no longer fit to work in the capacity stated therein,

he may serve on the manager of the factory a notice requiring that such person, or that such child or adolescent, as the case may be, shall be examined by a certifying surgeon or by a practitioner authorised under sub-section (2) of section 12, and such person, child or adolescent shall not, if the Inspector so directs, be allowed to work in any factory until he has been so examined and has been granted a certificate of fitness or a fresh certificate of fitness, as the case may be.

Power to make rules.

59. [Cf. S. 126, Eng. Act.] The Provincial Government may make rules—

(a) prescribing the forms of certificates of fitness to be granted under section 52, providing for the grant of duplicates in the event of loss of the original certificates, and fixing the fees which may be charged for such certificates and such duplicates;

(b) prescribing the physical standards to be attained by children and adolescents;

(c) regulating the procedure of certifying surgeons under this Chapter, and specifying other duties which they may be required to perform in connexion with the employment of children and adolescents in factories; and

(d) providing for any other matter which may be expedient in order to give effect to the provisions of this Chapter.

¹CHAPTER V-A.

SMALL FACTORIES.

59-A. (1) In this Act, unless there is anything repugnant in the subject or context, "small factory" means any premises including the precincts thereof whereon ten or more but less than twenty workers are working or were working on any day of the preceding six months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, but does not include a mine subject to the operation of the Indian Mines Act, 1923:

Provided that the Provincial Government may by notification in the Official Gazette, declare any premises to be a small factory, notwithstanding that less than ten workers are working thereon, if such premises would otherwise be a small factory.

(2) For the purposes of this Chapter an adolescent holding a certificate granted under this Act to work as an adult shall be deemed to be an adult.

59-B. (1) All the provisions of this Act, except clause (j) of section 2, sections 4, 5, 6 and 7, sub-sections (1) and (4) of section 14, sections 15, 21, 22 and 25, sub-sections (1), (2) and (3) of section 33 and Chapter IV shall apply to, and in relation to, all small factories wherein any worker who is not, or is not deemed to be, an adult is employed; and in the provisions hereby made so applicable every reference to a

factory shall be deemed to include, so far as may be, a reference to a small factory.

(2) The aforesaid provisions shall cease to apply to a small factory on the expiry of six months from the receipt by the Inspector of a notice in writing from the occupier that he has ceased to employ therein any worker who is not, or is not deemed to be, an adult, unless any such worker is employed therein on any day of the said six months:

Provided that if any such worker is thereafter employed in the small factory, the said provisions of this Act shall again apply thereto.

Certain other provisions of law not barred.

59-C. The provisions of this Chapter shall be in addition to, and not in derogation of, the provisions of the Employment of Children Act, 1938.

CHAPTER VI.

PENALTIES AND PROCEDURE.

Penalty for contraventions of Act and rules.

60. [Cf. Ss. 135-138, Eng. Act and Ss. 41 to 44-A of the old Act.] If in any factory—

- (a) there is any contravention—
 - (i) of any of the provisions of sections 13 to 29 inclusive, or
 - (ii) of any order made under any of the said sections, or
 - (iii) of any of the said sections read with rules made in pursuance thereof under clause (a) of section 32, or
 - (iv) of any rule made under any of the said sections or under clause (b), clause (c), or clause (g) of section 32 or section 33, or

SECS. 60 TO 69.—These embody with the necessary consequential additions, secs. 41 to 44-A of the Old Act. Sec. 43-A which provided for the grant of compensation to injured workers out of fines has been omitted, as adequate provision has been made by the Workmen's Compensation Act. (*Objects and Reasons*).

REPORT OF SELECT COMMITTEE.—“We have re-cast in a more succinct form the list of offences contained in the clause. We have also provided both here and in cl. 65 that where the manager and occupier were held jointly responsible for the breach of the law, the combined penalty shall not be in excess of the maximum penalty that might be inflicted on either of them.”

SEC. 60: CONSTRUCTION OF SECTION.—The section is a penal one, it ought to be construed strictly. The occupier and manager both or either of them can be required to pay a fine which may extend to Rs. 200 (now Rs. 500) but between the two they cannot be required to pay any sum exceeding that limit for each offence. (45 Bom. 220=1921 Bom. 322). See now the change in the present Code explained in the Report of the Select Committee. See also sec. 65 *infra*. Factory Acts should be properly enforced for protection of workmen, but on the other hand one must also bear in mind that the employer's position has to be considered too. It may be that without any negligence on their part defects will exist in their factories, but if they are to be proceeded against in a Criminal Court for alleged negligence, then it would seem only fair that the matter should be clearly brought home to them. 26 Bom.L.R. 1245=26 Cr.L.J. 482=1925 Bom. 143. The Act is a special Act, and the ab-

sence of definite evidence to show that a boy seven or eight years old, was employed or allowed to work in contravention of the provisions of the Act, a conviction under the Act is illegal. 49 I.C. 860=20 Cr.L.J. 236=17 A.L.J. 223.

LIABILITY OF MANAGER AND OCCUPIER JOINT AND SEVERAL.—The Act provides that both the occupier and manager shall be jointly and severally liable to fine for any of the offences committed under the Act. This joint and several fine imposed on both the occupier and manager is irrespective of the fact as to which of the two had committed the offence. The duty to inform the authority under the Act is laid on the manager. It is therefore primarily the manager who is to be supposed to have contravened his provision of the Act, but both the occupier and manager are made responsible jointly and severally for this contravention. 31 Cr. L.J. 869 (2)=125 I.C. 380 (2)=1930 Lah. 658. See also 55 Bom. 366=32 Cr.L.J. 1063=33 Bom.L.R. 309. See also Report of Select Committee. The word “occupier” denotes a person who is either a proprietor or otherwise entitled to be in possession of the factory and control its working. He may or may not actually occupy the building and even if he carries on the work through an agent he does not cease to be the occupier. He cannot therefore be any one who is a mere servant charged with specific duties either in regard to the control of the machinery, workmen or office. A *mukaddam* is really a foreman of the operatives and a servant of the factory. He is neither a managing agent nor a person authorised to represent the occupier. He cannot therefore be regarded as an occupier or manager. He

- (v) of any condition imposed under sub-section (3) of section 31, or
 (b) any person is allowed to work in contravention—
 (i) of any of the provisions of sections 34 to 38 inclusive, 42, 45 and 48,

or

cannot be tried jointly with the manager for an offence under sec. 41 (a) of the old Act, but can be tried under sec. 42 (1) on the complaint of the manager. 34 Cr.L.J. 831 = 29 Nag.L.R. 72 = 1932 Nag. 100. If more than one person is unlawfully employed the manager and agent are liable for as many offences as there are persons so employed. 45 Bom. 220 = 1921 Bom. 322. The owners and occupiers of a factory cannot relieve themselves of their responsibilities regarding compliance with the requirements of the Factories Act by appointing a manager; they must see that the manager carries out his duties. It is only when the manager has acted in express disobedience of their order and they have done their best to see that the provisions of the Act are complied with, that they can themselves escape liability. Sec. 60 makes it clear that both the manager and occupier are liable. A manager is not a 'managing agent' within the meaning of that expression as used in the proviso to the definition of 'occupier' and hence cannot be deemed to be the occupier of the factory. The fact that the "occupiers" were ignorant persons who trusted to the knowledge and good sense of their manager may be a ground for awarding a smaller punishment but not for acquitting them. 55 L.W. 253 = A.I.R. 1942 Mad. 347 (1) = (1942) 1 M. L.J. 104. See also 44 Bom.L.R. 810 = 1943 Bom. 5 (Beach of Rule 37—Offence.)

OMITTING TO FENCE ENGINE WITHIN PREMISES.—The manager of the concern is liable to be prosecuted for not properly fencing the engine found in the premises. 31 Cr.L.J. 1094 = 32 Bom.L.R. 329 = 1930 Bom. 163.

PRACTICE AND PROCEDURE.—Where the manager is prosecuted under sec. 60 (b) (i) read with sec. 42 for allowing work to be done beyond the prescribed period, it is no defence to plead that the accused acted in good faith honestly believing in the clock in the factory to be correct and that he is protected by sec. 81. It is enough in a prosecution under the Act to prove that the accused has infringed the Act or rules under the Act and it is not necessary to show that accused intended to infringe the Act or the rules. 1938 N.L.J. 217 = A.I.R. 1938 Nag. 406. See also L.L.R. (1940) Nag. 257. It is not necessary that an order or notice from the Inspector of Factories should be issued to a person, who has not conformed to the rules made under the Act, before he can be charged for any offence under it. It is the duty of such person to obey the rules, and in case of his disobedience, he becomes liable to conviction whether there was any order or not from the Inspector, calling upon him to obey the rules. 12 Bom.L.R. 225. See also L.B.R. (1893-1900) 407. Management acting in good faith—Launching of prosecution as test case—propriety of.

Where the authorities themselves are doubtful about the applicability of certain provisions of the Act, but the management act reasonably and shows a genuine desire to meet any complaint and to rectify irregularities, and there is no absence of good faith, the launching of a test case in respect of trial and technical infringements of the provisions of the Act is uncalled for. 152 I.C. 566 = 38 C.W.N. 1008 = 1934 Cal. 730. Penalties in cases against factory owners who are exploiting labour must be deterrent, especially in view of the fact that detection is frequently avoided. 19 N.L.J. 247.

SECS. 60 (b) AND 81.—Where acting on the assurance of the authorities concerned a factory doing urgent military orders works overtime fully believing that the necessary exemption would be given, the manager and occupier of the factory cannot be convicted of an offence under sec. 60 (b) (i) of the Factories Act. The case is covered by sec. 81, as there was no deliberate breach of the rules. 1943 Oudh 308 = 1943 O.W.N. 171.

SECS. 60 (c) AND 71.—Where in a factory there was a delay of a few minutes in posting the attendance register though the occupier had appointed a well-paid and efficient manager and there was no deliberate breach of the rule it was held there could be no conviction under sec. 60 (c) and that the occupier was entitled to the benefit of sec. 71. 19 Luck. 251; 1943 Oudh 311 = 1943 O. W.N. 174.

SECS. 60 (c), 63 AND 41 AND R. 71.—There is nothing in sec. 41 (2) as to the availability of the register of adult workers for inspection. Failure to produce the register on demand would be a breach of secs. 11 and 63 but it would not be a breach of any rule made under sec. 41 (2) since the availability of the register cannot possibly be brought within the words "the manner in which it shall be maintained" occurring in sec. 41 (2). The words in R. 71 "the register shall always be kept available during working hours for immediate inspection" are thus not *ultra vires* of the Act but these words are *ultra vires* of any rule made under sec. 41. Consequently the owner and occupier of the factory who was not present himself and from whom no demand for the production of the register was made cannot be made liable under sec. 60 (c) of the Act which relates to secs. 39, 40, 41, 44 & 47 only. The breach in question is one punishable under sec. 63 of the Act which deals with wilful obstruction of an Inspector or failure to produce on demand any register in the custody of the person from whom the demand for inspection is made. The correct person to prosecute is not the owner but the person from whom the demand is made. 1942 N.L.J. 518 = 1943 Nag. 79 = I.L.R. (1943) Nag. 38.

(ii) of any rule made under any of the said sections, or under section 49, or

(iii) of any condition attached to any exemption granted under section 43 or section 44 or section 45 or to any permission granted under section 38 or section 49, or

(c) there is any contravention of any of the provisions of sections 39 to 41 inclusive or of any rule made under section 39, section 41 or section 47, or of any condition attached to any exemption granted under section 41 or to any modification or relaxation made under section 44, or

(d) any person is not paid any extra pay to which he is entitled under the provisions of section 47, or

(e) any adolescent or child is allowed to work in contravention of any of the provisions of sections 50, 51, 54, 55, 57 and 58 or

(f) there is any contravention of section 55 or section 56 or of any rules made under either of these sections, or under clause (d) of section 59, the manager and occupier of the factory shall each be punishable with fine which may extend to five hundred rupees :

Provided that if both the manager and the occupier are convicted, the aggregate of the fines inflicted in respect of the same contravention shall not exceed this amount, ¹[or

(g) there is any contravention of section 49-B, 49-C or 49-D, or of any rule made under section 49-F.]

61. [Cf. S. 45 of the old Act and S. 143, Eng. Act.] If any person who has been convicted of any offence punishable under clauses (b) to [(g)]² inclusive of section 60 is again guilty of an offence involving a contravention of the same provision, he shall be punishable on the second conviction with fine which may extend to seven hundred and fifty rupees and shall not be less than one hundred rupees, and if he is again so guilty, shall be punishable on the third or any subsequent conviction with fine which may extend to one thousand rupees and shall not be less than two hundred and fifty rupees :

Provided that for the purposes of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.

Provided further that the Court, if it is satisfied that there are exceptional circumstances warranting such a course, may, after recording its reasons in writing, impose a smaller fine than is required by this section.

Penalty for failure to give notice of commencement of work or of change of manager.

62. An occupier of factory who fails to give any notice required by sub-section (1) or sub-section (2) of section 9 shall be punishable with fine which may extend to five hundred rupees.

LEG. REF.

¹ The word "or" at the end of cl. (f) and new cl. (g) added by Act III of 1945.

² Subs. by Act III of 1945.

SEC. 61: STATEMENT OF OBJECTS AND REASONS.—This follows a recommendation of the Labour Commission and is designed to secure in suitable cases adequate penalties

in the case of repeated offences.

REPORT OF SELECT COMMITTEE.—We have provided for a gradual increase of the penalty in the case of repeated offences, and we have limited the operation of the whole clause to offences relating to the provisions of Chapters IV and V, and it is only in respect of such offences that the need of such a provision has been felt.

63. [Cf. S. 43, Old Act.] Whoever wilfully obstructs an Inspector in the exercise of any power under section 11, or fails to produce on demand by an Inspector any registers or other documents in his custody kept in pursuance of this Act or of any of the rules made thereunder, or conceals or prevents any worker in a factory from appearing before or being examined by an Inspector, shall be punishable with fine which may extend to five hundred rupees.

64. [Cf. S. 41 (j), Old Act.] A manager of a factory who fails to give notice of an accident as required under section 30 shall be punishable with fine which may extend to five hundred rupees.

65. [Cf. S. 41, Old Act.] If in respect of any factory any return is not furnished as required under section 77, the manager and the occupier of the factory shall each be liable to fine which may extend to five hundred rupees:

Provided that if both the manager and the occupier are convicted, the aggregate of the fines inflicted shall not exceed this amount.

66. [S. 43, Old Act.] Whoever smokes, or uses a naked light or causes or permits any such light to be used in the vicinity of any inflammable material in a factory shall be punishable with fine which may extend to five hundred rupees.

Exception.—This provision does not extend to the use, in accordance with such precautions as may be prescribed, of a naked light in the course of a manufacturing process.

67. [Cf. S. 139, Eng. Act and S. 44, Old Act.] Whoever knowingly uses or attempts to use, as a certificate granted to himself under section 52, a certificate granted to another person under that section, or who, having procured such a certificate, knowingly allows it to be used, or an attempt to use it to be made by another person, shall be punishable with fine which may extend to twenty rupees.

SEC. 63.—No sort of vicarious responsibility is recognized by this Act in respect of offences referred to in this section. Where the Assistant Manager failed to produce register on demand by the Inspector, alleging that the same was with the Manager who had left the office, the Manager cannot be convicted under this section even if he was really hiding himself in the factory in order to avoid meeting the Inspector. 41 C.W.N. 740.

SEC. 64.—See 1930 L. 658; L.B.R. (1893-1900) 407 cited under sec. 70 *infra*.

SEC. 65: LIABILITY OF OCCUPIER AND MANAGER.—Liability of the occupier and manager of a factory to be sentenced for an offence under sec. 41 is joint and several. Where, therefore, both are tried jointly for an offence under the section they cannot each be sentenced to the maximum penalty provided by the section but their joint liability to pay fine should not exceed the maximum. 21 Cr.L.J. 728=59 I.C. 152=45 B. 220=22 Bom.L.R. 904. See also 10 Bom.L.R. 38=7

Cr.L.J. 44. See also notes under sec. 60 *supra*.

CASE-LAW UNDER THE OLD ACT.—Separate sentences of fine on the occupier and manager in one trial under sec. 41 of the Act are illegal. An occupier is the controller for the time being of factory and may be either an owner of a lessee or a mortgagee with possession. The manager merely carries out the occupier's orders to work the factory. If there is no manager, the occupier himself is deemed to be the manager (*Le Rossignol, J.*). 13 P.R. (Cr.) 1918=45 I.C. 159=19 Cr.L.J. 495. The manager of a mill who employs a number of workmen to work in his mill after 7 p.m., is liable to be convicted and sentenced separately in respect of each such workman under the provisions of sec. 41 (a) read with sec. 29 (i) of the Factories Act (*Shah and Hayward, J.J.*). 53 I.C. 935=20 Cr.L.J. 837=21 Bom.L.R. 1059. See also 44 B. 88. On this section see also 45 B. 220=1921 B. 322 cited under sec. 60 *supra*.

68. [Cf. S. 148, Eng. Act] If a child works in a factory on any day on

Penalty on guardian for permitting double employment of a child.

which he has already been working in another factory, the parent or guardian of the child or the person having custody of or control over him, or obtaining any direct benefit from his wages, shall be punishable with fine which may extend to twenty rupees, unless it appears to the Court that the child so worked without the consent, connivance or wilful default of such parent, guardian or person.

69. [Cf. S. 41 (1), Old Act.] A manager of a factory who fails to display

Penalty for failure to display certain notices.

the notice required under sub-section (1) of section 76 or by any rule made under this Act, or to display or maintain any such notice as required by sub-section (2) of that section, shall be punishable with fine which may extend to five hundred rupees.

70. [Vide Ss. 140 and 141, Eng. Act.] (1) Where the occupier of a factory

Determination of "occupier" for purposes of this Chapter.

is a firm or other association of individuals, any one of the individual partners or members thereof may be prosecuted and punished under this Chapter for any offence for which the occupier of the factory is punishable:

Provided that the firm or association may give notice to the Inspector that it has nominated one of its number who is resident in British India to be the occupier of the factory for the purposes of this Chapter, and such individual shall so long as he is so resident be deemed to be the occupier for the purposes of this Chapter until further notice cancelling his nomination is received by the Inspector or until he ceases to be a partner or member of the firm or association.

(2) Where the occupier of a factory is a company, any one of the directors thereof, or, in the case of a private company, any one of the shareholders thereof, may be prosecuted and punished under this Chapter for any offence for which the occupier of the factory is punishable:

SEC. 70: WHO IS OCCUPIER—LIABILITY OF OCCUPIER—OLD CASES.—The term "occupier" generally means a person who controls the factory or workshop and the work that is done there, and includes the owner of the factory. 15 Bom.L.R. 328=20 I.C. 144=14 Cr.L.J. 384. The word 'occupier' denotes a person who is either a proprietor or otherwise entitled to be in possession of the factory and control its working. He may or may not actually occupy the building and even if he carries on the work through an agent he does not cease to be the occupier. He cannot therefore be any one who is a mere servant charged with specific duties either in regard to the control of the machinery, workmen, or office. A *mukaddam* is really a foreman of the operatives and a servant of the factory. He is neither a managing agent nor a person authorised to represent the occupier. He cannot therefore be regarded as an occupier or manager. He cannot be tried jointly with the manager for an offence under sec. 41 (a) of the Old Act but cannot be tried under sec. 42 (i) on the complaint of the manager. 144 I.C. 693=34 Cr.L.J. 821=1933 N. 100. The word "occupier" in general means a person who occupies the factory either by himself or his agent. He may be an owner, he may be a lessee or even a mere licensee but he must have the right to occupy the property and

dictate how it is to be managed. 55 Bom. 366=32 Cr.L.J. 1063 (i)=33 Bom.L.R. 309=1931 B. 308. Even if the accused, who is the owner of a factory shows that he knows nothing about the management of the factory and that he has left the whole conduct of its affairs to a manager appointed by him for the purpose, he is not free from the liability imposed on him by sec. 41 (a) of the Old Act. (*Ibid.*) Several persons may at the same time be occupiers of premises within the meaning of the Act for different purposes. *Wearings v. Kirk*, (1904) 1 K.B. 213 (O.A.). *Per Mathew, L.J.*, at p. 217. The proprietor of a factory who lives for the greater part of the year in a house on the factory premises is an occupier for the purposes of the Act. Rat. 901. But see 29 B. 423; 7 Bom.L.R. 454 (*contra*). The provisions of Factories Act throw upon the occupier the responsibility of keeping the register. The responsibility is personal; and he cannot get rid of it by saying that he had delegated the duty to another person. 11 Bom.L.R. 12=9 Cr.L.J. 160=1 I.C. 102. The mere fact that a Municipality and the Factory were jointly responsible to keep a factory in a cleanly state will not discharge the occupier from his liability under Factories Act. The provision of Old sec. 17 is of a highly penal character and must be construed strictly in favour of the accused; 25

(a) that the occupier or manager of the factory has used all due diligence to enforce the execution of this Act, and

(b) by what person the offence has been committed, and

(c) that it has been committed without the knowledge, consent or connivance of the occupier or manager, and in contravention of his orders, the Inspector shall proceed against the person whom he believes to be the actual offender without first proceeding against the occupier or manager of the factory, and such person shall be liable to the like fine as if he were the occupier or manager.

72. [Cf. S. 46, Old Act.] If a child over the age of six years is found inside any part of a factory in which children are working, he shall, until the contrary is proved, be deemed to be working in the factory.

Presumption as to employment.

73. [Cf. S. 147, Eng. Act and S. 47, Old Act.] (1) When an act or omission would, if a person were under or over a certain age, be an offence punishable under this Act, and such person is in the opinion of the Court apparently under or over such age, the burden shall be on the accused to prove that such person is not under or over such age.

Evidence as to age.

(2) A declaration in writing by a certifying surgeon relating to a worker that he has personally examined him and believes him to be under or over the age set forth in such declaration shall, for the purposes of this Act, be admissible as evidence of the age of that worker.

74. [Cf. S. 48, Old Act.] (1) No prosecution under this Act, except a prosecution under section 66, shall be instituted except by or with the previous sanction of the Inspector.

Cognizance of offences.

(2) No Court inferior to that of a Presidency Magistrate or of a Magistrate of the first class shall try any offence against this Act or any rule or order made thereunder other than an offence under section 66 or section 67.

75. [Cf. S. 146, Eng. Act and section 49, Old Act.] No Court shall take cognizance of any offence under this Act or any rule or order thereunder, other than an offence under section 62 or section 64, unless, complaint thereof is made within six months of the date on which the offence is alleged to have been committed:

Limitation of prosecutions.

Provided that when the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within twelve months of the date on which the offence is alleged to have been committed.

CHAPTER VII.

SUPPLEMENTAL.

76. [Cf. S. 128, Eng. Act and section 36, cl. (1), Old Act.] (1) In addition to the notices required to be displayed in any factory by this Act or the rules made thereunder, there shall be displayed in every factory a notice containing such abstracts of this Act and of the rules made thereunder in English and in the vernacular of the majority of the workers, as the Provincial Government may prescribe.

Display of factory notices.

SEC. 75: RULE OF LIMITATION—IF PER-
EMPTORY.—The Rule of Limitation laid down
in sec. 75 is peremptory and cannot be cir-
cumvented by any considerations imported
from the provisions of the Limitation Act.
I.L.R. 1943 Nag. 362=1943 Nag. 243=1943

N.L.J. 399.

SEC. 76.—It is no offence, where an employ-
er is being prosecuted for supplying incor-
rect particulars to show that the workmen
could easily have ascertained their falsity.
(*Nussey v. Britwistle*, (1894) 58 J.P. 735).

(2) All notices required to be displayed in a factory shall be displayed at some conspicuous place at or near the main entrance to the factory, and shall be maintained in a clean and legible condition.

77. [Cf. S. 37, Old Act.] The ¹[Provincial Government] may make rules requiring occupiers or managers of factories to submit such returns, occasional or periodical, as may in his opinion be required for the purposes of this Act.

Power of Provincial Government to make rules.

Control of rules made by Local Governments.

78. ^{1a}[* * * * *]

79. [Cf. Ss. 39 and 40, Old Act.] (1) All rules made under this Act shall be subject to the condition of previous publication, and the date to be specified under clause (3) of section 23 of the General Clauses Act, 1897, shall not be less than three months from the date on which the draft of the proposed rules was published.

(2) All such rules shall be published in ²[* * *] the Official Gazette ²[* * *] and shall, unless some later date is appointed, come into force on the date of such publication.

Application to Crown factories.

80. [Cf. S. 150, Eng. Act.] This Act shall apply to factories belonging to the Crown.

Protection to persons acting under this Act.

81. [Cf. S. 58, Old Act.] No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Repeal and savings.

82. [Repealed by Act XX of 1937.]

SCHEDULE—(Repealed by Act XX of 1937.)

THE FACTORIES (MADRAS AMENDMENT) ACT VI OF 1941.

N.B.—See the same cited under Sec. 52, Factories Act (XXV of 1934), *supra*.

FEMALE INFANTICIDE PREVENTION ACT (VIII OF 1870).³

Year.	No.	Short title.	Amendments.
1870	VIII	The female Infanticide Prevention Act, 1870.	Short title given, Act XIV of 1897. Rep. in part and amended, Act XXXVIII of 1920. Amended in Bombay Presidency, and declared to extend to that Presidency, Bom. Act III of 1897.

[18th March, 1870.]

An Act for the Prevention of the murder of Female Infants.

WHEREAS the murder of female infants is believed to be commonly com-

LEG. REF.

¹Substituted for 'Governor-General in Council' by A.O., 1937.

^{1a}Sec. 78 omitted by A.O., 1937.

²Words 'the Gazette of India' and 'as the case may be' omitted by *ibid*.

³Short title. See the Indian Short Titles Act, 1897 (XIV of 1897).

SEC. 77.—The rules framed under the Factories Act do not require that a place, like a pit containing hot water, for silting wood in a rice factory, which is used for the purposes of the factory, should be fenced in such manner as to be completely unapproachable. It is sufficient if it is fenced in such a way that nobody would cross that

way and fall into the pit by accident. Where the pit, which contained hot water and into which an employee in the factory fell and was fatally scalded was fenced on three sides but the fourth side was left open for approach and did not ordinarily contain very hot or other injurious substance. *Held*, that the manager was not liable to be convicted for not observing Rule 72 (1) of the Rules framed under the Factories Act and for failing to fence the pit, because, firstly, the pit was fenced and secondly, it was not a pit which ordinarily contained any hot or injurious substance. A.I.R. 1939 Pat. 46=20 Pat.L. T. 95=1939 P.W.N. 133.

SEC. 81.—This section does not apply to a manager; it was inserted, primarily, if not

Preamble.

mitted in certain parts of British India; and whereas it is necessary to make better provision for the prevention of the said offence; it is hereby enacted as follows:

1. If it shall appear to the Provincial Government that the said offence is commonly committed in any district, or by any class, or family, or persons residing therein, the Provincial Government may, ¹[* * *] declare by notification published in the Official Gazette, and in such other manner as the Provincial Government shall direct, that measures for the prevention of such offence shall be taken under this Act, in such district, or in respect of such class, or family or persons.²

Power to take measures under Act in particular districts.

The notification shall define the limits of such district, or shall specify the class, or family or persons to whom such notification is to be deemed to apply.

³2. When such notification shall have been published as aforesaid, it shall be lawful for the Provincial Government, subject to the provisions of section 3, from time to time, to

Power to make rules.

make rules consistent with this Act for all or any of the following purposes:—

(1) for making and maintaining registers of births, marriages and deaths occurring in such district, or in or among the class, family, or persons to whom such notification has been made applicable; and for making, from time to time, a census of such persons, or of any other persons residing within such district;⁴

(2) for the entertainment of any police-force in excess of the ordinary fixed establishment of police, or for the entertainment of any officers or servants, for the purpose of preventing or detecting the murder of female infants in such district, or in or among such class, family or persons, or for carrying out any of the provisions of this Act:

(3) for prescribing how and by whom information shall be given to the

LEG. REF.

For the Statement of Objects and Reasons see *Gazette of India*, 1870, Pt. V, p. 15; for Proceedings in Council, see *ibid.*, Supplement, pp. 53, 131 and 473.

This Act has been declared by notification under sec. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts, namely:—

The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum see *Gazette of India*, 1881, Pt. I, p. 504. The District of Lohardaga included at this time the present District of Palamanu, which was separated in 1894; the district of Lohardaga is now called the Ranchi district, see *Calcutta Gazette*, 1899, Pt. I, p. 44.

As to the operation of the Act in the Bombay Presidency, see note to sec. 7 *infra*.

¹ The words "with the previous sanction of the Governor-General of India in Council" were omitted by sec. 2 and Sch. I of the Devolution Act 1920 (XXXVIII of 1920).

² For notification issued under this power in respect of certain classes of persons in the Ahmedabad and Kaira Districts of the Bombay Presidency, see Bom. R. & O.

For notification issued under this power in respect of various localities in the Province of Agra, see U. P. List of Local Rules and Orders.

³ For rules made under the section for the United Provinces of Agra and Oudh, see U. P. List of Local Rules and Orders.

For rules made under this section by the Government of the Punjab in respect of all Jats resident in certain villages of the Jullundar District, see *Gazette of India*, 1901, Pt. I, p. 295.

⁴ For rules made by the Government of Bombay in respect of the classes referred to in the previous note, see Bom. R. & O.

entirely for the benefit of the inspecting staff. It cannot be said that the manager is acting under the Act. 1938 N.L.J. 217=A. I.R. 1938 Nag. 406.

SEC. 2: RULES VI OF RULES FRAMED BY N. W. P. GOVERNMENT—LIABILITY OF HEADS OF FAMILIES.—Though Rule VI of the Rules framed under sec. 2, Act VIII of 1870, requires the *chowkidar* of a village to immediately report to the officer in charge of a police station among other things, "also—on the occasion of his periodical visit to the police station other deaths, removals and arrivals," the last duty, *viz.*, of reporting "other deaths, removals and arrivals" though it may be a duty cast upon him under sec. 8 (3) (f) of Act XVI of 1873 (Village and Rural Police) is not a duty cast upon him by the provisions of Act VIII of 1870 and Rule VI is not, on this point consistent with the Act. 4 L.B.R. 11=6 Cr.L.J. 122. Lessee not liable for offence by sub-lessee. L.B.R. (1893-1900), 594. As to liability of heads of families to give information, see 6 A. 380.

proper officers of all births, marriages and deaths occurring or about to occur in such district, or in or among such class, family or persons:

(4) for the regulation and limitation of expenses¹ incurred by any person to whom such notification applies on account of the celebration of marriage or of any ceremony or custom connected therewith:

(5) for regulating the manner in which all or any of the expenses incurred in carrying into effect rules made under this section shall be recovered from all or any of the inhabitants of such district, or from the persons to whom such notification is applicable:²

(6) for defining the duties of any officer or servant appointed to carry out any rule made under this section.

3. No rule or alteration made under section 2 shall take effect until it shall have been³ * * * * *
Confirmation and publi- * * published⁴ * * * * * in the Official
cation of rules. Gazette.
Gazette.

Copies of every such rule shall be affixed in such places, and shall be distributed in such manner, as the Provincial Government may direct.

4. Whoever disobeys any such rule shall, on conviction before any officer exercising the powers of a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.
Punishment for breach of rules.

5. Nothing in this Act, or in any rule made and published as aforesaid, shall prevent any person from being prosecuted and punished under any other law for any offence punishable under this Act: Provided that no person shall be punished twice for the same offence.
Saving of prosecutions under other laws.

6. If it appears to the Magistrate of the District that any person, to whom the notification mentioned in section 1 applies, neglects to make proper provision for the maintenance of any female child for whose maintenance he is legally responsible, and that the life or health of such child is thereby endangered, such Magistrate may, in his discretion, place the child under such supervision as he may think proper, and shall, if necessary, remove the child from the custody of such person.
Power to place neglected children under supervision.

The Magistrate of the District may order him to make a monthly allowance for the maintenance of the child at such monthly rate not exceeding fifty rupees as to such Magistrate shall seem reasonable, and, if such person wilfully neglects to comply with such order, such Magistrate may, for every breach of the order, by warrant direct the amount due to be levied in manner provided by section 61⁵ of the Code of Criminal Procedure.

Nothing in this section shall affect the powers of a Magistrate under section 316⁶ of the same Code.

7. This Act shall, in the first instance, extend only to the North-Western

LEG. REF.

¹ For rules limiting marriage expenses among the classes referred to *supra* see *ibid*.

² As to the application of funds collected under the Act or the rules made thereunder for the educational benefit of those classes in the Ahmedabad District to whom the Act has been applied, see sec. 1 of Bombay Act III of 1897 (to amend Act VIII of 1870).

³ The words "confirmed by the Governor-General of India in Council and" were omitted by sec. 2 and Schedule I of the Devolu-

tion Act, 1920 (XXXVIII of 1920).

⁴ The words "in the Gazette of India and also" were omitted by *ibid*.

⁵ See now Act V of 1898, secs. 386 and 387.

⁶ See now Act V of 1898, sec. 488.

⁷ The Act has been declared to extend and to have extended from the 21st December, 1870, to the Presidency of Bombay, by sec. 2 of Bom. Act III of 1897 (to amend Act VIII of 1870).

Extent of Act. Provinces, to the Punjab and to Oudh; but ¹[* * *] ²[the Provincial Government of any other part of British India may, by notification published in the Official Gazette, extend it to any part of the territories under the administration of that Provincial Government.]

THE INDIAN FISHERIES ACT (IV OF 1897).³

Year.	No.	Short title.	Amendments.
1897	IV	The Indian Fisheries Act, 1897.	Repealed in part, X of 1914. Amended, locally, Madras Act II of 1929.

[4th February, 1897.

An Act to provide for certain matters relating to Fisheries in British India.

WHEREAS it is expedient to provide for certain matters relating to fisheries in British India; it is hereby enacted as follows:—

Title and extent. 1. (1) This Act may be called THE INDIAN FISHERIES ACT, 1897.

(2) It extends to the whole of British India, [* *] [* * *].

2. Subject to the provisions⁴ of sections 8 and 10 of the ⁵General Clauses Act, 1887, this Act shall be read as supplemental to any other enactment⁷ for the time being in force relating to fisheries in any part of British India [* *].

Definitions. 3. In this Act, unless there is anything repugnant in the subject or context,—

(1) "fish" includes shell-fish;

(2) "fixed engine" means any net, cage, trap or other contrivance for taking fish, fixed in the soil or made stationary in any other way; and

(3) "private water" means water which is the exclusive property of any person or in which any person has for the time being an exclusive right of fishery whether as owner, lessee or in any other capacity.

Explanation.—Water shall not cease to be "private water" within the meaning of this definition by reason only that other persons may have by custom a right of fishery therein.

LEG. REF.

¹ Reference to Governor-General in Council omitted by A.O., 1937.

² These words were substituted for the words "and the Governor of Madras, etc." by sec. 2 and Schedule I of the Devolution Act, 1920 (XXXVIII of 1920).

³ For Statement of Objects and Reasons, see *Gazette of India*, 1893, Pt. V, p. 101; for Report of the Select Committee, see *ibid.*, 1897, Pt. V, p. 15, and for Proceedings in Council, see *ibid.*, 1893, Pt. VI p. 207, *ibid.*, 1896, p. 250 and *ibid.*, 1897, p. 21.

This Act has been declared to be in force in British Baluchistan by sec. 3 of the British Baluchistan Laws Regulation, 1913 (II of 1913), Bal. Code.

⁴ The words 'except Burma' omitted by A.O., 1937.

⁵ The word "and" at the end of sub-sec. (2), and sub-sec. (3) were repealed by the Repealing and Amending Act, 1914, (X of

1914).

⁶ See now secs. 4 and 26 of the General Clauses Act, 1897 (X of 1897).

⁷ For law relating to Fisheries in—

(1) Assam, see the Assam Land and Revenue Regulation, 1886, (I of 1886), secs. 16 and 155.

(2) Bengal and Assam (private fisheries), see the Private Fisheries Protection Act, 1889 (Ben. Act II of 1889).

(3) Central Provinces, see the Central Provinces Land Revenue Act, 1881 (XVIII of 1881), C. P. Code.

(4) Nilgiris District, as to acclimatised fish, see the Nilgiris Game and Fish Preservation Act, 1879 (Mad. Act II of 1879). Mad. Code, Vol. I.

(5) See Punjab Fisheries Act (II of 1914).

(6) Madras—see Madras Act (II of 1927).

4. (1) If any person uses any dynamite or other explosive substance in any water with intent thereby to catch or destroy any of the fish that may be therein, he shall be punishable with imprisonment for a term which may extend to two months, or with fine which may extend to two hundred rupees.

(2) In sub-section (1) the word "water" includes the sea within a distance of one marine league of the sea-coast; and an offence committed under that sub-section in such sea may be tried, punished and in all respects dealt with as if it had been committed on the land abutting on such coast.

5. (1) If any person puts any poison, lime or noxious material into any water with intent thereby to catch or destroy any fish, he shall be punishable with imprisonment for a term which may extend to two months, or with fine which may extend to two hundred rupees.

(2) The Provincial Government may, by notification in the Official Gazette, suspend the operation of this section in any specified area; and may in like manner modify or cancel any such notification.

6. (1) The Provincial Government may make rules¹ for the purposes hereinafter in this section mentioned, and may by notification in the Official Gazette apply all or any of such rules to such waters, not being private waters, as the Provincial Government may specify in the said notification.

(2) The Provincial Government may also, by a like notification, apply such rules or any of them to any private water with the consent in writing of the owner thereof and of all persons having for the time being any exclusive right of fishery therein.

(3) Such rules may prohibit or regulate all or any of the following matters, that is to say:—

- (a) the erection and use of fixed engines;
- (b) the construction of weirs; and
- (c) the dimension and kind of the nets to be used and the modes of using them.

(4) Such rules may also prohibit all fishing in any specified water for a period not exceeding two years.

(5) In making any rule under this section the Provincial Government may—

(a) direct that a breach of it shall be punishable with fine which may extend to one hundred rupees, and, when the breach is a continuing breach, with a further fine which may extend to ten rupees for every day after the date of the first conviction during which the breach is proved to have been persisted in; and

(b) provide for—

- (i) the seizure, forfeiture and removal of fixed engines, erected, or used or nets used, in contravention of the rule, and
- (ii) the forfeiture of any fish taken by means of any such fixed engine or net.

(6) The power to make rules under this section is subject to the condition that they shall be made after previous publication.

7. (1) Any police-officer, or other person² specially empowered by the Provincial Government in this behalf, either by name or as holding any office, for the time being may, without an order from a Magistrate and without warrant,

Arrest without warrant for offences under this Act.

LEG. REF.

¹ For rules under sec. 6, see different local Rules and Orders.

² For notification under this section in Madras, see Fort St. George Gazette, 1908, Pt. I, p. 19.

arrest any person committing in his view any offence punishable under section 4 or 5 or under any rule under section 6--

(a) if the name and address of the person are unknown to him, and

(b) if the person declines to give his name and address, or if there is reason to doubt the accuracy of the name and address if given.

(2) A person arrested under this section may be detained until his name and address have been correctly ascertained:

Provided that no person so arrested shall be detained longer than may be necessary for bringing him before a Magistrate, except under the order of a Magistrate for his detention.

THE INDIAN FISHERIES (MADRAS AMENDMENT) ACT (II OF 1929).

[2nd December, 1928.]

An Act to amend the Indian Fisheries Act, 1897, in its application to the Presidency of Madras.

WHEREAS it is expedient to amend the Indian Fisheries Act, 1897, in its application to the Presidency of Madras for the purposes hereinafter appearing; and whereas the previous sanction of the Governor-General has been obtained to the passing of this Act; It is hereby enacted as follows:—

Short title and extent. 1. (1) This Act may be called THE INDIAN FISHERIES (MADRAS AMENDMENT) ACT, 1927.

(2) It extends to the whole of the Presidency of Madras.

Amendment of S. 6, Act IV of 1897. 2. In sub-section (3) of section 6 of the Indian Fisheries Act, 1897 (hereinafter referred to as the said Act)—

(i) after the words "prohibit or regulate" the words "either permanently or for a time or for specified seasons only" shall be inserted, and

(ii) for clause (c) the following clause shall be substituted, namely:—

"(c) the dimension and kind of the contrivances to be used for taking fish generally or any specified kind of fish and the modes of using such contrivances."

Amendment of S. 6, Act IV of 1897. 3. For sub-section (4) of section 6 of the said Act, the following sub-section shall be substituted, namely:—

(4) Such rules may also prohibit all fishing in any specified water except under a lease or license granted by Government and in accordance with such conditions as may be specified in such lease or licence:

"Provided that no rule shall be made under this sub-section to prohibit sea fishery other than pearl fishery or chank fishery unless, after previous publication under sub-section (6) of this section, it has been laid in draft before the Legislative Council, and has been approved by a resolution of the Legislative Council either with or without modification or addition; but upon such approval being given the rule may be issued in the form in which it has been so approved."

Addition of new S. 8 to Act IV of 1897. 4. After section 7 of the said Act, the following section shall be added, namely:—

"8. All rents, fees and other moneys payable to Government on account of fishery leases and licences granted by them may be recovered in like manner as if they were arrears of land revenue."

Recovery of rents, fees and other moneys payable to Government.

THE FOREIGNERS ACT (III OF 1864).¹

[See also Registration of Foreigners Act XVI of 1939].

[Rep. in part by Acts XII of 1876 and X of 1914; amended by Acts XII of 1891 and III of 1915. See also Act XVI of 1939.]

[12th February, 1864.

An Act to give the Government certain powers with respect to Foreigners.

WHEREAS it is expedient to make provision to enable the Government to prevent the subjects of Foreign States from residing or sojourning in British India, or from passing through or travelling therein, without the consent of the Government; it is enacted as follows:—

1. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say:—

LEG. REF.

¹ Short title, "the Foreigners Act, 1864". See the Indian Short Titles Act, 1897 (XIV of 1897).

For special direction from Parliament to pass this Act, see sec. 84 of the Government of India Act, 1833 (III and IV Will. IV, c. 85), Coll. Stats., Ind., Vol. I.

For the Statement of Objects and Reasons of the Bill which became Act III of 1864, see Calcutta Gazette, 1863, p. 2163; for Proceedings relating to the Bill, see *ibid.*, Supplement, p. 581, and *Gazette of India*, 1864, Supplement, p. 41.

The Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (XV of 1874), sec. 3.

It has been declared in force in—

Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), sec. 4 (1) and Sch. I, Bur. Code, Vol. I but its application to Chins in the

Chin Hills has been barred by the Chin Hills Regulation, 1896 (V of 1896), Bur. Code, Vol. I, and to hill tribes in a hill-tract to which the Regulation applies by the Kachin Hill Tribes Regulation 1895 (I of 1895), Bur. Code, Vol. I.

The Santhal Parganas by the Santhal Parganas Settlement Regulation (III of 1872), sec. 3, as amended by the Santhal Parganas Justice and Laws Regulation, (III of 1899) B. and O. Code, Vol. I.

The Arakan Hill Districts by the Arakan Hill District Laws Regulation 1916 (1 of 1916), sec. 2, Bur. Code, Vol. I.

British Baluchistan by the British Baluchistan Laws Regulation, 1913 (II of 1913), sec. 3, Bal. Code;

Angul District by the Angul Laws Regulation, 1913 (III of 1913), sec. 3, B. and O. Code, Vol. I.

It has been declared, by notification under sec. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts namely:—

Sindh ...
Aden ...
West Jalpaiguri, the Western Dvars, the Western Hills of Darjiling, the Darjiling Tarai, and the Dahson Sub-division of the Darjiling District ...
The Districts of Hazaribagh, Lohardaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum ...
The Purhat Estate in the Singhbhum District ...
The Scheduled portion of the Mirzapur District ...
Jaunsar Barwar ...

See Gazette of India, 1878, Pt. I, p. 482.
Ditto 1879, Pt. I, p. 434.

Ditto 1881, Pt. I, p. 74.

Ditto 1881, Pt. I, p. 504.

Ditto 1897, Pt. I, p. 1059.

Ditto 1879, Pt. I, p. 333.

Ditto 1879, Pt. I, p. 382.

The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khan. (*Portions of the Districts of Hazara, Bannu, Dera Ismail Khan and Dera Ghazi Khan and the Districts of Peshawar and Kohat now form the North-West Frontier Province, see Gazette of India, 1901 Pt. I, p. 857, and ibid., 1902, Pt. I, p. 575; but its application in that part of the Hazara*

¹[* * *].

"Foreigner."

The word "foreigner" shall denote a persons:—

²[(a) who is not a natural born British subject as defined in sub-sections (1) and (2) of section 1 of the British Nationality and Status of Aliens Act, 1914, or

(b) who has not been granted a certificate of naturalisation as a British subject under any law for the time being in force in British India:

Provided that any British subject who, under any law for the time being in force in British India, ceases to be a British subject, shall thereupon be deemed to be a foreigner];

the words "the Magistrate of the district" shall denote the chief officer

charged with the executive administration of a district and exercising the powers of a Magistrate, by whatever designation the chief officer charged with the executive administration is styled, or, in the absence of such officer from the station at which his Court is usually held, the senior officer at the station exercising the powers of a Magistrate as defined in the Code of Criminal Procedure:

³the word "vessel" shall include anything made for the conveyance by water of human beings or property.³

"Vessel"

[Number.] Rep. by Act X of 1914.

[Gender.] Rep. by Act X of 1914.

2. If a question shall arise whether any person alleged to be a foreigner

and to be subject to the provisions of this Act is a foreigner or not, or is or is not subject to the provisions of this Act, the onus of proving that such person

is not a foreigner, or is not subject to the provisions of this Act, shall lie upon such person.

LEG. REF.

District known as Upper Tanawal has been barred by the Hazara (Upper Tanawal) Regulation, 1900 (II of 1900). (Punjab and N. W. Code) ...

The District of Lahaul ...

The Scheduled Districts of the Central Provinces ...

The Scheduled Districts in Ganjam and Vizagapatam ...

The District of Sylhet ...

The rest of Assam (except the North Lushai Hills) ...

It has been extended by notification under sec. 5 of the last-mentioned Act, to the

See Gazette of India, 1886, Pt. I, p. 48.

Ditto 1886, Pt. I, p. 301.

Ditto 1879, Pt. I, p. 771.

Ditto 1898, Pt. I, p. 870.

Ditto 1879, Pt. I, p. 631.

Ditto 1897, Pt. I, p. 299.

following Scheduled Districts, namely:—

Kumaon and Garhwal ...

Ditto 1876, Pt. I, p. 606.

The Tarai of the Province of Agra ...

Ditto 1876, Pt. I, p. 505.

¹ Definitions of 'British India' and 'Local Government' omitted by A.O., 1937.

² These words were substituted for the words "not being either a natural-born subject of Her Majesty within the meaning of the Statute 3 and 4 William IV, Chap. 85, sec. 81, or a Native of British India" by sec. 2 of the Foreigners (Amendment) Act, 1915 (III of 1915).

³ Cf. definition in sec. 3 (50) of the General Clauses Act, 1897.

SEC. 2: EFFECT OF TRANSFER OF TERRITORY—CESSION OF TERRITORY BY BRITAIN TO ANOTHER STATE—BRITISH SUBJECT CEASES

TO BE SUCH ON CESSION.—A relinquishment by the Government of a territory is not only a relinquishment of the right to soil or territory, but also of the rights over the inhabitants of the country. The distinction between a right of election of which sovereign he will become the subject and the method by which a man can leave a newly ceded territory and remain within the allegiance of his former sovereign, seems somewhat fine: but the distinction is one between a mere assertion of elected allegiance and actual conduct clearly showing such an election. It is not enough for an inhabitant to assert, when the question arises, that he has

3. The Central Government may, by writing, order any foreigner to remove himself from British India or to remove himself therefrom by a particular route to be specified in the order; ¹[* * *].

²[3-A. (1) Whenever in a Presidency town the Commissioner of Police or elsewhere the Magistrate of the District, considers that the ³[Central Government] should be moved to issue an order under section 3 in respect of any foreigner who is within the limits of such Presidency town or of the jurisdiction of such Magistrate, he may report the case to the ³[Central Government] and at the same time issue a warrant for the apprehension of such foreigner.

(2) Any officer issuing a warrant under sub-section (1) may, in his discretion, direct by endorsement on the warrant that if such foreigner executes a bond with or without sureties for his attendance at a specified place and time, the person to whom the warrant is directed shall take such security and release such foreigner from custody.

(3) Any person executing a warrant under sub-section (1) may search for and apprehend the foreigner named in such warrant: and, subject to any direction issued under sub-section (2), shall forthwith cause such foreigner when apprehended to be produced before the officer issuing the warrant.

(4) When a foreigner for whose apprehension a warrant has been issued

LEG. REF.

¹ Words referring to Local Government omitted by A.O., 1937.

² Sec. 3-A was inserted by sec. 3 of the Foreigners (Amendment) Act, 1915 (III of 1915).

³ Substituted for 'Local Government' by A.O., 1937.

elected to remain within the allegiance of his former sovereign; there must be conduct on his part, such as leaving the ceded territory and going to reside permanently in his former sovereign's dominions to indicate his previous election. Any inhabitant of the ceded or separated territory has not the right to remain an inhabitant of it, and at the same time to retain the allegiance and nationality of the State which ceded or permitted the separation. The common law of England embodying the above rules is the law for the time being in force in British India within the meaning of the proviso to sec. 1. 90 I.C. 310=1925 B. 489. [18 Cal. 620 (P.C.) and 42 Mad. 589 (P.C.), Foll.]. The applicant was born in Ramdupati which was in British territory. In that village he had some lands and owned a house in which his family resided permanently. He, however, came to Bombay for purposes of trade. Ramdupati was subsequently ceded to the Maharaja of Benares by the British Government. The applicant continued to live in Bombay for trade before as well as after the cession. *Held*, that the applicant was a "foreigner" by virtue of the proviso to sec. 2 of Act III of 1915, amending the Foreigners Act, 1864. 90 I.C. 310=49 B. 801=27 Bom.L.R. 1043=26 Cr.L.J. 1526=1925 B. 489.

SECS. 3 AND 3-A: PROCEDURE.—Government must issue orders about detention or

release or removal without delay—Commissioner of Police cannot do any such thing without such orders. 85 I.C. 138=49 B. 222=26 Bom.L.R. 1252=26 Cr.L.J. 458=1925 B. 139.

SECS. 3 AND 4.—Act III of 1864 is not *ultra vires* of the Governor-General of India in Council. 18 B. 636. Per *Bayley, J.* The Act applies to all foreigners, although their residence in Bombay may not be likely to affect or endanger the peace and security of British India. (*Ibid.*) Per *Stirling, J.*—The Government would be the sole Judges of what was necessary for the peace and security of British India, and if they acted in accordance with the letter of the Act, the High Court could not enquire into the sufficiency or otherwise of their reasons for so acting. (*Ibid.*) A warrant issued under secs. 3 and 4 of Act III of 1864 should not comprise two distinct orders, one to the foreigner to remove himself from British India, the other to arrest him in case it is not duly obeyed. There should be a separate order directing him to remove himself from British India which should be duly served upon him. Then, in case of his refusal or neglect to comply with its terms, there should be a further order by the Government authorizing his arrest and detention in jail. The persons named in the warrant should be described with sufficient certainty and particularity. The particular route to be specified in the order referred to in sec. 3 of Act III of 1864 is intended to be a route in British India and not a route beyond the High Seas. In the absence of statutory provision, the absence of a seal will render a warrant void. (*Ibid.*) See also 18 C.W.N. 705=15 Cr.L.J. 328=23 I.C. 678=1 L.W. 989 (P.C.).

under sub-section (1) is produced or appears before the officer issuing such warrant, such officer may direct him to be detained in custody pending the orders of the ¹[Central Government], or may release him on his executing a bond with or without sureties to appear at a specified place and time and thereafter if and when required until such orders are obtained.

(5) Any officer who has in accordance with the provisions of sub-section (4), ordered a foreigner to be detained or released on his executing a bond shall forthwith report the fact to the ¹[Central Government]. On the receipt of a report under this sub-section the ¹[Central Government] shall without delay either direct that the foreigner be discharged or make an order for the removal of such foreigner in accordance with the provisions of section 3.]

4. If any foreigner ordered to remove himself from British India, or ordered to remove himself therefrom by a particular route, shall neglect or refuse so to do, or if any foreigner, having removed himself from British India in consequence of an order issued under any of the provisions of this Act, or having been removed from British India under any of the said provisions, shall wilfully return thereto without a license in writing granted by the Central Government ²[* * *] such foreigner may be apprehended and detained in safe custody, until he shall be discharged therefrom by order of the Central Government ²[* * *] upon such terms and conditions as the said Central Government ²[* * *] shall deem sufficient for the peace and security of British India, and of the allies of Her Majesty, and of the neighbouring Princes and States.

5. Whenever the Central Government shall consider it necessary to take further precautions in respect of foreigners residing or travelling in British India or any part thereof, it shall be lawful for the Central Government, by a notification published in the Official Gazette, to order that the provisions of this and the subsequent sections of this Act shall be in force in British India, or in such part thereof as shall be specified in such notification, for such period as shall be therein declared; and thereupon, and for such period, the whole of this Act including this and the subsequent sections shall have full force and effect in British India or such part thereof as shall have been so specified. The Central Government may, from time to time, by a notification published as aforesaid, cancel or alter any former notification which may still be in force, or may extend the period declared therein: Provided that none of the provisions of this or the subsequent sections of this Act shall extend to any foreign

Central Government may order all the provisions of this Act to be in force in British India or in any part thereof.

Proviso. minister duly accredited by his Government; to any consul or vice-consul; to any person under the age of fourteen years; or to any person in the service of Her Majesty.

6. Every foreigner on arriving in any part of British India in which all the provisions of this Act are for the time being in force under an order issued as provided in the last preceding section, from any port or place not within British India, or from any port or place within British India where all the provisions of this Act are not in force, shall if he arrive at a presidency-town, forthwith report himself to the Commissioner of Police of such town, or, if he arrive at any other place, then he shall forthwith report himself to the Magistrate of the district, or to such other officer as shall be appointed to receive such reports, by the Central Government ³[+ * +].

Every foreigner to report his arrival in India in certain cases.

LEG. REF.

¹ Substituted for 'Local Government' by A.O., 1937. ² Words referring to Local Government omitted by *ibid.* ³ Reference to Local Government omitted by A.O., 1937.

7. The report shall be in writing, and shall be signed by the person reporting himself, and shall specify his name or names, the nation to which he belongs, the place from which he shall have come, the place or places of his destination, the object of his pursuit, and the date of his arrival in such presidency-town or other place. The report shall be recorded by the officer to whom it is made.

8. The provisions of the last two preceding sections shall not extend to any person being the master or commander of a vessel or employed therein, but if any such person shall be in any part of British India in which all the provisions of this Act are for the time being in force, after he shall have ceased to be actually employed in a vessel, he shall forthwith report himself in manner aforesaid.

Foreigners, being masters of vessels or employed therein, to report themselves when they cease to be so employed.

Foreigners neglecting to report themselves, may be dealt with in like manner as foreigners travelling without a license.

No foreigner to travel in India without a license.

9. If any foreigner shall neglect to report himself as required by this Act, he may be dealt with in the manner hereinafter provided in respect of foreigners travelling without a license.

10. No foreigner shall travel in or pass through any part of British India in which all the provisions of this Act are for the time being in force without a license.

Grant of licenses.

11. Licenses under this Act may be granted by the Central Government or by officers specially authorized by that Government.]

12. Every such license shall state the name of the person to whom the license is granted, the nation to which he belongs, the district or districts through which he is authorized to pass or the limits within which he is authorized to travel, and the period (if any) during which the license is intended to have effect.

What to be stated in license.

13. The license may be granted subject to such conditions as the Central Government ²[* * *] may direct, or as the officer granting the license may deem necessary. Any license may be revoked at any time by the Central Government ²[* * *] or by the officer who granted the license.

License may be granted subject to conditions and may be revoked.

14. If any foreigner travel in or attempt to pass through any part of British India without such license as aforesaid, or beyond the districts or limits mentioned therein, or after such license shall have been revoked, or shall violate any of the conditions therein specified, he may be apprehended without warrant by any officer exercising any of the powers of a Magistrate, or by any European commissioned officer in the service of Her Majesty, or by any member of a volunteer corps enrolled by authority of ³[the Central Government] whilst on duty, or by any police-officer.

Foreigner travelling without or contrary to the conditions of license may be apprehended.

15. If any person be apprehended by a person not exercising any of the powers of a Magistrate and not being a police-officer, he shall be delivered over as soon as possible to a police-officer, and forthwith carried before the Magistrate of the district. Whenever any person shall be apprehended by or taken

Procedure upon apprehension.

LEG. REF.

¹ Sec. 11 substituted by A.O., 1937.

² The words "or the Local Government"

omitted by *ibid.*

³ Substituted for 'Government' by A.O., 1937.

under sub-section (1) is produced or appears before the officer issuing such warrant, such officer may direct him to be detained in custody pending the orders of the ¹[Central Government], or may release him on his executing a bond with or without sureties to appear at a specified place and time and thereafter if and when required until such orders are obtained.

(5) Any officer who has in accordance with the provisions of sub-section (4), ordered a foreigner to be detained or released on his executing a bond shall forthwith report the fact to the ¹[Central Government]. On the receipt of a report under this sub-section the ¹[Central Government] shall without delay either direct that the foreigner be discharged or make an order for the removal of such foreigner in accordance with the provisions of section 3.]

4. If any foreigner ordered to remove himself from British India, or ordered to remove himself therefrom by a particular route, shall neglect or refuse so to do, or if any foreigner, having removed himself from British India in consequence of an order issued under any of the provisions of this Act, or having been removed from British India under any of the said provisions, shall

Foreigner refusing to remove, or returning without licence after removal, may be apprehended and detained.

wilfully return thereto without a license in writing granted by the Central Government ²[* * *] such foreigner may be apprehended and detained in safe custody, until he shall be discharged therefrom by order of the Central Government ²[* * *] upon such terms and conditions as the said Central Government ²[* * *] shall deem sufficient for the peace and security of British India, and of the allies of Her Majesty, and of the neighbouring Princes and States.

5. Whenever the Central Government shall consider it necessary to take further precautions in respect of foreigners residing or travelling in British India or any part thereof, it shall be lawful for the Central Government, by a notification published in the Official Gazette, to order that the provisions of this and the subsequent sections of this Act shall be in force in British India, or in

Central Government may order all the provisions of this Act to be in force in British India or in any part thereof.

such part thereof as shall be specified in such notification, for such period as shall be therein declared; and thereupon, and for such period, the whole of this Act including this and the subsequent sections shall have full force and effect in British India or such part thereof as shall have been so specified. The Central Government may, from time to time, by a notification published as aforesaid, cancel or alter any former notification which may still be in force, or may extend the period declared therein: Provided that none of the provisions of this or the subsequent

Proviso.

sections of this Act shall extend to any foreign minister duly accredited by his Government; to any consul or vice-consul; to any person under the age of fourteen years; or to any person in the service of Her Majesty.

6. Every foreigner on arriving in any part of British India in which all the provisions of this Act are for the time being in force

Every foreigner to report his arrival in India in certain cases.

under an order issued as provided in the last preceding section, from any port or place not within British India, or from any port or place within British India where all the provisions of this Act are not in force, shall if he arrive at a presidency-town, forthwith report himself to the Commissioner of Police of such town, or, if he arrive at any other place, then he shall forthwith report himself to the Magistrate, of the district, or to such other officer as shall be appointed to receive such reports, by the Central Government ²[* * *].

LEG. REF.

omitted by *ibid.*

¹ Substituted for 'Local Government' by A.O., 1937.

² Reference to Local Government omitted by A.O., 1937.

² Words referring to Local Government

7. The report shall be in writing, and shall be signed by the person reporting himself, and shall specify his name or names, the nation to which he belongs, the place from which he shall have come, the place or places of his destination, the object of his pursuit, and the date of his arrival in such presidency-town or other place. The report shall be recorded by the officer to whom it is made.

8. The provisions of the last two preceding sections shall not extend to any person being the master or commander of a vessel or employed therein, but if any such person shall be in any part of British India in which all the provisions of this Act are for the time being in force, after he shall have ceased to be actually employed in a vessel, he shall forthwith report himself in manner aforesaid.

Foreigners, being masters of vessels or employed therein, to report themselves when they cease to be so employed.

Foreigners neglecting to report themselves, may be dealt with in like manner as foreigners travelling without a license.

No foreigner to travel in India without a license.

9. If any foreigner shall neglect to report himself as required by this Act, he may be dealt with in the manner hereinafter provided in respect of foreigners travelling without a license.

10. No foreigner shall travel in or pass through any part of British India in which all the provisions of this Act are for the time being in force without a license.

Grant of licenses.

11. Licenses under this Act may be granted by the Central Government or by officers specially authorized by that Government.]

12. Every such license shall state the name of the person to whom the license is granted, the nation to which he belongs, the district or districts through which he is authorized to pass or the limits within which he is authorized to travel, and the period (if any) during which the license is intended to have effect.

What to be stated in license.

13. The license may be granted subject to such conditions as the Central Government ²[* * *] may direct, or as the officer granting the license may deem necessary. Any license may be revoked at any time by the Central Government ²[* * *] or by the officer who granted the license.

License may be granted subject to conditions and may be revoked.

14. If any foreigner travel in or attempt to pass through any part of British India without such license as aforesaid, or beyond the districts or limits mentioned therein, or after such license shall have been revoked, or shall violate any of the conditions therein specified, he may be apprehended without warrant by any officer exercising any of the powers of a Magistrate, or by any European commissioned officer in the service of Her Majesty, or by any member of a volunteer corps enrolled by authority of ³[the Central Government] whilst on duty, or by any police-officer.

Foreigner travelling without or contrary to the conditions of license may be apprehended.

15. If any person be apprehended by a person not exercising any of the powers of a Magistrate and not being a police-officer, he shall be delivered over as soon as possible to a police-officer, and forthwith carried before the Magistrate of the district. Whenever any person shall be apprehended by or taken

Procedure upon apprehension.

LEG. REF.

¹ Sec. 11 substituted by A.O., 1937.

² The words "or the Local Government"

omitted by *ibid.*

³ Substituted for 'Government' by A.O., 1937.

Magistrate to report to Government.

before the Magistrate of the district, such Magistrate shall immediately report the case to the ¹[Central Government] and shall cause the person brought before him to be discharged, or to be conveyed to one of the presidency-towns, or pending the orders of such Government to be detained.

16. Any person apprehended or detained under the provisions of this Act may be admitted to bail by the Magistrate of the district, or by any officer authorized to grant licenses, and shall be put to as little inconvenience as possible during his detention in custody.

²[17. The Central Government may order any person apprehended or detained under the provisions of this Act to remove himself from any part of British India by sea or by such other route as the Central Government may direct; or the Central Government may cause him to be removed from that part of British India by such route and in such manner as to that Government may seem fit.]

18. The Central Government may by order prohibit any person or any class of persons not being natural-born subjects of Her Majesty within the meaning of the ³Statute 3 and 4 William IV, Chap. 85, section 81, from travelling in or passing through any part of British India in which all the provisions of this Act may, for the time being, be in force, and from passing from any part thereof to another without a license to be granted by such officer or officers as shall be specified in the order; and, if any person so prohibited shall wilfully disobey such order, he may be apprehended without warrant by any of the officers specified in section 14 of this Act, and carried before the Magistrate of the district, and dealt with under the provisions of section 17 in the same manner as if he were a foreigner; and the Central Government may order such person to be detained in safe custody or under the surveillance of the police so long as it may be deemed necessary for the peace and security of British India or any part thereof.

19. * * * * *

20. It shall be lawful for the Commissioner of Police, or for the Magistrate of the district, or for any officer appointed to receive reports as mentioned in the sixth section of this Act, or for any police-officer under the authority of such Commissioner or Magistrate, to enter any vessel in any port or place within British India in which all the provisions of this Act may, for the time being, be in force, in order to ascertain whether any foreigner bound to report his arrival under the said section 6 of this Act is on board of such vessel; and it shall be lawful for such Commissioner of Police, Magistrate or other officer as aforesaid to adopt such means as may be reasonably necessary for that purpose; and the master or commander of such vessels shall also, before any of the passengers are allowed to disembark, if he shall be required so to do by such Commissioner of Police, Magistrate, or other officer as

LEG. REF.

¹ Substituted for 'Local Government to which he is subordinate' by A.O., 1937.

² Sec. 17 substituted for old sec. 17 by *ibid.*

³ The Government of India Act, 1833 (3 & 4 Will. IV, c. 85) is now repealed except-

ing sec. 112 by the Government of India Act (9 & 10 Geo. 5, c. 101). For definition of "natural-born British Subject," see sec. 1 of British Nationality and Status of Aliens Act 1914 (4 & 5 Geo. V, c. 17), Coll. Stats., Ind., Vol. III.

⁴ Sec. 19 omitted by A.O., 1937.

aforesaid, deliver to him a list in writing of the passengers on board, specifying the ports or places at which they embarked, and the ports or places of their disembarkation, or intended disembarkation, and answer to the best of his knowledge all such questions touching the passengers on board the said vessel,

Foreigner, refusing to give account of himself, not to be allowed to disembark.

or touching those who may have disembarked in any part of British India, as shall be put to him by the Commissioner of Police, Magistrate, or other officer as aforesaid. If any foreigner on board such vessel in any part of British India shall refuse to give an account of his objects of pursuit in India, or if his account thereof shall not be satisfactory the officer may refuse to allow him to disembark, or he may be dealt with in the same manner as a foreigner travelling in British India without a license.

21. If the master or commander of a vessel shall wilfully give a false answer to any question which by section 20 of this Act he is bound to answer, or shall make any false report, he shall be held to have committed the offence specified in section 177 of the Indian Penal Code.

22. If the master or commander of any vessel shall wilfully neglect or refuse to comply with the requisitions of this Act, he shall, on conviction before the Magistrate of the district or a Justice of the Peace, be liable to a fine not exceeding two thousand rupees.

23. Whoever intentionally obstructs any officer in the exercise of any of the powers vested in him by this Act shall be held to have committed the offence specified in section 186 of the Indian Penal Code.

24. [*Fines imposed under this Act how to be recovered.*] Rep. by Act X of 1914.

25. The Central Government ¹[* * *] may ²exempt any person, or any class of persons, either wholly or partially, or temporarily or otherwise, from all or any of the provisions of this Act contained in any of the sections subsequent to section 5, and may at any time revoke any such exemption.

THE FOREIGNERS ACT (II OF 1940).

[23rd February, 1940.]

An Act to provide for the imposition of restrictions on foreigners.

WHEREAS it is expedient to provide for the imposition of restrictions on the entry of foreigners into British India, their presence therein and their departure therefrom; It is hereby enacted as follows:—

Short title, extent and duration. 1. (1) This Act may be called THE FOREIGNERS ACT, 1940.

(2) It extends to the whole of British India.

(3) It shall be in force during the continuance of the present war and for a period of six months thereafter.

Definitions. 2. In this Act,—

(a) "foreigner" has the meaning assigned to it in the Foreigners Act, 1864, except that it does not include—

(i) any ruler or subject of any Indian State; or

(ii) any native of the tribal areas;

LEG. REF.

¹ Reference to Local Government omitted by A.O., 1937.

² For exemption, see Gazette of India, 1914, Pt. I, pp. 1329 and 1905.

(b) "prescribed" means prescribed by orders made under this Act;

(c) "specified" means specified by direction of a prescribed authority.

3. (1) The Central Government may, by order, make provision, either generally with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into British India or their departure therefrom or their presence or continued presence therein.

(2) In particular, and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner—

(a) shall not enter British India, or shall enter British India only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed;

(b) shall not depart from British India, or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;

(c) shall not remain in British India, or in any prescribed area therein;

(d) shall remove himself to, and remain in, such area in British India as may be prescribed;

(e) shall comply with such conditions as may be prescribed or specified—

(i) requiring him to reside in a particular place;

(ii) imposing any restrictions on his movements;

(iii) requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;

(iv) requiring him to allow his photograph and finger impression to be taken and to furnish specimens of his hand-writing and signature to such authority and at such time and place as may be prescribed or specified;

(v) prohibiting him from association with persons of a prescribed or specified description;

(vi) prohibiting him from engaging in activities of a prescribed or specified description;

(vii) prohibiting him from using or possessing prescribed or specified articles; or

(viii) otherwise regulating his conduct in any such particular as may be prescribed or specified;

(f) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions; or

(g) shall be arrested and detained or confined; and may make provision for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.

4. (1) Any foreigner (hereinafter referred to as an internee) in respect of whom there is in force any order made under clause (g) of sub-section (2) of section 3, directing that he be detained or confined, shall be detained or confined in such place and manner and subject to such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline as the Central Government may from time to time determine.

Internees.

(2) No person shall—

(a) knowingly assist an internee to escape from custody or knowingly harbour an escaped internee; or

(b) give an escaped internee any assistance with intent thereby to prevent, hinder or interfere with the apprehension of the internee.

(3) The Central Government may, by order, provide for regulating access to, and the conduct of persons in, places in British India where internees are detained and for prohibiting or regulating the despatch or conveyance from outside such places to or for internees therein of such articles as may be prescribed.

(4) No proceedings shall be taken by virtue of sub-section (2) or sub-section (3) against any person in respect of any act done by him when he is himself an internee.

5. (1) No foreigner who was in British India on the date on which this Act came into force shall, while in British India after that date, assume or use or purport to assume or use for any purpose any name other than that by which he was ordinarily known immediately before the said date.

(2) Where, after the date on which this Act came into force, any foreigner carries on or purports to carry on (whether alone or in association with any other person) any trade or business under any name or style other than that under which that trade or business was being carried on immediately before the said date, he shall, for the purposes of sub-section (1), be deemed to be using a name other than that by which he was ordinarily known immediately before the said date.

(3) In relation to any foreigner who, not having been in British India on the date on which this Act came into force, thereafter enters British India, sub-sections (1) and (2) shall have effect as if for any reference, in those sub-sections to the date on which this Act came into force there were substituted a reference to the date on which he first enters British India thereafter.

(4) For the purposes of this section—

(a) the expression "name" includes a surname, and

(b) a name shall be deemed to be changed if the spelling thereof is altered.

(5) Nothing in this section shall apply to the assumption or use—

(a) of any name in pursuance of a Royal licence; or

(b) by any married woman, of her husband's name.

6. Any District Magistrate and any Commissioner of Police, or, where there is no Commissioner of Police, any Superintendent of Police, may, for any purpose connected with the enforcement of this Act or any order made thereunder, enter, with such assistance as he may think fit any vessel or aircraft at any port or place in British India and may—

(a) direct the master of the vessel or the pilot of the aircraft, as the case may be,—

(i) before any passenger disembarks, or before the vessel or aircraft leaves such port or place, as the case may be, to furnish a list in writing of the passengers who are on board or who have been carried on board at any time since the vessel or aircraft commenced its journey, or who have signified their intention of departing from British India on board such vessel or aircraft, setting out the ports or places at which they embarked, the ports or places of their disembarkation or intended disembarkation, and such other particulars as may be prescribed, and

(ii) to answer to the best of his ability any question relating to the passengers who are on board or who have disembarked in any part of British India; and

(b) if any foreigner seeking to enter British India on board such vessel or aircraft does not give satisfactory reasons for entering British India, either—

(i) refuse to allow such foreigner to disembark from such vessel or aircraft, or

(ii) place him under such restraint as may be prescribed or specified.

7. If any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description, the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872, lie upon such person.

8. The Central Government may, by order, declare that any or all of the provisions of this Act or the orders made thereunder shall not apply, or shall apply only with such modifications or subject to such conditions as may be specified, to or in relation to any individual foreigner or any class or description of foreigner.

9. (1) Any authority empowered by or under or in pursuance of the provisions of this Act to give any direction or to exercise any other power, may, in addition to any other action expressly provided for in this Act, take or cause to be taken, such steps and use, or cause to be used, such force as may, in its opinion, be reasonably necessary for securing compliance with such direction or for preventing or rectifying any breach thereof, or for the effective exercise of such power, as the case may be.

(2) Any police officer may take such steps and use such force as may, in his opinion, be reasonably necessary for securing compliance with any order made or direction given under or in pursuance of the provisions of this Act or for preventing or rectifying any breach of such order or direction.

(3) The power conferred by this section shall be deemed to confer upon any person acting in exercise thereof a right of access to any land or other property whatsoever.

10. Any authority upon which any power to make or give any direction, consent or permission or to do any other act is conferred by this Act or by any order made thereunder may, unless express provision is made to the contrary, in writing authorise, conditionally or otherwise, any authority subordinate to it to exercise such power on its behalf, and thereupon the said subordinate authority shall, subject to such conditions as may be contained in the authorisation be deemed to be the authority upon which such power is conferred by or under this Act.

11. (1) Any person who attempts to contravene, or abets, or attempts to abet, or does any act preparatory to, a contravention of, the provisions of this Act or of any order made or direction given thereunder, or fails to comply with any direction given in pursuance of any such order, shall be deemed to have contravened the provisions of this Act.

(2) Any person who, knowing or having reasonable cause to believe that any other person has contravened the provisions of this Act or of any order made or direction given thereunder, gives that other person any assistance with intent thereby to prevent, hinder or otherwise interfere with his arrest, trial or punishment for the said contravention, shall be deemed to have abetted that contravention.

(3) The master of any vessel or the pilot of any aircraft, as the case may be, by means of which any foreigner enters or leaves British India in contravention of any order made under, or direction given in pursuance of, section 3 shall, unless he proves that he exercised all due diligence to prevent the said contravention, be deemed to have contravened this Act.

12. If any person contravenes the provisions of this Act or of any order made thereunder, or any direction given in pursuance of this Act or such order, he shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if such person has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting court why such penalty should not be paid.

Penalties.
Protection to persons acting under this Act.

13. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

14. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Foreigners Act, 1864, the Registration of Foreigners Act, 1939, and of any other enactment for the time being in force.

Application of other laws not barred.
Repeal and saving.

15. (1) The Foreigners Ordinance, 1939, is hereby repealed.

(2) Notwithstanding such repeal, all orders made, directions given things done and action taken under the said Ordinance, shall be deemed to have been made, given, done or taken under the provisions of this Act, as if this Act had come into force on the 26th day of August, 1939, references to the said Ordinance in any rule made under any enactment shall be construed as references to this Act, and offences committed against or proceedings commenced under the said Ordinance may be punished or may be continued and completed as if such offences were committed against or such proceedings were commenced under this Act.

THE FOREIGN RECRUITING ACT (IV OF 1874).¹

[*Rep. in part Act XII of 1876.*]

[24th February, 1874.]

An Act to control recruiting in British India for the service of Foreign States.

WHEREAS it is expedient that the Governor-General in Council should exercise full control over recruiting in British India for the service of Foreign States; It is hereby enacted as follows:—

Preamble.

Short title.

1. This Act may be called THE FOREIGN RECRUITING ACT, 1874.

LEG. REF.

¹ For the Statement of Objects and Reasons, see Gazette of India, 1874, Pt. V, p. 1; for Proceedings in Council, see *ibid.*, 1873, Supplement, p. 1300; *ibid.*, 1874, Supplement, pp. 12 and 240.

This Act has been declared in force in—
Upper Burma generally (except the Shan States), by sec. 4 (1) and Sch. I of the Burma Laws Act, 1898 (XIII of 1898), Bur. Code, Vol. I;

the Arakan Hill District, see sec. 2 and Schedule to the Arakan Hill District Laws Regulation, 1916, *ibid.*;

British Baluchistan, see the Baluchistan Laws Regulation, 1913 (II of 1913), sec. 3, Bal. Code.

It has been declared, by notification under sec. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the

following Scheduled Districts, namely:—

The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum, see Gazette of India, 1881, Pt. I, p. 504. The District of Lohardaga, included at this time the Palamau District, which was separated in 1894; Lohardaga is now called the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44.

It has been extended, by notification under sec. 5 of the same Act, to the Scheduled District of the North-Western Provinces Tarai, see Gazette of India, 1876, Pt. I, p. 505.

The Foreign Enlistment Act, 1870 (33 and 34 Vict., c. 90), applies only when the recruiting is for the service of any foreign State at war with any foreign State at peace with Her Majesty.

Local extent.

It extends to the whole of British India.

[Commencement.] *Rep. by the Repealing Act, 1876 (XII of 1876).*

"Foreign State" defined.

2. In this Act—

"Foreign State" includes any person or persons exercising or assuming to exercise the powers of Government in or over any country, colony, province or people beyond the limits of British India.

3. If any person is, within the limits of British India, obtaining or attempt-

Power to prohibit or permit recruiting.

ing to obtain recruits for the service of any Foreign State in any capacity, the Central Government may, by order in writing, ¹[* * * :] either prohibit

such person from so doing, or permit him to do so subject to any conditions which the Central Government thinks fit to impose.

4. The Central Government may from time to time, by general order

Power to impose conditions.
fit.

notified in the Official Gazette, either prohibit recruiting for the service of any Foreign State, or impose upon such recruiting any conditions which ²[it] thinks

5. The Central Government may rescind or vary

Power to rescind or vary orders.

any order made under this Act in such manner as he thinks fit.

6. Whoever, in violation of the prohibition of the Central Government or

Offences.

of any condition subject to which permission to recruit may have been accorded,—

(a) induces or attempts to induce any person to accept or agree to accept or to proceed to any place with a view to obtaining any commission or employment in the service of any Foreign State, or

(b) knowingly aids in the engagement of any person so induced, by forwarding or conveying him or by advancing money or in any other way whatever, shall be liable to imprisonment for a term which may extend to seven years, or to fine to such amount as the Court thinks fit, or to both.

7. Any offence against this Act may be inquired into and tried, as well in

Place of trial.

any district in which the person accused may be found, as in any district in which it might be inquired into

and tried under the provisions of the Code of Criminal Procedure.

THE FOREIGN RELATIONS ACT (XII OF 1932).

[8th April, 1932.]

An Act to provide against the publication of statements likely to prejudice the maintenance of friendly relations between His Majesty's Government and the Governments of certain foreign States.

WHEREAS it is expedient to provide against the publication of statements likely to prejudice the maintenance of friendly relations between His Majesty's Government and the Governments of certain foreign States; It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called THE FOREIGN RELATIONS ACT, 1932.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

2. Where an offence falling under Chapter XXI of the Indian Penal Code

Power of Central Government to prosecute in certain cases of defamation.

is committed against a Ruler of a State outside but adjoining India, or against the consort or son or principal Minister of such Ruler, the Central Government may make, or authorise any person to make,

LEG. REF.

¹ Omitted by A.O., 1937.

² Substituted for 'he' by *ibid.*

complaint in writing of such offence, and, notwithstanding anything contained in section 198 of the Code of Criminal Procedure, 1898, any Court competent in other respects to take cognizance of such offence may take cognizance thereof on such complaint.

Explanation.—¹[* * * * *].

3. The provisions of sections 19-A to 99-G of the Code of Criminal Procedure, 1888, and of sections 27-B to 27-D of the Indian

Power to forfeit certain publications or to detain them in the course of transmission through post.

Minister of such Ruler and tends to prejudice the maintenance of friendly relations between His Majesty's Government and the Government of such State, in like manner as they apply in the case of a book, newspaper or document containing seditious matter within the meaning of those sections:

Provided that for the purposes of this section the said provisions shall be construed as if for the words "Provincial Government" wherever they occur, the words "Central Government" were substituted.

4. Where, in any trial of an offence upon a complaint under section 2, or

Proof of status of persons defamed.

in any proceeding before a High Court arising out of section 3, there is a question whether any person is a Ruler of any State, or is the consort or son or principal Minister of such Ruler, a certificate under the hand of a Secretary to the Central Government that such person is such Ruler, consort, son or principal Minister shall be conclusive proof of that fact.

THE INDIAN FOREST ACT (XVI OF 1927).

Year.	No.	Title.	Amendments.
1927	XVI	The Indian Forest Act, 1927.	Amended, XXVI of 1930 and III of 1933.

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LEG. REF.

¹ Expl. omitted by A.O., 1937.

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THE INDIAN FOREST ACT (XVI OF 1927).

[21st September, 1927.]

An Act to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce.

WHEREAS it is expedient to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title and extent.
(Old Act, S. 1.)

1. (1) This Act may be called THE INDIAN FOREST ACT, 1927.

(2) It extends to Bombay, Bengal, Bihar and Orissa, the United Provinces, the Punjab, the Central Provinces and the North-West Frontier Province (except the District of Hazara).

(3) The Provincial Government of any other province may, by notification in the Official Gazette extend this Act to the whole or any specified part of the province. (Cf. Act XXXVIII of 1920, S. 2 and Sch. I.)

Interpretation clause.
(Old Act, S. 2.)

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "cattle" includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids;

(2) "forest-officer" means any person whom ¹[* *] the Provincial Government or any officer empowered by ¹[* *] the Provincial Government in this behalf, may appoint to carry out all or any of the purposes of this Act or to

LEG. REF.

SEC. 1.—For the forest law in force in the Hazara Districts, see the Hazara Forest Regulation, 1893 (VI of 1893). P. and N. W. Code.

For Madras Ajmere-Merwara, Burma, British Baluchistan and Assam there are special forest laws—see Madras Forest Act, 1882 (V of 1882), Madras Code; the Ajmere Forest Regulation, 1874 (VI of 1874), Aj. Code; the Burma Forest Act, 1902 (IV of 1902); the British Baluchistan Forest Regulation, 1890 (V of 1890), Bal. Code; the Assam Forest Regulation, 1891 (VII of 1891), E. B. and A. Code.

In the Punjab, the Land Preservation (Chos.) Act, 1900 (Punjab Act II of 1900), is to be read with and taken as part of this Act, see P. and N. W. Code. For rules for the conservancy of forests and jungles in the hill district of the Punjab-territories, see appendix to *ibid.* These rules are also in force in the North-West Frontier Province, see sec. 4 and second schedule to Reg. VII of 1901, *ibid.*

SEC. 2.—For notification appointing Forest Officers for the Santhal Parganas and empowering them to compound for offences mentioned in sec. 67 within certain specified areas, see *Calcutta Gazette*, 1901, Pt. I, p. 28; in the North-West Frontier Province for certain specified forest for all

purposes of the Act, see *Gazette of India*, 1904, Pt. II, p. 113; in the Punjab, for Rawalpindi Forest division for the purpose of carrying out the duties of Forest-officer, see *Punjab Gazette*, 1907, Pt. I, p. 32.

¹ Words 'the Governor-General in Council, or' omitted by A.O., 1937.

SEC. 1.—The Act does not oust jurisdiction of Civil Courts to decide whether certain land is forest land or waste land. 7 Bom.L.R. 496. This Act is one that curtails proprietary rights. See 55 P.L.R. 1901 (Cr.) (where the scope and nature of this Act is discussed). As to construction of Act see 1943 N.L.J. 130 cited under sec. 63.

INFREINGEMENT OF THE FOREST RULES.—Not provided for in the rules should be tried under the Penal Code. 4 P.R. 1869 (Cr.). If a person is found with a gun and ammunition in a Reserved Forest it may be presumed until the contrary is shown that hunting was being engaged in. 1929 M.W. N. 808.

SEC. 2.—Forest-officer is a public servant. 10 B.-124. Forest Settlement-officer, whether a Civil Court, 17 Mad. 193; Karkones who issue process if Forest-officers, see 2 Bom.L.R. 675 (679). Forest produce—Stems of trees are such produce. 1 Weir 757, but not logs fastened to buildings. 9 M. 373.

do anything required by this Act or any rule made thereunder to be done by a forest-officer;

(3) "forest-offence" means an offence punishable under this Act or under any rule made thereunder;

(4) "forest-produce" includes—

(a) the following whether found in, or brought from, a forest or not that is to say:—(Cf. Act V of 1890, S. 2.)

timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds ¹[Kuth] and myrabolams, and (See Act XV of 1911, S. 2.).

(b) the following when found in, brought from, a forest, that is to say,—

(i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees,

(ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,

(iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and

(iv) peat, surface soil, rock, and minerals (including limestone, laterite, mineral oils and all products of mines or quarries);

²[(4-A) "owner" includes a Court of Wards in respect of property under the superintendence or charge of such Court];

(5) "river" includes any stream, canal, creek or other channels, natural or artificial;

(6) "timber" includes trees when they have fallen or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not; and [see Act V of 1890, S. 2, cl. (2)].

(7) "tree" includes palms, bamboos, stumps, brush-wood and canes. [See Act V of 1890, S. 2, cl. (1).]

CHAPTER II.

OF RESERVED FORESTS.

3. The Provincial Government may constitute any forest-land or waste-

Power to reserve forests
(Old Act, S. 3.)

land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

Notification by Provincial Government.
(Old Act S. 4.)

4. (1) Whenever it has been decided to constitute any land a reserved forest, the Provincial Government shall issue a notification in the Official Gazette—

(a) declaring that it has been decided to constitute such land a reserved forest;

(b) specifying, as nearly as possible, the situation and limits of such land; and

(c) appointing an officer (hereinafter called "the Forest Settlement-officer") to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised

LEG. REF.

¹ Inserted by Act XVII of 1930.

² This clause has been newly inserted by Amendment Act (III) of 1933).

SEC. 3.—As to application of provisions relating to reserved forests (1) to village-forests, see sec. 27, last paragraph; (2) to forests and lands not the property of the Government, see secs. 36, 38; (3) to forest

waste lands or produce the joint property of the Government and other persons, see sec. 79.

SEC. 4: SCOPE OF SECTION.—29 B. 480; power of Government to reserve forest—What is reserved forest, 29 B. 484; Jenmis can claim compensation for land notified as reserved forest. 7 M.L.J. 13. Absence of notification—Effect of. 1 Weir 759.

within such limits, or in or over any forest-produce, and to deal with the same as provided in this Chapter.

Explanation.—For the purpose of clause (b), it shall be sufficient to describe the limits of the forest by roads, rivers, ridges, or other well-known or readily intelligible boundaries.

(2) The officer appointed under clause (c) of sub-section (1) shall ordinarily be a person not holding any forest-office except that of Forest Settlement-officer.

(3) Nothing in this section shall prevent the Provincial Government from appointing any number of officers not exceeding three, not more than one of whom shall be a person holding any forest-office except as aforesaid, to perform the duties of a Forest Settlement-officer under this Act.

5. After the issue of a notification under section 4, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of [the Crown] or some person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land except in accordance with such rules as may be made by the Provincial Government in this behalf.

6. When a notification has been issued under section 4, the Forest Settlement-officer shall publish in the local vernacular in every town and village in the neighbourhood of the land comprised therein, a proclamation—

(a) specifying, as nearly as possible, the situation and limits of the proposed forest;

(b) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest; and

(c) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in section 4 or section 5 within such period either to present to the Forest Settlement-officer a written notice specifying or to appear before him and state, the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof.

7. The Forest Settlement-officer shall take down in writing all statements made under section 6, and shall at some convenient place inquire into all claims duly preferred under that section, and the existence of any rights mentioned in section 4 or section 5 and not claimed under section 6 so far as the same may be ascertainable from the records of Government and the evidence of any persons likely to be acquainted with the same.

8. For the purpose of such inquiry, the Forest Settlement-officer may exercise the following powers, that is to say:—

(a) power to enter, by himself or any officer authorised by him for the purpose upon any land, and to survey, demarcate and make a map of the same; and

(b) the powers of a Civil Court in the trial of suits.

LEG. REF.

¹ Substituted for 'Government' by A.O., 1937.

SEC. 5.—When a person cuts trees in a plot marked as waste number, the prosecution should lie not under the Forest Act, but under the Land Revenue Code of the

rules framed thereunder. Rat. 873=Cr. Reg. 49 of 1896. See also 22 P.R. 1876 (Cr.)

SEC. 6 (c).—As to presumption from long possession and enjoyment and as to burden of proof in such cases. see 15 M. 315; 7 M. L.T. 241; 3 M.L.J. 231.

SEC. 8.—As to the powers of Forest Settlement-officer, see 14 M. 247. Notification

9. Rights in respect of which no claim has been preferred under section 6, and of the existence of which no knowledge has been acquired by inquiry under section 7, shall be extinguished, unless before the notification under section 20 is published, the person claiming them satisfies the Forest Settlement-officer that he had sufficient cause for not preferring such claim within the period fixed under section 6.

10. (1) In the case of a claim relating to the practice of shifting cultivation, the Forest Settlement-officer shall record a statement setting forth the particulars of the claim and of any local rule or order under which the practice is allowed or regulated, and submit the statement to the Provincial Government, together with his opinion as to whether the practice should be permitted or prohibited wholly or in part.

(2) On receipt of the statement and opinion, the Provincial Government may make an order permitting or prohibiting the practice wholly or in part.

(3) If such practice is permitted wholly or in part, the Forest Settlement-officer may arrange for its exercise—

(a) by altering the limits of the land under settlement so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimants, or

(b) by causing certain portions of the land under settlement to be separately demarcated, and giving permission to the claimants to practice shifting cultivation therein under such conditions as he may prescribe.

(4) All arrangements made under sub-section (3) shall be subject to the previous sanction of the Provincial Government.

(5) The practice of shifting cultivation shall in all cases be deemed a privilege subject to control, restriction and abolition by the Provincial Government.

11. (1) In the case of a claim to right in or over any land, other than a right-of-way or right-of-pasture, or a right to forest-produce or a water-course, the Forest Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

(2) If such claim is admitted in whole or in part, the Forest Settlement-officer shall either—

(i) exclude such land from the limits of the proposed forest;

(ii) come to an agreement with the owner thereof for the surrender of his rights; or

(iii) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1894.

(3) For the purpose of so acquiring such land—

(a) the Forest Settlement-officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1894;

(b) the claimant shall be deemed to be a person interested and appearing before him in pursuance of notice given under section 9 of that Act;

(c) the provisions of the preceding sections of that Act shall be deemed to have been complied with; and

(d) the collector, with the consent of the claimant, or the Court, with

closing forest for an indefinite period is not bad for indefiniteness, when it is not known at that time, how long it may be necessary to close the forest. 19 P.R. 1880 (Gr.).

SEC. 9.—See 1942 Cal. 371=48 C.W.N. 347 cited under sec. 20.

SEC. 11.—As to acquisition of land over which riparian rights are claimed, see 20 M. 279; as to claim on mortgage, see 21 B. 396. As to burden of proof on questions of title, see 3 M.L.J. 231; 15 M. 315; 7 M.L.T. 241; 1929 Nag. 190.

the consent of both parties, may award compensation in land, or partly in land, and partly in money.

Order on claims to rights to pasture or to forest-produce. (Old Act. S. 11.)

12. In the case of a claim to rights of pasture or to forest-produce, the Forest Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

Record to be made by Forest Settlement-officer. (Old Act. S. 12.)

13. The Forest Settlement-officer, when passing any order under section 12, shall record, so far as may be practicable,—

(a) the name, father's name, caste, residence and occupation of the person claiming the right; and

(b) the designation, position and area of all fields or groups of fields (if any) and the designation and position of all buildings (if any) in respect of which the exercise of such rights is claimed.

14. If the Forest Settlement-officer admits in whole or in part any claim

Record where he admits claim. (Old Act, S. 13.)

under section 12, he shall also record the extent to which the claim is so admitted, specifying the number and description of the cattle which the claimant is from time to time entitled to graze in the forest, the season during which such pasture is permitted, the quantity of timber and other forest-produce which he is from time to time authorised to take, or receive, and such other particulars as the case may require. He shall also record whether the timber or other forest-produce obtained by the exercise of the rights claimed may be sold or bartered.

15. (1) After making such record the Forest Settlement-officer shall to

Exercise of rights admitted. (Old Act, S. 14.)

the best of his ability, and having due regard to the maintenance of the reserved forest in respect of which the claim is made, pass such orders as will ensure the continued exercise of the right so admitted.

(2) For this purpose the Forest Settlement-officer may—

(a) set out some other forest-tract of sufficient extent, and in a locality reasonably convenient, for the purposes of such claimants, and record an order conferring upon them a right of pasture or to forest-produce (as the case may be) to the extent so admitted; or

(b) so alter the limits of the proposed forest as to exclude forest land of sufficient extent, and in a locality reasonably convenient, for the purposes of the claimants; or

(c) record an order, continuing to such claimants, a right of pasture or to forest-produce, as the case may be, to the extent so admitted, at such seasons, within such portions of the proposed forest, and under such rules, as may be made in this behalf by the Provincial Government.

16. In case the Forest Settlement-officer finds it impossible, having due

Commutation of rights. (Old Act, S. 15.)

regard to the maintenance of the reserved forest, to make such settlement under section 15 as shall ensure the continued exercise of the said rights to the extent so admitted, he shall, subject to such rules as the Provincial Government may make in this behalf, commute such rights, by the payment to such persons of a sum of money in lieu thereof, or by the grant of land, or in such other manner as he thinks fit.

17. Any person who has made a claim under this Act, or any forest-officer

Appeal from order passed under S. 11, S. 12, S. 15 or S. 16 (Old Act, S. 16.)

or other person generally or specially empowered by the Provincial Government in this behalf, may, within three months from the date of the order passed on such claim by the Forest Settlement-officer under

section 11, section 12, section 15 or section 16, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Collector, as the Provincial Government may, by notification in the Official Gazette, appoint to hear appeals from such orders:

Provided that the Provincial Government may establish a Court (hereinafter called the Forest Court) composed of three persons to be appointed by the Provincial Government, and when the Forest Court has been so established, all such appeals shall be presented to it.

18. (1) Every appeal under section 17 shall be made by petition in writing and may be delivered to the Forest Settlement-officer who shall forward it without delay to the authority competent to hear the same.

Appeal under S. 17. (Old Act, S. 17.)

(2) If the appeal be to an officer appointed under section 17, it shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land-revenue.

(3) If the appeal be to the Forest Court, the Court shall fix a day and a convenient place in the neighbourhood of the proposed forest for hearing the appeal, and shall give notice thereof to the parties, and shall hear such appeal accordingly.

(4) The order passed on the appeal by such officer or Court, or by the majority of the members of such Court, as the case may be, shall, subject only to revision by the Provincial Government, be final.

19. The Provincial Government, or any person who has made a claim under this Act, may appoint any person to appear, plead and act on its or his behalf before the Forest Settlement-officer, or the appellate officer or Court, in the course of any inquiry or appeal under this Act.

Pleaders. (Old Act, S. 18.)

Notification declaring forest reserved. (Old Act, S. 19.)

20. (1) When the following events have occurred, namely:—

(a) the period fixed under section 6 for preferring claims has elapsed, and all claims, if any, made under that section or section 9 have been disposed of by the Forest Settlement-officer;

(b) if any such claims have been made, the period limited by section 17 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer or Court; and

(c) all lands (if any) to be included in the proposed forest, which the Forest Settlement-officer has, under section 11, elected to acquire under the Land Acquisition Act, 1894, have become vested in the Government under section 16 of that Act, the Provincial Government shall publish a notification in the Official Gazette, specifying definitely, according to boundary marks erected or otherwise, the limits of the forest which is to be reserved, and declaring the same to be reserved from a date fixed by the notification.

SEC. 18 (4): APPELLATE ORDER BECOMING FINAL—JURISDICTION OF CIVIL COURT.—Where an appellate order rejecting the claim of a person to land included within a proposed forest has become final under sec. 18 (4) of the Forest Act, the Civil Court has no power to restore that land or to grant compensation in respect thereto to him or to his successor-in-interest. I.L.R. (1942) 2 Cal. 35=46 C.W.N. 347=A.I.R. 1942 Cal. 371.

SECS. 18 AND 21.—Contract to work Government forest—Partnership of contractor with third person—Not void. See 117 I.C. 298 (case-law discussed).

SEC. 20.—See 12 M. 226; removal of grass from Government land, when offence. 1 Weir 492.

SECS. 20 AND 9: PUBLICATION OF NOTIFICATION—EXTINCTION OF RIGHTS.—On the publication of a notification declaring a forest reserved under sec. 20 of the Forest Act, all rights in respect of which no claim has been preferred under sec. 6 and of the existence of which no knowledge has been acquired by inquiry under sec. 7 become extinguished by virtue of the provisions of sec. 9. I.L.R. (1942) 2 Cal. 35=46 C.W.N. 347=A.I.R. 1942 Cal. 371.

(2) From the date so fixed such forest shall be deemed to be a reserved forest.

Publication of translation of such notification in the neighbourhood of forest. (Old Act, S. 20.)

21. The Forest-officer shall, before the date fixed by such notification, cause a translation thereof into the local vernacular to be published in every town and village in the neighbourhood of the forest.

22. The Provincial Government may, within five years from the publication of any notification under section 20, revise any

Power to revise arrangement made under S. 15 or S. 18. (Old Act, S. 21.)

and may for this purpose rescind or modify any order made under section 15 or section 18 and direct that any one of the proceedings specified in section 5 be taken in lieu of any other of such proceedings, or that the rights admitted under section 12 be commuted under section 16.

23. No right of any description shall be acquired in or over a reserved

No right acquired over reserved forest, except as here provided. (Old Act, S. 22.)

forest except by succession or under a grant or contract in writing made by or on behalf of the [Crown] or some person in whom such right was vested when the notification under section 20 was issued.

24. (1) Notwithstanding anything contained in section 23, no right continued under clause. (c) of sub-section (2) of

Rights not to be alienated without sanction. (Old Act, S. 23.)

section 15 shall be alienated by way of grant, sale, lease, mortgage or otherwise, without the sanction of the Provincial Government:

Provided that, when any such right is appended to any land or house, it may be sold or otherwise alienated with such land or house.

(2) No timber or other forest-produce obtained in exercise of any such right shall be sold or bartered except to such extent as may have been admitted in the order recorded under section 14.

25. The forest-officer may, with the previous sanction of the Provincial

Power to stop ways and water-courses in reserved forests. (Old Act, S. 24.)

Government or of any officer duly authorised by it in this behalf, stop any public or private way or water-course in a reserved forest, provided that a substitute for the way or water-course so stopped, which the

Provincial Government deems to be reasonably convenient, already exists, or has been provided or constructed by the forest-officer in lieu thereof.

Acts prohibited in such forests. (Old Act, S. 25; Act V of 1890, Sl. 7.)

26. (1) Any person who—

LEG. REF.

¹ Substituted for 'Government' by A.O., 1937.

SEC. 26.—For rules made under this clause for

(1) Bombay, *see* Bom. R. and O.;
(2) Central Provinces, *see* C.P.R. and O.;
and

(3) United Provinces, *see* p. 59 of the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894.

SEC. 26 (1).—For notification prohibiting the killing, injuring or capturing of any rhinoceros in reserved forests in the Jalpaiguri and Darjeeling Districts, *see* Calcutta Gazette, 1899, Pt. I, p. 1368. For rules under this clause in conjunction with sec. 75

(d) as to hunting, shooting, fishing, etc., in reserved forests in the United Provinces, *see* United Provinces Gazette, 1906, Pt. I, p. 651; *ibid.*, for Central Provinces, *see* C. P. Gazette, 1907, Pt. I, p. 678.

SEC. 25.—Sec. 25 pre-supposes the existence of public rights of way before a forest is reserved and that such public rights are recognized; and the powers given to deal with them are exceptional powers hedged with the proviso that suitable alternatives be provided in the case of the special power to close them being used. The alternatives referred to cannot be clogged with any restriction such as the imposition of a transit fee for cattle. A.I.R. 1938 Nag. 415.

- (a) makes any fresh clearing prohibited by section 5, or
- (b) sets fire to a reserved forest, or, in contravention of any rules made by the Provincial Government in this behalf, kindles any fire, or leaves any fire burning, in such manner as to endanger such a forest; or who, in a reserved forest—
- (c) kindles, keeps or carries any fire except at such seasons as the forest-officer may notify in this behalf;
- (d) trespasses or pastures cattle, or permits cattle to trespass;
- (e) causes any damage by negligence in felling any tree or cutting or dragging any timber;
- (f) fells, girdles, lops, taps or burns any tree or strips off the bark or leaves, from, or otherwise damages, the same;
- (g) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest-produce;
- (h) clears or breaks up any land for cultivation or any other purpose;
- (i) in contravention of any rules made in this behalf by the Provincial Government hunts, shoots, fishes, poisons water or sets traps or snares; or

SEC. 26, CL. (b): PUNJAB GOVERNMENT NOTIFICATIONS—"SETS FIRE TO"—MEANING OF.—A person sets fire to a thing if he puts a match to it or sets it on fire directly, and not if it catches fire as an indirect consequence of his act. The accused kindled a fire in his master's garden which spread to an unclassified forest, and then to a reserved forest. The accused should not be said to have set fire to either of the forests within the meaning of sec. 25 (b). 30 P.R. (Cr.) 1916=17 Cr.L.J. 458=36 I.C. 138.

CL. (c): POSSESSION OF FLINT OR STEEL.—The mere possession of a flint or steel within forest limits does not constitute an offence under sec. 25 (c). 4 Bom.L.R. 935.

CL. (d).—The trespass of a human being in a reserved forest is punishable under sec. 25 (d). Rat. 602. See also 87 I.C. 918=26 Cr.L.J. 1030. The words of sec. 25 (d) clearly apply only to the person who does any of the acts mentioned therein. 16 Cr. L.J. 485=29 I.C. 325=11 N.L.R. 76. A person's cattle were found grazing in the Government forest in charge of a boy. Where the person had not authorized either directly or indirectly the boy to graze the cattle in the forest, he could not be convicted. (11 N.L.R. 76; Ref.) 120 I.C. 414 (1)=1930 N. 64. The question whether the owner of cattle, whose animals trespass in a reserved forest, is criminally liable for committing an offence under sec. 25, depends upon the whole circumstances of each case. 16 P.R. 1909 (Cr.). In a great many cases the question will resolve itself into, "did he or did he not take proper precautions to prevent such trespass," and it does not depend upon the presence of the owner at the moment. 16 P.R. 1909 (Cr.). The levy of pound fines under Act I of 1871, sec. 12, in respect of an offence of allowing cattle to trespass in a reserved forest is not a punishment, and does not, therefore, bar a prosecution, under sec. 25 of the Forest Act, 19 P.R. 1885 (Cr.).

Barar grazing Rules do not enforce a liability on a master for the acts of his ser-

van's. 87 I.C. 918=26 Cr.L.J. 1030. See also A.I.R. 1938 Nag. 365=39 Cr.L.J. 700; 1926 N. 73. Cattle are instrumental in the theft of grass which they eat and in the damage to grass and young trees which they cause in grazing and such cattle used in committing an offence under sec. 26 (d) of the Forest Act are as much liable to confiscation as cattle drawing a cart containing illicitly felled timber. 39 Cr.L.J. 700=175 I.C. 795=A.I.R. 1938 Nag. 365.

SEC. 26, CL. (f).—A person felling a number of trees in a forest is guilty of as many offences under sec. 25 (f) as the number of the trees felled by him. 19 Cr.L.J. 161=43 I.C. 577 (A). There is no provision, either in the Act or the rules framed thereunder, to award compensation for damages in respect of the protected forest. 8 Bom. L.R. 987=5 Cr.L.J. 9. In the absence of anything in a Special Act (like the Forest Act) to exclude the operation to the general criminal law, an intention on the part of the legislature to exclude it should not be inferred. Further sec. 66 negatives any such intention. Theft of wood from a Government forest to which the Forest Act had not been applied, is punishable under the Penal Code. 10 P.R. 1885 (Cr.) [22 P.R. 1876 (Cr.). Disapproved.]

CL. (h).—Where it is clear from evidence that the accused has been cultivating land alleged to be part of a Government forest for at least seven years and the probabilities are that his father had done the same before him he cannot be held to have cleared or broken up the land for cultivation or any other purpose and his conviction under sec. 26 (h) cannot be sustained. 1929 N. 190. Where the charge against the accused is that he has made an encroachment on Government forest land, the onus is on the prosecution to establish that the land forms part of the Government forest, 1929 N. 190.

CL. (i).—The word 'hunt' implies motion, a chase and a pursuit. Hence any person who is one of the party beating up game in a reserved forest in this fashion is a

(j) in any area in which the Elephants' Preservation Act, 1879, is not in force, kills or catches elephants in contravention of any rules so made; shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid.

(2) Nothing in this section shall be deemed to prohibit—

(a) any act done by permission in writing of the forest-officer, or under any rule made by the Provincial Government; or

(b) the exercise of any right continued under clause (c) of sub-section (2) of section 15, or created by grant or contract in writing made by or on behalf of [the Crown] under section 23.

(3) Whenever fire is caused wilfully or by gross negligence in a reserved forest the Provincial Government may (notwithstanding that any penalty has been inflicted under this section) direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest-produce shall be suspended for such period as it thinks fit.

Power to declare forest no longer reserved. (Old Act, S. 26 and Act XV of 1911, S. 8.)

27. (1) The Provincial Government may, [*] by notification in the Official Gazette, direct that, from a date fixed by such notification, any forest or any portion thereof reserved under this Act shall cease to be a reserved forest.

LEG. REF.

1 Substituted for 'Government' by A.O., 1937.

2 Words 'subject to the control of the Governor-General in Council' omitted by A.O., 1937.

member of the hunt, and even though he himself may not be within the prohibited area he is guilty of the offence along with the rest of the hunt. 1935 N. 23. Hunting and shooting without a permit in a reserved forest is punishable under sec. 25. 40 A. 38 = 15 A.L.J. 824 = 19 Cr.L.J. 10. Hunting and killing a tiger in a reserved forest even though it be for killing the tiger which killed the cattle of the accused, amounts to hunting. 42 B. 406 = 19 Cr.L.J. 610 = 20 Bom.L.R. 384. A conviction recorded under sec. 25 (4), for shooting in a reserved forest in contravention of any rules which the Local Government from time to time prescribes, is illegal where no such rules have been passed by the Government. Rat. 684 = Cr. Rg. 50 of 1893. Accused who had license for a gun was going along the District Board road running through a reserved forest with the gun loaded. On this he was convicted under sec. 26 (1) (4). *Held*, that from the mere fact that accused was carrying a loaded gun it did not follow that he was going with intention of shooting. *Held, further*, that what is made penal is not the intention to shoot but actual shooting itself and that unless accused was alleged to have been found shooting or hunting in the forest he could not be convicted. 145 I. C. 735 = 34 Cr.L.J. 1050 = 1933 A.L.J. 704 = 1933 A. 630.

MISCELLANEOUS CASES UNDER THE OLD ACT—CONVICTION UNDER THE ACT—ORDER FOR CONFISCATION.—An order for confiscation cannot be regarded as an order incidental to

a conviction under the Act. The confiscation is by the terms of sec. 54 declared to be a punishment, for it is in addition to any other punishment prescribed for the offence, the order for confiscation should be passed simultaneously with the punishment for the offence. 24 C. 450 (4 A. 417, B.). It is illegal to impose a fine where the Forest Act provides the penalty of confiscation. Col. Dig. Cr. 69 of 1877. Payment of rewards out of fines and confiscations is not a part of the sentence, but is a matter for the Executive Government to deal with in the exercise of the power vested in them by the rules framed under the Act. Rat. 950. These rules give the Government the power to pay one half of the proceeds of fines and confiscations by way of reward without any order of the convicting Court, but more than one half cannot, however, be paid unless the Magistrate so directs. Rat. 950.

FOREST OFFENCE—COURT-FEES—COURT-FEES ACT, SEC. 31.—Where persons convicted of an offence under the Forest Act, where each is sentenced to pay a fine of thirteen annas, or in default to suffer one day's simple imprisonment, and all of them were ordered to pay annas five as compensation for the loss of forest fuel or wood and Rs. 1-4-0 as Court-fees expenses under sec. 31 of the Court-Fees Act, *held*, that the order as to payment of Court-fees was not a valid order. 10 P.B. 1885 (Cr.).

SUMMONS CASE—ACQUITTAL—FURTHER ENQUIRY—REVISION.—A case under sec. 25 is a "Summons case" and the Tahsildar, if he did not find the accused guilty, was bound to acquit him, and no order under sec. 437, Cr. P. Code, directing further enquiry, could be passed. The order of the District Magistrate and conviction and sentence were set aside. 50 P.L.R. 1900 (Cr.) = 19 P.B. 1900 (Cr.).

(2) From the date so fixed, such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

CHAPTER III.

OF VILLAGE FORESTS.

28. (1) The Provincial Government may assign to any village-community the rights of Government to or over any land which has been constituted a reserved forest, and may cancel such assignment. All forests so assigned shall be called village forests.

(2) The Provincial Government may make rules for regulating the management of village forests, prescribing the conditions under which the community to which any such assignment is made may be provided with timber or other forest-produce or pasture, and their duties for the protection and improvement of such forest.

(3) All the provisions of this Act relating to reserved forest shall (so far as they are not inconsistent with the rules so made) apply to village forests.

CHAPTER IV.

OF PROTECTED FORESTS.

29. (1) The Provincial Government may, by notification in the Official Gazette, declare the provisions of this Chapter applicable to any forest-land or waste-land which is not included in a reserved forest, but which is the property of Government, or over which the Government has proprietary rights or to the whole or any part of the forest-produce of which the Government is entitled.

(2) The forest-land and waste-land comprised in any such notification shall be called a "protected forest."

(3) No such notification shall be made, unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the Provincial Government thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved:

Provided that, if, in the case of any forest-land or waste-land, the Provincial Government thinks that such inquiry and record are necessary, but that they will occupy such length of time as in the meantime to endanger the rights of Government, the Provincial Government may, pending such inquiry and record, declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

Power to issue notification reserving trees, etc.
(Old Act, S. 29.)

30. The Provincial Government may, by notification in the Official Gazette,—

(a) declare any trees or class of trees in a protected forest to be reserved from a date fixed by the notification;

(b) declare that any portion of such forest specified in the notification shall be closed for such term, not exceeding thirty years, as the Provincial Government thinks fit, and that the rights of private persons, if any, over such portion shall be suspended during such term, provided that the remainder of such forest be sufficient, and in a locality reasonably convenient, for the due exercise of the rights suspended in the portion so closed; or

SECS. 29, 30 AND 33.—See 7 Bom.L.R. 462; 46 A. 128=1924 A. 539. Where a notification regarding a reserved forest does not state the date from which it shall come into force, the notification is invalid, and consequently nothing on which to base an offence

under sec. 33. A Forest-officer is not entitled to arrest a person for the breach of sec. 30 (a) and that his custody cannot be said to be lawful. 54 C. 296=28 Cr.L.J. 562=1927 C. 516.

(c) prohibit, from a date fixed as aforesaid, the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process, or removal of, any forest-produce in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, of any land in any such forest.

31. The Collector shall cause a translation into the local vernacular of every notification issued under section 30 to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest comprised in the notification.

Publication of translation of such notification in neighbourhood. (Old Act, S. 30.)

Power to make rules for protected forests. (Old Act, S. 31.)

32. The Provincial Government may make rules to regulate the following matters, namely:—

(a) the cutting, sawing, conversion and removal of trees and timber, and the collection, manufacture and removal of forest-produce, from protected forests;

(b) the granting of licences to the inhabitants of towns and villages in the vicinity of protected forests to take trees, timber or other forest-produce for their own use, and the production and return of such licences by such persons;

(c) the granting of licences to persons felling or removing trees or timber or other forest-produce from such forests for the purposes of trade, and the production and return of such licences by such persons;

(d) the payments, if any, to be made by the persons mentioned in clauses (b) and (c) for permission to cut such trees, or to collect and remove such timber or other forest-produce;

(e) the other payments, if any, to be made by them in respect of such trees, timber and produce, and the places where such payment shall be made;

(f) the examination of forest-produce passing out of such forest;

(g) the clearing and breaking up of land for cultivation or other purposes in such forest;

(h) the protection from fire of timber lying in such forests and of trees reserved under section 30;

(i) the cutting of grass and pasturing of cattle in such forests;

(j) hunting, shooting, fishing, poisoning water and setting traps or snares in such forests, and the killing or catching of elephants in such forests in areas in which the Elephants' Preservation Act, 1879, is not in force;

(k) the protection and management of any portion of a forest closed under section 30; and

(l) the exercise of rights referred to in section 29.

Penalties for acts in contravention of notification under S. 30 or of rules under S. 32. (Old Act, S. 32.) S. 3.)

33. (1) Any person who commits any of the following offences, namely:—

LEG. REF.

SEC. 32.—For rules under this section for—

(1) Bombay, see Bom. R. and O.;

(2) for protected Forests of Naini Tal, Ranikhet and Lallipur, see p. 62 of the North Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894;

(3) for rules made by the Government of Bengal under this section and sec. 41 for the protected forests in the Sonthal Parganas, see Calcutta Gazette, 1901, Pt. I, p. 571; in the Sundarbans, see Calcutta Gazette, 1906, Pt. I, p. 1973; in the Angul Protected Forests, see Calcutta Gazette, 1901, Pt. I, p.

879;

(4) or protected forests in the Punjab, see Punjab Gazette, 1904, Pt. I, p. 76.

SEC. 32, CL. (g).—Mere 'clearing' does not amount to 'breaking' of ground where the notification issued under the Forest Act prohibited 'breaking' of ground in a protected forest, and where the evidence only showed that the accused had cleared the ground. *Held*, that no offence was committed. 49 A. 291=28 Cr.L.J. 151=1927 A. 121. See also 102 I.C. 559=28 Cr.L.J. 591. On this section, see 11 A.L.J. 340=20 I.C. 408.

(a) falls, girdles, lops, taps or burns any tree reserved under section 30, or strips off the bark or leaves from, or otherwise damages, any such tree;

(b) contrary to any prohibition under section 30, quarries any stone, or burns any lime or charcoal, or collects, subjects to any manufacturing process, or removes any forest-produce;

(c) contrary to any prohibition under section 30, breaks up or clears for cultivation or any other purpose any land in any protected forest;

(d) sets fire to such forest, or kindles a fire without taking all reasonable precautions to prevent its spreading to any tree reserved under section 30, whether standing, fallen or felled, or to any closed portion of such forest;

(e) leaves burning any fire kindled by him in the vicinity of any such tree or closed portion;

(f) fells any tree or drags any timber so as to damage any tree reserved as aforesaid;

(g) permits cattle to damage any such tree;

(h) infringes any rule made under section 32;

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(2) Whenever fire is caused wilfully or by gross negligence in a protected forest, the Provincial Government may, notwithstanding that any penalty has been inflicted under this section, direct that in such forest or any portion thereof the exercise of any right of pasture or to forest-produce shall be suspended for such period as it thinks fit. (*Cf.* Act V of 1901, S. 2.)

34. Nothing in this Chapter shall be deemed to prohibit any act done with the permission in writing of the Forest-officer, or in accordance with rules made under section 32, or, except as regards any portion of a forest closed under section 30, or as regards any rights the exercise of which has been suspended under section 33, in the exercise of any right recorded under section 29.

Nothing in this Chapter to prohibit acts done in certain cases. (Old Act, S. 33; *cf.* also Act V of 1901, S. 3.

CHAPTER V.

OF THE CONTROL OVER FORESTS AND LANDS NOT BEING THE PROPERTY OF GOVERNMENT.

Protection of forest for special purposes. (Old Act, S. 35.)

35. (1) The Provincial Government may, by notification in the Official Gazette, regulate or prohibit in any forest or waste-land—

(a) the breaking up or clearing of land for cultivation;

(b) the pasturing of cattle; or

(c) the firing or clearing of the vegetation;

when such regulation or prohibition appears necessary for any of the following purposes:—

(i) for protection against storms, winds, rolling stones, floods and avalanches;

(ii) for the preservation of the soil on the ridges and slopes and in the valleys of hilly tracts, the prevention of land slips or of the formation of ravines and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel;

(iii) for the maintenance of a water-supply in springs, rivers and tanks;

(iv) for the protection of roads, bridges, railways and other lines of communication;

(v) for the preservation of the public health.

SEC. 33. CL. (c).—Where breaking of ground only is forbidden by notification under the Forest Act, no offence is committed when there has been only 'clearing'. 102 I.C. 559=28 Cr.L.J. 591; 49 A. 291=99 I.C. 497=1927 A. 121.

(2) The Provincial Government may, for any such purpose, construct at its own expense, in or upon any forest or waste-land, such work as it thinks fit.

(3) No notification shall be made under sub-section (1) nor shall any work be begun under sub-section (2), until after the issue of a notice to the owner of such forest or land calling on him to show cause, within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, as the case may be, and until his objections if any, and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf and have been considered by the Provincial Government.

36. (1) In case of neglect of, or wilful disobedience to, any regulation or prohibition under section 35, or if the purposes of any work to be constructed under that section so require, the Provincial Government may, after notice in writing to the owner of such forest or land and after considering his objections, if any, place the same under the control of a Forest-officer, and may declare that all or any of the provisions of this Act relating to reserved forests shall apply to such forest or land.

(2) The net profits, if any, arising from the management of such forest or land shall be paid to the said owner.

37. (1) In any case under this Chapter in which the Provincial Government considers that in lieu of placing the forest or land under the control of a Forest-officer, the same should be acquired for public purposes, the Provincial Government may proceed to acquire it in the manner provided by the Land Acquisition Act, 1894.

(2) The owner of any forest or land comprised in any notification under section 35 may, at any time not less than three or more than twelve years from the date thereof, require that such forest or land shall be acquired for public purposes, and the Provincial Government shall acquire such forest or land accordingly.

38. (1) The owner of any land or, if there be more than one owner thereof, the owners of shares therein amounting in the aggregate to at least two-thirds thereof may, with a view to the formation or conservation of forests thereon, represent in writing to the Collector their desire—

(a) that such land be managed on their behalf by the Forest-officer as a reserved or a protected forest on such terms as may be mutually agreed upon; or

(b) that all or any of the provisions of this Act be applied to such land.

(2) In either case, the Provincial Government may, by notification in the Official Gazette, apply to such land such provisions of this Act as it thinks suitable to the circumstances thereof and as may be desired by the applicants.

CHAPTER VI.

OF THE DUTY ON TIMBER AND OTHER FOREST-PRODUCE.

39. (1) The ¹[Central Government] may levy a duty in such manner, at such places and at such rates as it may declare by notification in the Official Gazette on all timber or other forest-produce—

(a) which is produced in British India, and in respect of which the ²[Crown] has any right;

LEG. REF.

¹ Substituted for 'Local Government' by A. O., 1937.

² Substituted for 'the Government' by A. O., 1937.

(b) which is brought from any place outside British India:

(2) In every case in which such duty is directed to be levied *ad valorem* the ²[Central Government] may fix by like notification the value on which such duty shall be assessed.

(3) All duties on timber or other forest-produce which, at the time when this Act comes into force in any territory, are levied therein under the authority of the Provincial Government, shall be deemed to be and to have been duly levied under the provisions of this Act.

³[(4) Until provision to the contrary is made by the Central Legislature any Provincial Government which was, immediately before the commencement of Part III of the Government of India Act, 1935, levying a duty on any timber or other forest-produce produced in that Province may continue to levy that duty on such timber or forest-produce:

Provided that nothing in this sub-section authorizes the levy of any duty which as between timber or other forest-produce of the Province and similar produce of the locality outside the Province, discriminates in favour of the former, or which, in the case of timber or other forest-produce of localities outside the Province, discriminates between timber or other forest-produce of one locality and similar timber or other forest-produce of another locality.]

40. Nothing in this Chapter shall be deemed to limit the amount, if any chargeable as purchase-money or royalty on any timber or other forest-produce, although the same is levied on such timber or produce while in transit, in the same manner as duty is levied.

CHAPTER VII.

OF THE CONTROL OF TIMBER AND OTHER FOREST-PRODUCE IN TRANSIT.

Power to make rules to regulate transit of forest-produce. (Old Act, S. 41; see also Act V of 1890, S. 8. Cls. 3 and 4).

41. (1) The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest-produce in transit by land or water, is vested in the Provincial Government, and it may make rules to regulate the transit of all timber and other forest-produce.

(2) In particular and without prejudice to the generality of the foregoing power such rules may—

(a) prescribe the routes by which alone timber or other forest-produce may be imported, exported or moved into, from or within ⁴[the Province];

(b) prohibit the import or export or moving of such timber or other produce without a pass from an officer duly authorised to issue the same, or otherwise than in accordance with the conditions of such pass;

(c) provide for the issue, production and return of such passes and for the payment of fees therefor;

(d) provide for the stoppage, reporting, examination and marking of timber or other forest-produce in transit, in respect of which there is reason to believe that any money is payable to ⁵[the Crown] on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon, or to which it is desirable for the purposes of this Act to affix a mark;

(e) provide for the establishment and regulation of depots to which such timber or other produce shall be taken by those in charge of it for exami-

LEG. REF.

¹ Proviso repealed by A.O., 1937.

² Vide footnote 1, page 653.

³ Sub-sec. (4) of sec. 39 inserted by *ibid.*

⁴ Substituted for 'British India' by A.O., 1937.

⁵ Substituted for 'Government' by A.O., 1937.

SECS. 39-41.—See 76 I.O. 104=1925 L. 225.

SEC. 41.—See 21 Cr.L.J. 659=57 I.C. 816 (C). The words "Timber" and "Forest produce" in this section are used in their widest sense. See 106 I.O. 790=1928 L. 80.

RULE FRAMED BY GOVERNMENT OF BOMBAY UNDER SEC. 41 (B)—ULTRA VIRES.—Rule 4 of

nation, or for the payment of such money or in order that such marks may be affixed to it; and the conditions under which such timber or other produce shall be brought to, stored at and removed from such depots;

(f) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest-produce, and the throwing of grass, brushwood, branches or leaves into any such river or any act which may cause such river to be closed or obstructed;

(g) provide for the prevention of removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same;

(h) prohibit absolutely or subject to conditions, within specified local limits, the establishment of saw-pits, the converting, cutting, burning, concealing or marking of timber, the altering or effacing of any marks on the same, or the possession or carrying of marking hammers or other implements used for marking timber;

(i) regulate the use of property marks for timber, and the registration of such marks; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

(3) The Provincial Government may direct that any rule made under this section shall not apply to any specified class of timber or other forest-produce or to any specified local area.

¹[41-A. Notwithstanding anything in section 41, the Central Government

Powers of Central Government as to movements of timber across customs frontiers.

may make rules to prescribe the route by which alone timber or other forest-produce may be imported, exported or moved into or from British India across any customs frontier as defined by the Central Government, and any rules made under section 41 shall

have effect subject to the rules made under this section.]

42. (1) The Provincial Government may by

Penalty for breach of rules made under section 41 (Old Act, S. 42.)

such rules prescribe as penalties for the contravention thereof imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

(2) Such rules may provide that penalties which are double of those mentioned in sub-section (1) may be inflicted in cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or where the offender has been previously convicted of a like offence.

43. The ¹[Crown] shall not be responsible for any loss or damage which

Crown and Forest-officers not liable for damage to forest-produce at depot (Old Act, S. 43.)

may occur in respect of any timber or other forest-produce while at a depot established under a rule made under section 41, or while detained elsewhere, for the purposes of this Act; and no Forest-officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently.

LEG. REF.

¹ Sec. 41-A inserted by *ibid.*

² Substituted for 'Government' by A.O., 1937.

of that rule under sec. 42 of the Act cannot stand. 17 Cr.L.J. 364=35 L.C. 668=10 S. L.R. 9.

COMPENSATION IN ADDITION TO IMPOSITION OF FINE.—Where a person is convicted of an offence under Rr. 21, 26, framed under sec.

the rules for Sind framed by the Government of Bombay under sec. 41 (b) of the Act, prohibiting the moving of timber from private land without a certificate from the holder or manager of such land is *ultra vires*; consequently a conviction for a breach of the 41, compensation cannot be awarded in addition to the imposition of fine. 5 Bom.L.R. 225; 1924 L. 225; 1924 L. 250=26 Cr.L.J. 250.

44. In case of any accident or emergency involving danger to any property at any such depot, every person employed at such depot whether by the ¹[Crown] or by any private person, shall render assistance to any Forest-officer or Police-officer demanding his aid in averting such danger or securing such property from damage or loss.

CHAPTER VIII.

OF THE COLLECTION OF DRIFT AND STRANDED TIMBER.

Certain kinds of timber to be deemed property of Government until title thereto proved, and may be collected accordingly, (Old Act, S. 45.)

45. (1) All timber found adrift, beached, stranded or sunk;

all wood or timber bearing marks which have not been registered in accordance with the rules made under section 41, or on which the marks have been obliterated, altered or defaced by fire or otherwise; and

in such areas as the Provincial Government directs, all unmarked wood and timber;

shall be deemed to be the property of Government; unless and until any person establishes his right and title thereto, as provided in this Chapter.

(2) Such timber may be collected by any Forest-officer or other person entitled to collect the same by virtue of any rule made under section 51, and may be brought to any depot which the Forest-officer may notify as a depot for the reception of drift timber.

(3) The Provincial Government may, by notification in the Official Gazette, exempt any class of timber from the provisions of this section.

46. Public notice shall from time to time be given by the Forest-Officer of timber collected under section 45. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, within a period not less than two months from the date of such notice, a written statement of such claim.

Procedure on claim preferred to such timber (Old Act, S. 47.)

47. (1) When any such statement is presented as aforesaid, the Forest-officer may, after making such inquiry as he thinks fit, either reject the claim after recording his reasons for so doing, or deliver the timber to the claimant.

(2) If such timber is claimed by more than one person, the Forest-officer may either deliver the same to any of such persons whom he deems entitled thereto, or may refer the claimants to the Civil Courts, and retain the timber pending the receipt of an order from any such Court for its disposal.

(3) Any person whose claim has been rejected under this section may, within three months from the date of such rejection, institute a suit to recover possession of the timber claimed by him: but no person shall recover any compensation or costs against the ¹[Crown], or against any Forest-officer, on account of such rejection, or the detention or removal of any timber, or the delivery thereof to any other person under this section.

(4) No such timber shall be subject to process of any Civil, Criminal or Revenue Court until it has been delivered, or a suit has been brought, as provided in this section.

48. If no such statement is presented as aforesaid, or if the claimant

LEG. REF.

¹ Substituted for 'Government' by A. O., 1937, SEC. 45.—13 P.B. 1883 (Cr.).

Disposal of unclaimed timber. (Old Act, S. 48 and Act V of 1890, S. 10).

omits to prefer his claim in the manner and within the period fixed by the notice issued under section 46, or on such claim having been so preferred by him and having been rejected, omits to institute a suit to recover possession of such timber within the further period fixed by section 47, the ownership of such timber shall vest in the Government, or when such timber has been delivered to another person under section 47 in such other person free from all encumbrances not created by him.

49. The ¹[Crown] shall not be responsible for any loss or damage which may occur in respect of any timber collected under section 45, and no Forest-officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently.

Crown and its officers not liable for damage to such timber. (Old Act, S. 49.)

50. No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest-officer or other person entitled to receive it such sum on account thereof as may be due under any rule made under section 51.

Power to make rules and prescribe penalties. (Old Act, S. 51.)

51. (1) The Provincial Government may make rules to regulate the following matters, namely:—

(a) the salving, collection and disposal of all timber mentioned in section 45;

(b) the use and registration of boats used in salving and collecting timber;

(c) the amounts to be paid for salving, collecting, moving, storing or disposing of such timber; and

(d) the use and registration of hammers and other instruments to be used for marking such timber.

(2) The Provincial Government may prescribe, as penalties for the contravention of any rules made under this section, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

CHAPTER IX.

PENALTIES AND PROCEDURE.

52. (1) When there is reason to believe that a forest-offence has been committed in respect of any forest-produce, such produce, together with all tools, boats, carts or cattle used in committing any such offence, may be seized by any Forest-officer or Police-officer.

Seizure of property liable to confiscation. (Old Act, S. 52.)

LEG. REF.

¹ Substituted for "Government" by A.O., 1937.

SEC. 51.—A warrant drawn up in the name of a Forester can be validly endorsed by him to a Forest Watcher. *Per Curiam*.—In order to justify the action of a Police or Forest-officer in arresting without warrant a person suspected of a forest offence he must either have refused to give his name or must have given a false name and residence or there must have been reason to believe that he would abscond. In the absence of any of these conditions, no Police-officer or Forest-officer could lawfully arrest a person without a warrant. 1928 M.W.N. 310.

SEC. 52: SUB-ASSISTANT CONSERVATOR OF

CR. C. M. J.—83

FOREST—SEIZURE AND DETENTION OF TIMBER

—WANT OF VALID PASS.—Where a Sub-Assistant Conservator of Forest seized timber under the suspicion that it was property stolen from the Government forests, *held*, that he could justify the seizure on the ground of the commission of a forest offence arising from the want of a valid pass. 15 B. 229. According to sec. 52, a Forest-officer cannot justify the detention of goods on the ground of an offence against the Forest laws, where he had not taken the course which that section prescribes of taking the matter before a Magistrate. 15 B. 229. Under sec. 52 the forest produce alone can be seized in relation to which a forest offence is believed to have been committed, and no forest offence can be said to have been committed in relation to any forest

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that, when the forest-produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

53. Any Forest-officer of a rank not inferior to that of a Ranger, who, or whose subordinate, has seized any tools, boats, carts or cattle under section 52, may release the same on the execution by the owner thereof of a bond for the production of the property so released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

Power to release property seized under S. 52.
(Act I of 1918, S. 3.)

54. Upon the receipt of any such report, the Magistrate shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

55. (1) All timber or forest-produce which is not the property of Government and in respect of which a forest-offence has been committed, and all tools, boats, carts and cattle used in committing any forest-offence, shall be liable to confiscation.

(2) Such confiscation may be in addition to any other punishment prescribed for such offence.

56. When the trial of any forest-offence is concluded, any forest-produce in respect of which such offence has been committed shall, if it is the property of Government or has been confiscated, be taken charge of by a Forest-officer, and, in any other case, may be disposed of in such manner as the Court may direct.

Disposal, on conclusion of trial for forest-offence, of produce in respect of which it was committed.
(Old Act, S. 55.)

produce unless it is definitely established that the produce belonged to Government.
41 P.L.R. 423=A.I.R. 1939 Lah. 469.

SEC. 55.—N.B. See also notes under sec. 26 and sec. 33.

SCOPE AND OBJECT.—The object of the legislature in enacting sec. 55 is to make the owner liable to a certain extent for the acts of his servant, civilly, not criminally. In the case of cattle trespassing in Government forest unless duly licensed, the master cannot be criminally liable for the acts of his grazier in taking his cattle into such forest, unless he permits the cattle so to graze by some overt acts or by some negligent omission. Where a large herd of cattle is entrusted to a youth and two children, in the vicinity of a closed forest, it might be held to amount to such negligence as to suggest connivance at a breach of the law. 175 I.C. 795=A.I.R. 1938 Nag. 365.

CONFISCATION OF FOREST-PRODUCE, ETC., THE PROPERTY OF GOVERNMENT.—No confiscation order is necessary or can be made, in respect of forest-produce, which is the property of Government, and regarding which a forest-offence has been committed. All that need be done is, to direct that it should be taken by some Forest-officer. 4 A. 417; Rat. 361. Cattle are instrumental in the theft of grass which they eat and in the damage to

grass and young trees which they cause in grazing and such cattle used in committing an offence under sec. 26 (d) of the Act are as much liable to confiscation as cattle drawing a cart containing illicitly felled timber. 175 I.C. 795=A.I.R. 1938 Nag. 365.

POWER TO CONFISCATE.—It is only in respect of forest-produce with regard to which an offence has been committed, that power to direct confiscation is given by law. Such an order, regarding forest-produce not belonging to Government, can only be made at the time when the offender is convicted. 4 A. 417 followed in 27 C. 450.

REWARD—FOREST-PRODUCE.—Since there can be no legal confiscation of Government property, a reward cannot be paid out of such property. Rat. 620.

SEC. 56.—See also notes under sec. 33. DISPOSAL OF PROPERTY.—Under sec. 55 the property, regarding which an offence is committed, should be awarded to Government. 5 Bom.L.R. 124.

GOVERNMENT FOREST-PRODUCE, OFFENCE RELATING TO—PROPER ORDER.—When the forest-produce, in respect of which an offence is committed, is found to be the property of Government the only order which the Magistrate can legally make regarding it, under sec. 56 is that it should be taken charge of by a Forest-officer. An order for

57. When the offender is not known or cannot be found, the Magistrate may, if he finds that an offence has been committed, order the property in respect of which the offence has been committed to be confiscated and taken charge of by the Forest-officer, or to be made over to the person whom the Magistrate deems to be entitled

to the same:

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person, if any, claiming any right thereto, and the evidence, if any, which he may produce in support of his claim.

58. The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under section 52 and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold.

59. The officer who made the seizure under section 52, or any of his official superiors, or any person claiming to be interested in the property so seized may, within one month from the date of any order passed under section 55, section 56 or section 57, appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

60. When an order for the confiscation of any property has been passed under section 55 or section 57, as the case may be and the period limited by section 59 for an appeal from such order has elapsed, and no such appeal has been preferred, or when, on such an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the Government free from all incumbrances.

61. Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the Provincial Government from directing at any time the immediate release of any property seized under section 52.

62. Any forest-officer or Police-officer who vexatiously and unnecessarily

its sale and the payment of a reward to the informer from its proceeds is therefore illegal. Rat. 361; 4 A. 417; Rat. 620.

SEC. 57: FORFEITURE FOR FOREST-OFFENCE WHEN A GOOD TITLE HAS VESTED IN A THIRD PERSON.—Under the orders issued by the Collector of Kandesha, certain Bhils entered the forest, brought from it teak logs under the customary passes, and sold them in open market to applicants who purchased in good faith. The Government sought to forfeit them on the ground that a forest-offence had been committed in respect of them, inasmuch as the permission under which the Bhils acted, only allowed them to cut dead-wood and the logs did not fall under the description. *Held*, ordering the logs to be restored to the custody of purchasers, that it was clear from the terms of sec. 57 that a forfeiture was not a consequence of a forest-offence under the conditions stated in

that section, where a good title has vested in a third person. 2 Bom.L.R. 675.

SEC. 59: REVISION BY HIGH COURT OF AN ORDER OF A SUBORDINATE TRIBUNAL.—The terms of sec. 59 do not exclude the ordinary revisional powers of the High Court over a subordinate tribunal in the exercise of its criminal jurisdiction, where there had been judicial proceeding. 4 A. 417. Under sec. 59 even a third person who was not a party to the proceedings in the original Court and whose claim for relief from confiscation was not adjudicated upon is entitled to prefer an appeal. The phrase "any person claiming to be interested in the property so seized" in sec. 59 cannot be construed as limited to the case contemplated by sec. 57. And, the words "so seized" refer to the seizure under sec. 52. 34 C.W.N. 956=1930 C. 577.

Punishment for wrongful seizure. (Old Act, S. 61.) seizes any property on pretence of seizing property liable to confiscation under this Act shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary marks. (Old Act, S. 62.)

63. Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code—

(a) knowingly counterfeits upon any timber or standing tree a mark used by Forest-officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person; or

(b) alters, defaces or obliterates any such mark placed on a tree or on timber by or under the authority of a Forest-officer; or

(c) alters, moves, destroys or defaces any boundary-mark of any forest or waste-land to which the provisions of this Act are applied, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

64. (1) Any Forest-officer or Police-officer may, without orders from a Magistrate and without a warrant. (Old Act, S. 63; Act I of 1918, S. 4 and Act V of 1990, S. 12.) arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest-offence punishable with imprisonment for one month or upwards.

(2) Every officer making an arrest under this section shall, without unnecessary delay and subject to the provisions of this Act as to release on bond, take or send the person arrested before the Magistrate having jurisdiction in the case, or to the officer in charge of the nearest police station.

(3) Nothing in this section shall be deemed to authorise such arrest for any act which is an offence under Chapter IV unless such act has been prohibited under clause (c) of section 30.

65. Any Forest-officer of a rank not inferior to that of a Ranger, who, or whose subordinate, has arrested any person under the provisions of section 64, may release such person on his executing a bond to appear, if and when so required, before the Magistrate having jurisdiction in the case, or before the officer in charge of the nearest police station.

Power to prevent commission of offence. (Old Act, S. 64.)

66. Every Forest-officer and Police-officer shall prevent, and may interfere for the purpose of preventing, the commission of any forest-offence.

67. The District Magistrate or any Magistrate of the first class specially empowered in this behalf by the Provincial Government may try summarily, under the Code of Criminal Procedure, 1898, any forest-offence punishable with imprisonment for a term not exceeding six months, or fine not exceeding five hundred rupees, or both.

Power to compound offences. (Act V of 1890, S. 13.)

68. (1) The Provincial Government may, by notification in the Official Gazette, empower a Forest-officer—

Sec. 63 (c).—Although penal statutes are to be construed strictly, beneficial construction to promote the object of an Act is not excluded and a genus may include a species whether or not that species was in direct contemplation of the Legislature. Hence the expression 'boundary marks of a forest'

in sec. 63 (c), Forest Act (which makes cutting trees within the forest an offence) should be taken to include boundary marks within forest placed to separate what may be felled from what may not. 1943 N.L.J. 180.

Sec. 68.—See Bat. 591.

(a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence, other than an offence specified in section 62 or section 63, a sum of money by way of compensation for the offence which such person is suspected to have committed, and

(b) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.

(2) On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.

(3) A Forest-officer shall not be empowered under this section unless he is a Forest-officer of a rank not inferior to that of a Ranger and is in receipt of a monthly salary amounting to at least one hundred rupees, and the sum of money accepted as compensation under clause (a) of sub-section (1) shall in no case exceed the sum of fifty rupees.

69. When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to

Presumption that forest produce belongs to Government. (Old Act, S. 68.)

whether any forest produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary

is proved.

CHAPTER X.

CATTLE TRESPASS.

70. Cattle trespassing in a reserved forest or in any portion of a protected

Cattle Trespass Act, 1871 to apply. (Old Act, S. 69.)

forest which has been lawfully closed to grazing shall be deemed to be cattle doing damage to a public plantation within the meaning of section 11 of the Cattle

Trespass Act, 1871, and may be seized and impounded as such by any Forest-officer or Police-officer.

71. The Provincial Government may, by notification in the Official Gazette,

Power to alter fines fixed under that Act. (Old Act, S. 70.)

direct that, in lieu of the fines fixed under section 12 of the Cattle Trespass Act, 1871, there shall be levied for each head of cattle impounded under section 70 of this Act such fines as it thinks fit, but not exceeding

the following, that is to say:

For each elephant	ten rupees.
For each buffalo or camel	two ..
For each horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow or heifer	one rupee.
For each calf, ass, pig, ram, ewe, sheep, lamp, goat or kid	eight annas.

CHAPTER XI.

OF FOREST-OFFICES.

Provincial Government may invest Forest-officers with certain powers. (Old Act, S. 71.)

72. (1) The Provincial Government may invest any Forest-officer with all or any of the following powers, that is to say:—

(a) power to enter upon any land and to survey, demarcate and make a map of the same;

(b) the powers of a Civil Court to compel the attendance of witnesses and the production of documents and material objects;

(c) power to issue a search-warrant under the Code of Criminal Procedure, 1898; and

(d) power to hold an inquiry into forest-offences, and, in the course of such inquiry, to receive and record evidence.

(2) Any evidence recorded under clause (d) of sub-section (1) shall be admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person.

Forest-officers deemed public servants, (Old Act, S. 72.)

73. All Forest-officers shall be deemed to be public servants within the meaning of the Indian Penal Code.

Indemnity for acts done in good faith. (Old Act, S. 73.)

74. No suit shall lie against any public servant for anything done by him in good faith under this Act.

75. Except with the permission in writing of the Provincial Government, no Forest-officer shall, as principal or agent, trade in timber or other forest-produce, or be or become interested in any lease of any forest or in any contract for working any forest, whether in or outside British India.

CHAPTER XII.

SUBSIDIARY RULES.

Additional powers to make rules. (Old Act, S. 75.)

76. The Provincial Government may make rules—

(a) to prescribe and limit the powers and duties of any Forest-officer under this Act;

(b) to regulate the rewards to be paid to officers and informers out of the proceeds of fines and confiscation under this Act;

(c) for the preservation, reproduction and disposal of trees and timber belonging to Government, but grown on lands belonging to or in the occupation of private persons; and

(d) generally, to carry out the provisions of this Act.

LEG. REF.

1 For rules made under this section for—

(1) Bombay, *see* Bom. R. and O.;

(2) Central Provinces, *see* C.P.R. and O. and Central Provinces Gazette, 1900, Pt. I, p. 214;

(3) United Provinces, *see* pp. 68 to 70 of the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894. *See also* North-Western Provinces and Oudh Gazette, 1899, Pt. I, p. 494; *ibid.*, 1900 Pt. I, p. 491; U. P. Gazette, 1907, Pt. I, p. 189.

(4) Punjab, *see* Punjab Gazette, 1899, Pt. I, p. 748.

For notification declaring that certain officers shall exercise the powers of Forest-officers under certain sections, *see* Calcutta Gazette, 1901, Pt. I, p. 28.

For rules made by the Government of Bengal, *see* Calcutta Gazette, 1906, Pt. I, p. 1094.

For rules under this clause as to measurement and registration of boats in the Sundarban Division, *see* Calcutta Gazette, 1906, Pt. I, p. 1657.

See also notes under sec. 26.

Sec. 76.—Interpretation of section—Exercise law—Confiscation in the owner's absence. *See* 12 C.W.N. 139. Any rule made by the Provincial Government under sec. 76 which deals with the disposal of trees not belonging to Government will be *ultra vires*. 42 P.L.R. 423=A.I.R. 1939 Lah. 469,

RULES FRAMED UNDER THE ACT BY LOCAL GOVERNMENT.—When the Local Government has framed rules under the Forest Act prohibiting hunting and shooting in reserved forest during such periods and in such portions as the conservator may appoint, the conservator, in notifying periods and localities left unascertained by the Local Government cannot be said to be exercising the authority delegated to the Local Government by the Act. 19 P.R. 1880 (Cr.).

PASS—CONTRACTOR—AUTHORITY.—Of the rules framed under the Forest Act, R. 13, prohibits the removal of forest-produce beyond certain limits without a pass from the conservator or some person duly authorised in that behalf under R. 13, *held*, that a contractor under the Forest Department to whom the Forest-officer has given a pass book containing passes bearing the office seal with an endorsement that he might thereby remove timber was sufficiently authorised under R. 13 to issue passes. Rat. 424.

OFFENCE UNDER THE SECTION, WHAT CONSTITUTES.—The offence under sec. 75 of the Forest Act is only committed under the express terms of the Act and rules, when the trees cut are the property of Government. The Court, before convicting, is bound to satisfy itself of Government proprietary rights in the usual modes and by means of the usual materials recognised in Courts. The declared opinion of the executive Gov-

77. Any person contravening any rule under this Act, for the contravention of which no special penalty is provided, shall be punishable with imprisonment for a term which may extend to one month, or fine which may extend to five hundred rupees, or both.

Penalties for breach of rules. (Old Act, S. 76.)

78. All rules made by the Provincial Government under this Act shall be published in the Official Gazette, and shall thereupon, so far as they are consistent with this Act, have effect as if enacted therein.

Rules when to have force of law. (Old Act, S. 77.)

CHAPTER XIII.

MISCELLANEOUS.

79. ¹[(1)] Every person who exercises any right in a reserved or protected forest, or who is permitted to take any forest-produce from, or to cut and remove timber or to pasture cattle in, such forest, and every person who is employed by any such person in such forest, and every person in any village contiguous to such forest who is employed by the ²[Crown] or who receives emoluments from the ²[Crown] for services to be performed to the community,

Persons bound to assist Forest-officers and Police-officers. (Old Act, S. 78.)

shall be bound to furnish without unnecessary delay to the nearest Forest-officer or Police-officer any information he may possess respecting the commission of or intention to commit, any forest-offence, and shall forthwith take steps, whether so required by any Forest-officer or Police-officer or not,—

(a) to extinguish any forest fire in such forest of which he has knowledge or information;

(b) to prevent by any lawful means in his power any fire in the vicinity of such forest of which he has knowledge or information from spreading to such forest, and shall assist any Forest-officer or Police-officer demanding his aid;

(c) in preventing the commission in such forest of any forest-offence; and

(d) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.

¹[(2)] Any person who, being bound so to do, without lawful excuse (the burden of proving which shall lie upon such person) fails—

(a) to furnish without unnecessary delay to the nearest Forest-officer or Police-officer any information required by sub-section (1);

(b) to take steps as required by sub-section (1) to extinguish any forest fire in a reserved or protected forest;

LEG. REF.

¹ Sec. 79 re-numbered and Cl. (2) added by Act I of 1928, sec. 6.

² Substituted for 'Government' by A.O., 1937.

ernment merely as such can have no more weight with the Court than that of the humblest of Her Majesty's subjects. 18 B. 670 (Rat. 828, Foll.). Rules made by Bombay Government prohibiting a person who has made a tender from withdrawing it, valid. See 49 B. 759=1925 B. 485.

SEC. 77.—See 18 B. 670 cited under sec. 75 and see also notes under sec. 26 *supra*.

RULES FRAMED UNDER THE ACT—MISQUOTING OF THE SECTION—APPEAL.—A misquoting of the section of the Act under which a rule otherwise valid has been framed, does not render the rule void. 19 P.B. 1880

(Cr.). Where a conviction and sentence proceeds under the provisions of the Act it is not competent to a Magistrate to pass an order of reward to the complainant for detecting the offence. Cr. Reg. 48 of 1896.

SEC. 79: REFUSAL TO SERVE AS MEMBER OF PANCH.—A person refusing to serve as member of a *panch* appointed for the purpose of drawing a *panchnama* with reference to certain wood alleged to have been illegally cut in the reserved forests, was held not to be liable to be convicted under sec. 187, I. P. Code, as he was not shown to be a person contemplated in the provisions of the first three paragraphs of sec. 78 of Act VII of 1878, and as the purpose for which he was called upon to give his assistance was also not one of the purposes mentioned in Cls. (a) and (d) of that section. 22 B. 769.

(c) to prevent, as required by sub-section (1), any fire in the vicinity of such forest from spreading to such forest; or

(d) to assist any Forest-officer or Police-officer demanding his aid in preventing the commission in such forest of any forest-offence, or, when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender;

shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.]

Management of forests
the joint property of Gov-
ernment and other persons.
(Old Act, S. 79.)

80. (1) If the Government and any person be jointly interested in any forest or waste-land, or in the whole or any part of the produce thereof, the Provincial Government may either—

(a) undertake the management of such forest, waste-land or produce, accounting to such person for his interests in the same; or

(b) issue such regulations for the management of the forest, waste-land or produce by the person so jointly interested as it deems necessary for the management thereof and the interests of all parties therein.

(2) When the Provincial Government undertakes under clause (a) of sub-section (1) the management of any forest, waste-land or produce, it may, by notification in the Official Gazette, declare that any of the provisions contained in Chapters II and IV shall apply to such forest, waste-land or produce, and thereupon such provisions shall apply accordingly.

81. If any person be entitled to a share in the produce of any forest which is the property of Government or over which the Government has proprietary rights or to any part of the forest produce of which the Government is entitled, upon the condition of duly performing any service connected with such forest, such share shall be liable to confiscation in the event of the fact being established to the satisfaction of the Provincial Government that such service is no longer so performed:

Failure to perform service
for which a share in pro-
duce of Government forest
is enjoyed. (Old Act, S.
80.)

Provided that no such share shall be confiscated until the person entitled thereto, and the evidence, if any, which he may produce in proof of the due performance of such service, have been heard by an officer duly appointed in that behalf by the Provincial Government.

82. All money payable to the Government under this Act, or under any rule made under this Act, or on account of the price of any forest-produce, or of expenses incurred in the execution of this Act in respect of such produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land-revenue.

Recovery of money due
to Government. (Old Act,
S. 81.)

83. (1) When any such money is payable for or in respect of any forest-produce, the amount thereof shall be deemed to be a first charge on such produce, and such produce may be taken possession of by a Forest-officer until such amount has been paid.

Lien on forest-produce
for such money. (Old Act,
S. 82.)

(2) If such amount is not paid when due, the Forest-officer may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.

(3) The surplus, if any, if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to His Majesty.

Sec. 83.—Sec. 83 expressly provides that discharging the amount due. 31 I.C. 436 = the sale proceeds should be applied first in 9 S.L.E. 51.

Land required under this Act to be deemed to be needed for a public purpose under the Land Acquisition Act, 1894. (Old Act, S. 83.)

84. Whenever it appears to the Provincial Government that any land is required for any of the purposes of this Act, such land shall be deemed to be needed for a public purpose within the meaning of section 4 of the Land Acquisition Act, 1894.

85. When any person, in accordance with any provision of this Act, or in compliance with any rule made thereunder, binds himself by any bond or instrument to perform any duty or act, or covenants by any bond or instrument that he, or that he and his servants and agents will abstain from any act, the whole sum mentioned in such bond or instrument as the amount to be paid in case of a breach of the conditions thereof may, notwithstanding anything in section 74 of the Indian Contract Act, 1872, be recovered from him in case of such breach as if it were an arrear of land revenue.

[85-A. As from the commencement of Part III of the Government of India Act, 1935, nothing in this Act shall authorize any Provincial Government to make any order or to any other thing in relation to any Crown property not vested in His Majesty for the purposes of that Province or otherwise to prejudice any Crown rights, without the consent of the Government or authority concerned.

Repeals.

86. The enactments mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof.

THE SCHEDULE.

(See section 86.)

ENACTMENTS REPEALED.

Year.	No.	Short title.	Extent of repeal.
1	2	3	4
1878	VII	The Indian Forest Act, 1878.	So much as has not already been repealed.
1890	V	The Forest Act, 1890 ..	
1891	XII	The Amending Act, 1891 ..	
1901	V	The Indian Forest (Amendment) Act, 1901 ..	So much of Part I of Schedule II as relates to the Indian Forest Act, 1878.
1911	XV	The Indian Forest (Amendment) Act, 1911 ..	
1914	X	The Repealing and Amending Act, 1914 ..	
1918	I	The Indian Forest (Amendment) Act, 1918 ..	So much of the Second Schedule as relates to the Indian Forest Act, 1878, the Forest Act, 1890 and the Indian Forest (Amendment) Act, 1901.
1920	XXXVIII	The Devolution Act, 1920 ..	
			The whole.
			So much of Schedule I, Part I, as relates to the Indian Forest Act, 1878.

LEG. REF.

1 Sec. 85-A inserted by A.O. 1937.

THE MADRAS FOREST (AMENDMENT) ACT (VII OF 1936).

[9th March, 1936 and 27th March, 1936.

An Act further to amend the Madras Forest Act, 1882, for certain purposes.

WHEREAS it is expedient further to amend the Madras Forest Act, 1882, for the purposes hereinafter appearing;

AND WHEREAS the previous sanction of the Governor-General has been obtained to the passing of this Act;

It is hereby enacted as follows:—

Short title.

1. This Act may be called THE MADRAS FOREST (AMENDMENT) ACT, 1936.

2. In section 2 of the Madras Forest Act, 1882 (hereinafter referred to as the said Act), for the words "Sub-Assistant Conservator" occurring in the definition of "Forest-Officer" the words "Extra Assistant Conservator" shall be substituted.

Insertion of new section 17-A in Madras Act V of 1882.

3. After section 17 of the said Act, the following section shall be inserted, namely:—

"17-A. (1) Where the description of the limits of any reserved forest notified under section 16 is defective or is not clear in reference to existing facts, the Local Government may, by notification in the *Fort St. George Gazette*, declare their intention to re-define the limits of such reserved forest so as to remove the defect or to make the description clear in reference to existing facts. Such notification shall specify as nearly as possible the corrections which it is proposed to effect to the limits of the reserved forest.

(2) On the issue of a notification under sub-section (1), the District Forest Officer shall publish in the official gazette of the district concerned and in such other manner as may be prescribed by rules made in that behalf a notice—

section (1); and

(a) specifying the corrections proposed by the notification under sub-

(b) stating that any objections which may be made in person or in writing to the District Forest Officer, within a period of thirty days from the date of publication of the notice, will be considered by him.

(3) After the expiry of the period referred to in clause (b) of sub-section (2) and after considering the objections, if any, received by him, the District Forest Officer shall submit to the Local Government the record of the proceedings held by him together with a report thereon.

(4) The Local Government may, after considering the report of the District Forest Officer, by notification in the *Fort St. George Gazette* re-define the limits of the reserved forest, as proposed by the notification under sub-section (1), with such modifications as they think fit or without any modifications.

(5) Save as provided in this section, it shall not be necessary to follow the procedure laid down in sections 4 to 16 before issuing a notification under sub-section (4)."

Amendment of section 34, Madras Act V of 1882.

4. To section 34 of the said Act, the following paragraph shall be added at the end, namely:—

"The Local Government shall also have power to appoint any person to discharge any function of a Forest-officer under any of the provisions of this Act which have been extended to any land or to any forest or waste land or produce thereof by a notification under section 32 or section 33 or under any rule made in pursuance of any provision so extended."

Amendment of sections 41 and 43, Madras Act V of 1882.

Substitution of new section for section 46, Madras Act V of 1882.

Procedure in regard to perishable property seized under section 41.

5. In sections 41 and 43 of the said Act, for the word 'carts,' the word 'vehicles' shall be substituted.

6. For section 46 of the said Act, the following section shall be substituted, namely:—

“46. (1) Notwithstanding anything hereinbefore contained—

(a) the Magistrate may direct the sale of any property seized under section 41 which is subject to speedy and natural decay; and

(b) if, in the opinion of the officer seizing such property, it is not possible to obtain the orders of the Magistrate under clause (a) in time, such officer may sell the property himself, remit the sale-proceeds into the nearest Government treasury, and make a report of such seizure, sale and remittance to the Magistrate and thereupon the Magistrate shall take such measures as may be necessary for the trial of the accused.

(2) The Magistrate may deal with the proceeds of the sale of any property held under clause (a) or clause (b) of sub-section (1) in the same manner as he might have dealt with the property if it had not been sold.”

THE FORFEITURE ACT (IX OF 1859).

[*Rep. in Part by Acts VIII of 1868 and XII of 1891.*]

[30th April, 1859.]

An Act to provide for the adjudication of claims to property seized as forfeited.

WHEREAS it is expedient to remove doubts concerning the powers of officers or other persons to whom commissions may have been issued for the trial of heinous offences in certain districts, and concerning the validity of convictions and adjudications of forfeiture made by such officers or other persons; It is enacted as follows:

1 to 15. [*Constitution, procedure, etc., of Special Commission Courts.*] *Rep. by the Repealing Act, 1868 (VIII of 1868).*

Convictions involving forfeiture not questionable in suits relating to forfeited property.

16. Whenever any person shall have been convicted of an offence for which his property was forfeited to Government, no Court has power in any suit or proceeding relating to such property to question the validity of the conviction.

17. Whenever any person shall have been convicted as above by an officer having power to try and convict, the validity of any such conviction shall not be questioned upon the ground that the record of the conviction does not show in what capacity such officer acted, or that it represents him to have acted in a different capacity from that in which he had power to convict.

Conviction not questionable because capacity of convicting officer not shown.

18. Whenever any property shall have been attached or seized without either conviction or an adjudication of forfeiture by any officer of Government as property forfeited or liable to be forfeited to Government for an offence for which, upon conviction, the property of the offender would be forfeited, the validity of such attachment or seizure shall not be called in question by any Court or other authority in any suit or proceeding, unless the offender or alleged offender shall, within one year after the seizure of his property have surrendered himself for trial, and upon trial before a competent Court shall have been or shall be acquitted of the offence, and shall prove to the satisfaction of the Court that he did not escape or keep out of the way for the purpose of evading justice.

Attachment without adjudication of forfeiture not questionable unless offender be acquitted within one year, etc.

Nothing in this section shall extend to persons entitled to pardon upon

Exemption of pardoned persons.

His Majesty's proclamation published in the *Calcutta Gazette Extraordinary*, dated the 1st of November, 1858, or to any person who, having surrendered him-

self within the period of one year after the seizure of his property shall be ¹[duly discharged] without a prosecution.

19. [Release of property attached as forfeited.] Rep. by the Repealing Act, 1868 (VIII of 1868).

20. Nothing in this Act shall be held to affect the rights of parties not charged with any offence for which upon conviction the property of the offender is forfeited in respect of any property attached or seized as forfeited or liable to be forfeited to Government: Provided that no suit brought by any party in respect of such property shall be entertained unless it be instituted within the period of one year from the date of the attachment or seizure of the property to which the suit relates.

Rights of parties not charged with offence involving forfeiture.

Proviso.

LEG. REF.

¹ Substituted by A.O., 1937.

Sec. 20 of the Act to provide for the adjudication of claims to property: seized as forfeited, requires, that persons who have any claim that they are the owners of property which has been confiscated as the property of another, should bring such a claim within one year from the attachment or seizure of the property which they claim. Though Act VIII of 1868 has repealed various sections of the Act of 1859. Sec. 20 of the latter Act is not affected by Act VIII of 1868, and the application of sec. 20 is permanent, because it was intended to be a permanent bar against subsequent suits in Civil Courts, and hence has remained in force up to the present day. Limitation for the purposes of the section begins to run from the date of attachment which in those days took the form of a *parwana* being issued to the Sub-Inspector of Police for the attachment of the property. 1939 A.L.J. 1079=A.I.R. 1940 All. 121.

CASES UNDER THE OLD FORFEITURE ACT, XXV OF 1857.—A judgment-creditor, who has *bona fide* attached property, at the time when the property of the debtor become forfeited to Government under the above Act, is entitled in priority to Government. Marsh. 259=2 Hay 117. On this Act see also 17 W.R. 80=8 B.L.R. 83. The plaintiff joined with the rebels and took a leading part with them. A reward was set upon him as a rebel leader and, after a time, he was captured; no formal proceedings were taken, under secs. 2 and 7 of the Act XXV of 1857 for adjudicating his property (which consisted of little more than annuity) to be forfeited. The property charged with the annuity was in the hands of the Collector as the Manager under the Court of Ward, the annuity was withheld and was no longer regarded as a charge on the estate but was treated as merged. *Held*, that the mere withdrawal of the payment of annuity by those who had the management of the estate which was charged with the payment would be an illegal act in no way affecting the plaintiff's

right, but, as the withholding of the payment was under the authority and direction of the official who was authorized to make the attachment of the rebel's property, it was with reference to the nature of the property equivalent to an attachment or seizure and could not be questioned except under the provisions of sec. 18 of Act IX of 1859, notwithstanding there had been no adjudication of forfeiture. 3 Agra 281. A person who was in possession of an estate was found to be guilty of rebellion. All his property was forfeited to the Government, and he was subsequently sentenced to death and executed. A suit was eventually instituted on behalf of his infant son for the restoration of the land and the house which had been confiscated. The case made had two aspects:—One, that the estate, which had been granted towards maintaining the title and dignity of the Thakur was inalienable; the other, that it was subject to the Mitakshara Law, modified by the family-custom of primogeniture, and that the plaintiff became, on his birth, a co-sharer with his father: *Held* that the grant being for maintenance, and the descent being to the heirs male, did not make the estate inalienable. So long as there was an heir male, the grantor or his heirs could not resume such an estate; but a particular law or custom is necessary to convert an estate, which is conditional upon there being an heir male, into an estate which cannot be alienated: *Held*, that the Mitakshara, by which each son has by birth a property in the ancestral estate, is inconsistent with the custom that the estate is impartible, and descends to the eldest son, and was not applicable to this estate. *Held* that the suit was also barred under sec. 9, Act XXV of 1857, 22 W.R. 17=13 B.L.R. 445.

SEIZURE AND ATTACHMENT OF PROPERTY OF REBELS—PROCEDURE. See 14 W.R. 114.

EFFECT OF FORFEITURE.—Confiscation of village under Act X of 1853 for rebellion cancels the right of tenants. 2 Agra 324.

EFFECT OF ORDER ACQUITTING A PERSON and ordering release of his property. (1897) A. W.N. 129.

THE FUGITIVE OFFENDER'S ACT, 1881.

(44 & 45 VIC., C. 69.)

[27th August, 1881.]

An Act to amend the Law with respect to Fugitive Offenders in Her Majesty's Dominions, and for other purposes connected with the trial of offenders.

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lord Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows (that is to say):—

Short title.

1. This Act may be cited as THE FUGITIVE OFFENDERS ACT, 1881.

PART I.

RETURN OF FUGITIVE.

2. Where a person accused of having committed an offence (to which this Liability of fugitive to be part of this Act applies) in one part of Her Majesty's apprehended and returned. dominions has left that part, such person (in this Act referred to as a fugitive from that part) if found in another part of Her Majesty's dominions, shall be liable to be apprehended and return in manner provided by the Act to the part from which he is a fugitive. A fugitive may be so apprehended under an endorsed warrant or a provisional warrant.

3. Where a warrant has been issued in one part of Her Majesty's dominions for the apprehension of a fugitive from that part, any of the following authorities in another part of Her Majesty's dominions in or on the way to which the fugitive is or is suspected to be (that is to say):—

- (1) A judge of a superior Court in such part; and
- (2) In the United Kingdom a Secretary of State and one of the magistrates of the metropolitan police court in Bow Street; and
- (3) In a British possession the Governor of that possession, if satisfied that the warrant was issued by some person having lawful authority to issue the same, may endorse such warrant in manner provided by this Act, and the warrant so endorsed shall be a sufficient authority to apprehend the fugitive in the part of Her Majesty's dominions in which it is endorsed, and bring him before a Magistrate.

4. A magistrate of any part of Her Majesty's dominions may issue a Provisional warrant for apprehension of fugitive. provisional warrant for apprehension of a fugitive who is or is suspected of being in or on his way to that part on such information, and under such circumstances, as would in his opinion justify the issue of a warrant if the offence of which the fugitive is accused had been committed within his jurisdiction, and such warrant may be backed and executed accordingly.

A magistrate issuing a provisional warrant shall forthwith send a report of the issue, together with the information or a certified copy thereof, if he is in the United Kingdom, to a Secretary of State, and if he is in a British possession, to the Governor of that possession, and the Secretary of State or Governor may, if he thinks fit, discharge the person apprehended under such warrant.

5. A fugitive when apprehended shall be brought before a magistrate, who Dealing with fugitive. (subject to the provisions of this Act) shall hear the when apprehended. case in the same manner and have the same jurisdiction and powers, as near as may be (including the

SEC. 1: See 4 P.R. 1870 (Cr.).

SEC. 2. Application of the Act. See (1910) 2 K.B. 1056 C.A.

SEC. 3. Warrant need not state that the

offence charged is an offence within the Act. (1931) 1 I.R. 39.

SEC. 5.—Court has got power to admit offender to bail. This power should how-

power to remand and admit to bail), as if the fugitive were charged with an offence committed within his jurisdiction.

If the endorsed warrant for the apprehension of the fugitive is duly authenticated, and such evidence is produced as (subject to the provisions of this Act) according to the law ordinarily administered by the magistrate raises a strong or probable presumption that the fugitive committed the offence mentioned in the warrant, and that the offence is one to which this part of this Act applies, the magistrate shall commit the fugitive to prison to await his return, and shall forthwith send a certificate of the committal and such report of the case as he may think fit, if in the United Kingdom to a Secretary of State, and if in a British possession to the Governor of that possession.

Where the magistrate commits the fugitive to prison he shall inform the fugitive that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of *habeas corpus*, or other like process.

A fugitive apprehended on a provisional warrant may be from time to time remanded for such reasonable time not exceeding seven days at any one time as under the circumstances seems requisite for the production of an endorsed warrant.

6. Upon the expiration of fifteen days after a fugitive has been committed to prison to await his certain return, or if a writ of

Return of fugitive by warrant. *habeas corpus* or other like process is issued with reference to such fugitive by a superior court, after

the final decision of the Court in the case,

(1) if the fugitive is so committed in the United Kingdom, a Secretary of State; and

(2) if the fugitive is so committed in a British possession, the Governor of that possession,

may, if he thinks it just, by warrant under his hand order that fugitive to be returned to the part of Her Majesty's dominions from which he is a fugitive, and for that purpose to be delivered into the custody of the person to whom the warrant is addressed, or some one or more of them and to be held in custody, and conveyed by sea or otherwise to the said part of Her Majesty's dominions, to be dealt with there in due course of law as if he had been there apprehended, and such warrant shall be forthwith executed according to the tenor thereof.

The governor or other chief officer of any prison, on request of any person having the custody of a fugitive under any such warrant, and on payment or tender of a reasonable amount for expenses, shall receive such fugitive and detain him for such reasonable time as may be requested by the said person for the purpose of the proper execution of the warrant.

7. If a fugitive who, in pursuance of this part of this Act, has been committed to prison in any part of Her Majesty's

Discharge of person apprehended if not returned within one month.

dominions to await his return, is not conveyed out of that part within one month after such committal, a superior court, upon application by or on behalf of

the fugitive, and upon proof that reasonable notice of the intention to make such application has been given, if the said part is the United Kingdom to a Secretary of State, and if the said part is a British possession to the Governor of the possession, may, unless sufficient cause is shown to the contrary, order the fugitive to be discharged out of custody.

8. Where a person accused of an offence and returned in pursuance of

ever be exercised with great care and caution. (1898) 2 Q.B. 615; (1907) 1 K.B. 696; Biron and Chalmers's Law and Practice of Extradition p. 50. The magistrate must act only when there is a strong and probable presumption that the person charged has

committed the offence. (1903) 63 J.P. 142.

SEC. 8.—This section is permissive only. A fugitive may be tried upon charges other than those to meet which he is returned. (1858) 1 F. & F. 105; (1907) 71 J.P. 190.

Sending back of persons apprehended if not prosecuted within six months or acquitted.

this part of this Act to any part of Her Majesty's dominions, either is not prosecuted for the said offence within six months after his arrival in that part, or is acquitted of the said offence, then if that part is the United Kingdom a Secretary of State, and if that part is a British possession the Governor of that possession, may, if he thinks fit, on the request of such person cause him to be sent back free of cost and with as little delay as possible to the part of Her Majesty's dominions in or on his way to which he was apprehended.

9. This part of this Act shall apply to the following offences, namely, to

Offences to which this part of this Act applies.

treason and piracy, and to every offence, whether called felony, misdemeanor, crime, or by any other name, which is for the time being punishable in the part of Her Majesty's dominions in which it was committed, either on indictment or information, by imprisonment with hard labour for a term of twelve months or more, or by any greater punishment; and for the purposes of this section, rigorous imprisonment, and any confinement in a prison combined with labour by whatever name it is called, shall be deemed to be imprisonment with hard labour.

This part of this Act shall apply to an offence notwithstanding that by the law of the part of Her Majesty's dominions in or on his way to which the fugitive is or is suspected of being it is not an offence or not an offence to which this part of this Act applies; and all the provisions of this part of this Act, including those relating to a provisional warrant and to a committal to prison, shall be construed as if the offence were in such last mentioned part of Her Majesty's dominions an offence to which this part of this Act applies.

10. Where it is made to appear to a superior court that by reason of the

Powers of superior court to discharge fugitive when case frivolous or returns unjust.

trivial nature of the case, or by reason of the application for the return of a fugitive not being made in good faith in the interests of justice or otherwise, it would, having regard to the distance, to the facilities for communication, and to all circumstances of the case, be unjust or oppressive or too severe a punishment to return the fugitive either at all or until the expiration of a certain period, such Court may discharge the fugitive, either absolutely or on bail, or order that he shall not be returned until after the expiration of the period named in the order, or may make such other order in the premises as to the Court seems just.

11. In Ireland the Lord Lieutenant or Lord Justices or other chief gover-

Power of Lord Lieutenant in Ireland.

nor or governors of Ireland, also the chief secretary of such Lord Lieutenant, may, as well as Secretary of State, execute any portion of the powers by this part of this Act vested in a Secretary of State.

PART II.

INTER-COLONIAL BACKING OF WARRANTS, AND OFFENCES.

Application of part of Act.

Application of part of Act to group of British possession.

12. This part of this Act shall apply only to those groups of British possessions to which, by reason of their contiguity or otherwise, it may seem expedient to Her Majesty to apply the same.

It shall be lawful for Her Majesty from time to time by order in Council to direct that this part of this Act shall apply to the group of British possessions mentioned in the order, and by the same or any subsequent order to except

SEC. 10.—*See* (1910) 2 K.B. 1056 (C.A.). 26 T.L.R. 561 (C.A.); *see also* (1910) 2 K. No appeal lies from the decision of the King's Bench to the Court of appeal (1910) meaning of. *see* (*Ibid.*). "Unjust. and oppressive"

certain offences from the application of this part of this Act, and to limit the application of this part of this Act by such conditions, exceptions, and qualifications as may be deemed expedient.

BACKING OF WARRANTS.

13. Where in a British possession of a group to which this part of this Act

Backing in one British possession of warrant issued in another of same group.

applies, a warrant has been issued for the apprehension of a person accused of an offence punishable by law in that possession, and such person is or is suspected of being in or on the way to another British possession of the same group, a magistrate in the last mentioned possession, if satisfied that the warrant was issued by a person having lawful authority to issue the same, may endorse such warrant in manner provided by this Act, and the warrant so endorsed shall be a sufficient authority to apprehend, within the jurisdiction of the endorsing magistrate, the person named in the warrant, and bring him before the endorsing magistrate or some other magistrate in the same British possession.

14. The magistrate before whom a person so apprehended is brought, if he

Return of prisoner apprehended under backed warrant.

is satisfied that the warrant is duly authenticated as directed by this Act and was issued by a person having lawful authority to issue that same, and is satisfied on oath that the prisoner is the person named or otherwise described in the warrant, may order such prisoner to be returned to the British possession in which the warrant was issued, and for the purpose to be delivered into the custody of the persons to whom the warrant is addressed, or any one or more of them, and to be held in custody and conveyed by sea or otherwise into the British possession in which the warrant was issued, there to be dealt with according to law as if he had been there apprehended. Such order for return may be made by warrant under the hand of the magistrate making it, and may be executed according to the tenor thereof.

A Magistrate shall, so far as is requisite for the exercise of the powers of this section, have the same power, including the power to remand and admit to bail a prisoner, as he has in the case of a person apprehended under a warrant issued by him.

15. Where a person required to give evidence on behalf of the prosecutor

Backing in one British possession of summons, etc., of witness issued in another possession of same group.

or defendant on a charge for an offence punishable by law in British possession of a group to which this part of this Act applies, is or is suspected of being in or on his way to any other British possession of the same group, a judge, magistrate, or other officer who would have lawful authority to issue a summons, requiring the attendance of such witness, if the witness were within his jurisdiction, may issue a summons for the attendance of such witness, and a magistrate in any other British possession of the same group, if satisfied that the summons was issued by some judge, magistrate, or officer having lawful authority as aforesaid, may endorse the summons with his name; and the witness, on service in that possession of the summons, so endorsed, and on payment or tender of a reasonable amount for his expenses, shall obey the summons, and in default shall be liable to be tried and punished either in the possession in which he is served or in the possession in which the summons was issued, and shall be liable to

SECS. 14 AND 19. POWERS OF COURT.—SCOPE OF.—Magistrates to whom prisoners are brought under sec. 14 are *not* entitled to decide whether the issue of the warrant for the apprehension of the prisoner was or was not justifiable on the evidence. They can only act under sec. 19 if the case appears to be trivial or if the Magistrate considers the

application not made *bona fide*, not made in the interests of public justice or for some other reason of that kind. 144 I.C. 896=34 Cr.L.J. 883=1933 M.W.N. 324. Every order under sec. 14 relating to a prisoner whose return is sought is merely an order under sec. 19 and an appeal lies to the High Court. 57 Mad. 259=1934 Mad. 55=96 M.L.J. 883.

the punishment imposed by the law of the possession in which he is tried for the failure of a witness to obey such a summons. The expression "summons" in this section includes any *sub-poena* or other process for requiring the attendance of a witness.

16. A magistrate in a British possession of a group to which this part of this Act applies, before the endorsement in pursuance of this part of this Act of a warrant for the apprehension of any person, may issue a provisional warrant for the apprehension of that person, on such information and under such circumstances as would in his opinion justify the issue of a warrant if the offence of which such person is accused were an offence punishable by the law of the said possession, and had been committed within his jurisdiction, and such warrant may be backed and executed accordingly: provided that a person arrested under such provisional warrant shall be discharged unless the original warrant is produced and endorsed within such reasonable time as may, under the circumstances seem requisite.

17. If a prisoner in a British possession whose return is authorised in pursuance of this part of this Act is not conveyed out of that possession within one month after the date of the warrant ordering his return, a magistrate or a superior court, upon application by or on behalf of the prisoner, and upon proof that reasonable notice of the intention to make such application has been given to the person holding the warrant and to the chief officer of the police of such possession or of the province or town where the prisoner is in custody, may, unless sufficient cause is shown to the contrary, order such prisoner to be discharged out of custody.

Any order or refusal to make an order of discharge by a magistrate under this section shall be subject to appeal to a superior Court.

18. Where a prisoner accused of an offence is returned in pursuance of this part of this Act to a British possession, and either is not prosecuted for the said offence within six months after his arrival in that possession or is acquitted of the said offence, the governor of that possession, if he thinks fit, may, on the requisition of such person, cause him to be sent back, free of cost, and with as little delay as possible, to the British possession in or on his way to which he was apprehended.

19. Where the return of a prisoner is sought or ordered under this part of this Act, and it is made to appear to a magistrate or to the superior court that by reason of the trivial nature of the case, or by reason of the application for the return of such prisoner not being made in good faith in the interests of justice or otherwise, it would, having regard to the distance, to the facilities of communication, and to all the circumstances of the case, be unjust or oppressive or too severe a punishment, to return the prisoner either at all or until the expiration of a certain period, the court or magistrate may discharge the prisoner either absolutely or on bail, or order that he shall not be returned until after the expiration of the period named in the order, or may make such other order in the premises as to the magistrate or court seems just.

Any order or refusal to make an order of discharge by a magistrate under this section shall be subject to an appeal to a superior court.

SEC. 19: APPEAL UNDER—POWERS OF APPELLATE COURT.—In an appeal under sec. 19 of the Act, the appellate Court has the power to direct the taking of additional evidence. The Act does not define the powers which an appellate Court may exercise in

this behalf and so it may be inferred that it may act in accordance with the normal procedure by which it is governed in the exercise of its appellate criminal jurisdiction. 57 Mad. 259=1934 Mad. 55=66 M.L.J. 383.

PART III.

TRIAL, ETC., OF OFFENCES.

20. Where two British possessions adjoin, a person accused of an offence committed on or within the distance of five hundred yards from the common boundary of such possessions may be apprehended, tried, and punished in either of such possessions.

Offences committed on boundary of two adjoining British possessions.

21. Where an offence is committed on any person or in respect of any property in or upon any carriage, cart, or vehicle whatsoever employed in a journey, or on board any vessel whatsoever employed in a navigable river, lake, canal, or inland navigation, the person accused of such offence may be tried in any British possession through a part of which such carriage, cart, vehicle or vessel passed in the course of the journey or voyage during which the offence was committed; and where the side, bank, centre, or other part of the road, river, lake, canal, or inland navigation along which the carriage, cart, vehicle, or vessel passed in the course of such journey or voyage is the boundary of any British possession, a person may be tried for such offence in any British possession of which it is the boundary:

Offences committed on journey between two British possessions.

Provided that nothing in this section shall authorise the trial for such offence of a person who is not a British subject where it is not shown that the offence was committed in a British possession.

22. A person accused of the offence (under whatever name it is known) of swearing or making any false deposition, or of giving or fabricating any false evidence, for the purposes of this Act, may be tried either in the part of Her Majesty's dominions in which such deposition or evidence is used, or in the part in which the same was sworn, made, given, or fabricated, as the justice of the case may require.

Trial of offence of false swearing or giving false evidence.

23. Where any part of this Act provides for the place of trial of a person accused of an offence, that offence shall, for all purposes of and incidental to the apprehension, trial and punishment of such person, and of and incidental to any proceedings and matters preliminary, incidental to or consequential thereon, and of and incidental to the jurisdiction of any court, constable, or officer with reference to such offence, and to any person accused of such offence, be deemed to have been committed in any place in which the person accused of the offence can be tried for it; and such person may be punished in accordance with the Courts (Colonial) Jurisdiction Act, 1874.

Supplemental provision as to trial of person in any place.

24. Where a warrant for the apprehension of a person accused of an offence has been endorsed in pursuance of any part of this Act in any part of Her Majesty's dominions, or where any part of the Act provides for the place of trial of a person accused of an offence, every court and magistrate of the part in which the warrant is endorsed or the person accused of the offence can be tried shall have the same power of issuing a warrant to search for any property alleged to be stolen or to be otherwise unlawfully taken or obtained by such person, or otherwise to be the subject of such offence, as that court or magistrate would have if the property had been stolen or otherwise unlawfully taken or obtained, or the offence have been committed wholly within the jurisdiction of such court or magistrate.

Issue of search warrant.

25. Where a person is in legal custody in a British possession either in

Removal of prisoner by seal from one place to another.

pursuance of this Act or otherwise, and such person is required to be removed in custody to another place in or belonging to the same British possession, such person, if removed by sea in a vessel belonging to Her Majesty or any of Her Majesty's subjects, shall be deemed to continue in legal custody until he reaches the place to which he is required to be removed; and the provisions of this Act with respect to the retaking of a prisoner who has escaped, and with respect to the trial and punishment of a person guilty of the offence of escaping or attempting to escape, or aiding or attempting to aid a prisoner to escape, shall apply to the case of a prisoner escaping while being lawfully removed as aforesaid, in like manner as if he were being removed in pursuance of a warrant endorsed in pursuance of this Act.

PART IV.

SUPPLEMENTAL.

Warrants and Escape.

26. An endorsement of a warrant in pursuance of this Act shall be signed by the authority endorsing the same, and shall authorise all or any of the persons named in the endorsement; and of the persons to whom the warrant was originally directed, and also every constable, to execute the warrant within the part of Her Majesty's dominions or place within which such endorsement is by this Act made a sufficient authority, by apprehending the person named in it, and bringing him before some magistrate in the said part or place, whether the magistrate named in the endorsement or some other.

For the purposes of this Act every warrant, summons, sub-poena and process, and every endorsement made in pursuance of this Act thereon, shall remain in force, notwithstanding that the person signing the warrant or such endorsement dies or ceases to hold office.

27. Where a fugitive or prisoner is authorised to be returned to any part of Her Majesty's dominions in pursuance of Part one or Part II of this Act, such fugitive or prisoner may be sent thither in any ship belonging to Her Majesty or to any of her subjects. For the purpose aforesaid, the authority signing the warrant for the return may order the master of any ship belonging to any subject of Her Majesty, bound to the said part of Her Majesty's dominions to receive and afford a passage and subsistence during the voyage to such fugitive or prisoner, and to the person having him in custody, and to the witnesses, so that such master be not required to receive more than one fugitive or prisoner for every hundred tons of his ship's registered tonnage, or more than one witness for every fifty tons of such tonnage.

The said authority shall endorse or cause to be endorsed upon the agreement of the ship such particulars with respect to any fugitive prisoner or witness sent in her as the Board of Trade from time to time require. Every such master shall, on his ship's arrival in the said part of Her Majesty's dominions, cause such fugitive or prisoner if he is not in the custody of any person, to be given into the custody of some constable, there to be dealt with according to law.

Every master who fails on payment or tender of a reasonable amount for expenses to comply with an order made in pursuance of this section, or to cause a fugitive or prisoner committed to his charge to be given into custody as required by this section, shall be liable on summary conviction to a fine not exceeding fifty pounds, which may be recovered in any part of Her Majesty's dominions in like manner as a penalty of the same amount under the Merchant Shipping Act, 1854, and the Acts amending the same.

28. If a prisoner escape, by breach of prison, or otherwise, out of the custody of a person acting under a warrant issued or endorsed in pursuance of this Act, he may be retaken in the same manner as a person accused of a crime against the law of that part of Her Majesty's dominions to which he escapes may be retaken upon an escape.

A person guilty of the offence of escaping or of attempting to escape, or of aiding or attempting to aid a prisoner to escape, by breach of prison or otherwise, from custody under any warrant issued or endorsed in pursuance of this Act, may be tried in any of the following parts of Her Majesty's dominions, namely, the part to which and the part from which the prisoner is being removed and the part in which the prisoner escapes and the part in which the offender is found.

EVIDENCE.

29. A magistrate may take depositions for the purposes of this Act in the absence of a person accused of an offence in like manner as he might take the same if such person were present and accused of the offence before him.

Depositions (whether taken in the absence of the fugitive or otherwise) and copies thereof, and official certificates of or judicial documents stating facts, may, if duly authenticated, be received in evidence in proceedings under this Act:

Provided that nothing in this Act shall authorise the reception of any such depositions, copies, certificates, or documents in evidence against a person upon his trial for an offence.

Warrants and depositions, and copies thereof, and official certificates of or judicial documents stating facts, shall be deemed duly authenticated for the purposes of this Act if they are authenticated in manner provided for the time being by law, or if they purport to be signed by or authenticated by the signature of a judge, magistrate, or officer of the part of Her Majesty's dominions in which the same are issued, taken, or made, and are authenticated either by the oath of some witness, or by being sealed with the official seal of a Secretary of State, or with the public seal of a British possession, or with the official seal of a governor of a British possession, or of a colonial secretary, or of some secretary or minister administering a department of the Government of a British possession.

And all courts and magistrates shall take judicial notice of every such seal as is in this section mentioned, and shall admit in evidence without further proof the documents authenticated by it.

MISCELLANEOUS.

30. The jurisdiction under Part I of this Act to hear a case and commit a fugitive to prison to await his return shall be exercised,—

(1) In England, by a chief magistrate of the metropolitan police courts or one of the other magistrates of the metropolitan police court at Bow Street; and

(2) In Scotland, by the sheriff or sheriff substitute of the county of Edinburgh; and

(3) In Ireland, by one of the police magistrates of the Dublin metropolitan police district; and

(4) In a British possession, by any judge, justice of the peace, or other officer having the like jurisdiction as one of the magistrates of the metropolitan police court in Bow Street, or by such other court, judge, or magistrate as may be from time to time provided by an Act or ordinance passed by the legislature of that possession.

If a fugitive is apprehended and brought before a magistrate who has no power to exercise the jurisdiction under this Act in respect of that fugitive, that magistrate shall order the fugitive to be brought before some magistrate having that jurisdiction, and such order shall be obeyed.

31. It shall be lawful for Her Majesty in Council from time to time to make orders for the purposes of this Act, and to revoke and vary any order so made, and every order so made shall, while it is in force, have the same effect as if it were enacted in this Act.

Power as to making and revocation of Orders in Council.

An order in Council made for the purposes of this Act shall be laid before Parliament as soon as may be after it is made if Parliament is then in session, or if not, as soon as may be after the commencement of the then next session of Parliament.

Power of legislature of British possession to pass laws for carrying into effect this Act.

32. If the legislature of a British possession pass any Act or ordinance—

(1) For defining the offences committed in that possession to which this Act or any part thereof is to apply; or

(2) For determining the court, judge, magistrate, officer or person by whom and the manner in which any jurisdiction or power under this Act is to be exercised; or

(3) For payment of the costs incurred in returning a fugitive or a prisoner or in sending him back, if not prosecuted or is acquitted, or otherwise in the execution of this Act; or

(4) In any manner for the carrying of this Act or any part thereof into effect in that possession,

it shall be lawful for Her Majesty by Order in Council to direct, if it seems to Her Majesty in Council necessary or proper for carrying into effect the objects of this Act, that such Act or Ordinance, or any part thereof, shall with or without modification or alteration be recognised and given effect to throughout Her Majesty's dominions and on the high seas as if it were part of this Act.

APPLICATION OF ACT.

33. Where a person accused of an offence can, by reason of the nature of the offence, or of the place in which it was committed, or otherwise, be, under this Act or otherwise, tried for or in respect of the offence in more than one part of Her Majesty's dominions, a warrant for the apprehension of such person may be issued in any part of Her Majesty's dominions in which he can, if he happens to be there, be tried; and each part of this Act shall apply as if the offence had been committed in the part of Her Majesty's dominions where such warrant is issued, and such person may be apprehended and returned in pursuance of this Act, notwithstanding that in the place in which he is apprehended a Court has jurisdiction to try him:

Application of Act to offences at sea or triable in several parts of Her Majesty's dominions.

Provided that if such person is apprehended in the United Kingdom a Secretary of State, and if he is apprehended in a British possession the Governor of such possession, may, if satisfied that, having regard to the place where the witnesses for the prosecution and for the defence are to be found, and to all the circumstances of the case, it would be conducive to the interests of justice so to do, order such person to be tried in that part of Her Majesty's dominions in which he is apprehended, and in such case any warrant previously issued for his return shall not be executed.

SEC. 33: INTERPRETATION.—The word "return" in sec. 33 is not to be read as implying that the offender is a fugitive from

the country to which he is being sent for trial. (103 Law Times 473, Rel. on.) 112 L.C. 673=39 Cr.L.J. 1089=1928 Sind 161.

34. Where a person convicted by a Court in any part of Her Majesty's dominions of an offence committed either in Her Majesty's dominions or elsewhere, is unlawfully at large before the expiration of his sentence, each part of this Act shall apply to such person, so far as is inconsistent with the tenor thereof, in like manner as it applies to a person accused of the like offence committed in the part of Her Majesty's dominions in which such person was convicted.

35. Where a person accused of an offence is in custody in some part of Her Majesty's dominions, and the offence is one for or in respect of which, by reason of the nature thereof or of the place in which it was committed or otherwise, a person may under this Act or otherwise be tried in some other part of Her Majesty's dominions, in such case a superior court, and also if such person is in the United Kingdom a Secretary of State, and if he is in a British possession the Governor of that possession, if satisfied, that having regard to the place where the witnesses for the prosecution and for the defence are to be found, and to all the circumstances of the case, it would be conducive to the interests of justice so to do, may by warrant direct the removal of such offender to some other part of Her Majesty's dominions in which he can be tried, and the offender may be returned, and, if not prosecuted or acquitted, sent back free of cost in like manner as if he were a fugitive returned in pursuance of Part One of this Act, and the warrant were a warrant for the return of such fugitive, and the provisions of this Act shall apply accordingly.

36. It shall be lawful for Her Majesty from time to time by order in Council to direct that this Act shall apply as if, subject to the conditions, exceptions, and qualifications (if any) contained in the order, any place out of Her Majesty's dominions in which Her Majesty has jurisdiction, and which is named in the Order, were a British possession, and to provide for carrying into effect such application.

37. This Act shall extend to the Channel Islands and Isle of Man as if they were part of England and of the United Kingdom, and the United Kingdom and those islands shall be deemed for the purpose of this Act to be one part of Her Majesty's dominions; and a warrant endorsed in pursuance of Part One of this Act may be executed in every place in the United Kingdom and the said islands accordingly.

38. This Act shall apply where an offence is committed before the commencement of this Act, or, in the case of Part Two of this Act, before the application of that part to a British possession or to the offence, in like manner as if such offence had been committed after such commencement or application.

DEFINITIONS AND REPEAL.

Definition of terms.

"Secretary of State."

The expression "Secretary of State" means one of Her Majesty's Principal Secretaries of State:

"British possession."

The expression "British possession" means any part of Her Majesty's dominions, exclusive of the United Kingdom, the Channel Islands, and Isle of Man; all territories and places within Her Majesty's dominions which are under one Legislature shall be deemed to be one British possession and one part of Her Majesty's dominions:

"Legislature."

The expression "legislature", where there are local legislatures as well as central legislature, means the central legislature only:

The expression "governor" means any person or persons administering the government of a British possession¹ [* * *]:

The expression "constable" means, out of England, and policeman or officer having the like powers and duties as a constable, in England:

The expression "magistrate" means, except in Scotland, any justice of the peace, and in Scotland means a sheriff or sheriff substitute, and in the Channel Islands, Isle of Man, and a British possession means any person having authority to issue a warrant for the apprehension of persons accused of offences and to commit such persons for trial:

"Offence punishable on indictment;" The expression "offence punishable on indictment" means as regards India, an offence punishable on a charge or otherwise:

The expression "oath" includes affirmation or declaration in the case of persons allowed by law to affirm or declare instead of swearing, and expression "swear" and other words relating to an oath or swearing shall be construed accordingly:

"Deposition": The expression "deposition" includes any affidavit, affirmation, or statement made upon oath as above defined.

"Superior Court". The expression "superior court" means—

(1) In England, Her Majesty's Court of Appeal and High Court of Justice; and

(2) In Scotland, the High Court of Judiciary; and

(3) In Ireland, Her Majesty's Court of appeal and Her Majesty's High Court of Justice at Dublin; and

(4) In a British possession, any court having in that possession the like criminal jurisdiction to that which is vested in the High Court of Justice in England, or such Court or Judge as may be determined by any Act or Ordinance of that possession.

40. 2 [* * * * *]
41. 2 [* * * * *]

SCHEDULE—2 [* * * * *]

THE GAMBLING ACT.

[See *The Public Gambling Act.*]

THE GENERAL CLAUSES ACT (X OF 1897).

Year.	No.	Short title.	Amendment.
1897	IX	The General Clauses Act, 1897.	Repealed in part, I of 1903. Repealed in part and amended, X of 1941; XVIII of 1919; XXI of 1920. Amended, I of 1903; XVII of 1914, S. 2; XXIV of 1917, S. 2; XI of 1923; XVIII of 1928; Government of India (Adaptation of Indian Laws) Order, 1937; Act XIX of 1936 and Act XXXII of 1940.

LEG. REF.

¹ The words "and includes the Governor and Lieutenant-Governor of any part of

India" omitted by A.O., 1937.

² Secs. 40 and 41 and the Schedule repealed by 57 and 58 Vic., c. 56.

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N.B.—Throughout the Act, for “Acts of the Governor-General in Council” and “Act of the Governor-General in Council” the words “Central Acts” and “Central Act” have been substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

[11th March, 1897.

An Act to consolidate and extend the General Clauses Acts, 1868 and 1887.

WHEREAS it is expedient to consolidate and extend the General Clauses Acts, 1868 and 1887; It is hereby enacted as follows:—

Preliminary.

Short title and commencement.

1. (1) This Act may be called THE GENERAL CLAUSES ACT, 1897¹; .[*]²

(2) [* * * * *]

2. [*Repealed.*] *Rep. by the Repealing and Amending Act (I of 1903).*
General Definitions.

3. In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,—

LEG. REF.

¹ For Statement of Objects and Reasons, see Gazette of India, 1897, Pt. V, p. 38; for Report of Sel. Com., see *ibid.* p. 77; for Proceedings in Council, see *ibid.*, Part VI, pp. 35, 40, 56 and 76.

² Rep. by Act X of 1914, Sch. II, Cl. (2).—*Cf.* The Indian Penal Code (Act XLV of 1860), and the Madras Ge-

neral Clauses Act, 1891 (Madras Act III of 1891).

SECS. 1 AND 3: APPLICABILITY TO BOMBAY ABKARI ACT.—The General Clauses Act has no application to the Bombay Abkari Act, passed by the Governor of Bombay in Council. 1 Bom.L.R. 164 (16 B. 669 Foll.).

(1) "abet" with its grammatical variations and cognate expressions shall have the same meaning as in the Indian Penal Code:

(2) "act", used with reference to an offence or a civil wrong shall include a series of acts, and words which refer to acts done extend also to illegal omissions:

(3) "affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing:

¹(3-a) "Assam Act" shall mean an Act made by the Chief Commissioner of Assam in Council under the [Indian Councils Acts, 1861 to 1909] ²[or the Government of India Act, 1915,] ³[or by the Local Legislature or the Governor of Assam under the Government of India Act,] ⁴[or by the Provincial Legislature or the Governor of Assam under the Government of India Act, 1935]:

(4) "barrister" shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland:

¹[(5) "Bengal Act" shall mean in the case of Acts passed prior to the 1st April, 1912, an Act made by the Lieutenant Governor of Bengal in Council under the Indian Councils Act, 1861, or the Indian Councils Acts, 1861 and 1892, or the Indian Councils Acts, 1861 to 1909, and in the case of Acts passed after that date, an Act made by the Governor of the Presidency of Fort William in Bengal in Council under the Indian Councils Acts, 1861 to 1909.] ²[or the Government of India Act, 1915,] ³[or by the local Legislature or the Governor of the Presidency of Bengal under the Government of India Act,] ⁴[or by the Provincial Legislature or the Governor of Bengal under the Government of India Act, 1935]:

⁴[5-a) 'Berar' shall have the same meaning as in the Government of India Act, 1935:]

¹[⁴[(5-b)] "Bihar and Orissa Act" shall mean an Act made by the Lieutenant-Governor of Bihar and Orissa in Council under the Indian Councils Acts, 1861 to 1909] ²[or the Government of India Act, 1915] ⁴[or by the local Legislature or the Governor of Bihar and Orissa ⁴[or Bihar] under the Government of India Act]:

¹[(5-c) 'Bihar Act' shall mean an Act made by the Provincial Legislature or the Governor of Bihar under the Government of India Act, 1935:]

(6) "Bombay Act" shall mean an Act made by the Governor of Bombay in Council under ⁵[the Indian Councils Act, 1861, or] the Indian Councils Acts, 1861 and 1892 ¹[or the Indian Councils Acts, 1861 to 1909] ²[or the Government of India Act, 1915,] ³[or by the local Legislature or the Governor of the Presidency of Bombay under the Government of India Act] ¹[or by the Provincial Legislature or the Governor of Bombay under the Government of India Act, 1935:]

LEG. REF.

¹ Ins. by Act X of 1914.

² Ins. by Act XXIV of 1917, sec. 2 and Sch. I.

³ Ins. by Act XVIII of 1928, sec. 2 and Sch. I.

⁴ Ins. by A.O., 1937.

⁵ Inserted by Act I of 1903, sec. 3 and Sch. II.

CL. (3).—*Cf.* The definitions of "Oath" and "Swear" in sub-secs. (36 and 55), respectively, *infra*. As to affidavits in civil proceedings, *see* Code of Civil Procedure

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(Act V of 1908), 1st Sch., Order XIX; as to Criminal Proceedings, *see* Code of Criminal Procedure (Act V of 1898).

CL. (4).—*Cf.* The Indian High Courts Act, 1861 (24 and 25 Vict., c. 104), sec. 19, Col. Stats. Ind., Vol. I.

This Act applies only to Acts passed by the Governor-General in Council and not to Acts passed by the Local Legislature. ¹ Bom.L.R. 614. As to its applicability to Oudh Rent Act, *see* 16 O.C. 341.

¹[(7) 'British India' shall mean, as respects the period before the commencement of Part III of the Government of India Act, 1935, all territories and places within His Majesty's dominions, which were for the time being governed by His Majesty through the Governor-General of India or through any Governor or officer subordinate to the Governor-General of India, and as respects any period after that date means all territories for the time being comprised within the Governors' Provinces and the Chief Commissioners' Provinces, except that a reference to British India in an Indian law passed or made before the commencement of Part III of the Government of India Act, 1935, shall not include a reference to Berar:]

(8) "British possession" shall mean any part of Her Majesty's dominions, exclusive of the United Kingdom, and, where parts of those dominions are under both a central and a local Legislature, all parts under the Central Legislature shall, for the purposes of this definition, be deemed to be one British possession:

²[(8-a) 'Burma Act' shall mean an Act made by the Lieutenant-Governor of Burma in Council under the Indian Councils Acts, 1861 and 1892,] ³[or the Indian Councils Acts, 1861 to 1909], ⁴[or the Government of India Act, 1915,] ⁵[or by the local Legislature or the Governor of Burma under the Government of India Act]:

⁶[(8-aa) 'Central Act' shall mean an Act of the Central Legislature, and shall include, except in section 5, an Act made by the Governor-General under section 67-B of the Government of India Act, or section 44 of the Government of India Act, 1935:]

"Central Government." ⁷[(8-ab) 'Central Government' shall—
(a) in relation to anything done or to be done after the commencement of Part III of the Government of India Act, 1935, mean the Federal Government; and

(b) in relation to anything done before the commencement of Part III of the said Act, mean the Governor-General in Council, or the authority competent at the relevant date to exercise the functions corresponding to those subsequently exercised by the Governor-General in Council:]

⁸[(8-ac) "Central Legislature" shall mean the Governor-General in Council acting in a legislative capacity under the Government of India Act, 1833, the Government of India Act, 1853, the Indian Councils Acts, 1861 to 1909, or any of those Acts, or the Government of India Act, 1915, the Indian Legislature acting under the Government of India Act, or the Government of India Act, 1935, or the Federal Legislature acting under the Government of India Act, 1935, as the case may require:]

⁹[(8-b) "Central Provinces Act" shall mean an Act made by the Chief Commissioner of the Central Provinces in Council under the Indian Councils Act 1861 to 1909,] ⁴[or Government of India Act, 1915,] ⁵[or by the local Legislature or the Governor of the Central Provinces under the Government of India Act:]

LEG. REF.

¹ Inserted by A.O., 1937.

CL. (7).—*Cf.* The Interpretation Act, 1889 (52 and 53 Vict., c. 63), sec. 18 (4), Col. Stats. Ind., Vol. II. For definition of "India," *see infra*, sub.sec. (27).

CL. (8).—*Cf.* The Interpretation Act, 1889 (52 and 53 Vict., c. 53), sec. 18 (2), Col. of Stats. Ind., Vol. II.

² Inserted by Act I of 1903, sec. 3 and Sch. II.

³ Inserted by Act X of 1914.

⁴ Inserted by Act XXIV of 1937.

⁵ Inserted by Act XVIII of 1928.

⁶ Substituted for the original clause (7) by A.O., 1937.

⁷ Inserted by Act XVII of 1914, sec. 2 and Sch. I.

SEC. 3, CL. (7).—*See* 6 P.R. 1878 (Cr.). Quetta does not form part of "British India" as defined in sec. 3 of the General Clauses Act. It is what is known as an "administered area." 28 S.L.R. 54=1934 Sind 123. "Berar" if included in British India, *see* 39 Bom.L.R. 1287.

- ¹[(8-c) 'Central Provinces and Berar Act, shall mean an Act made by the Provincial Legislature or the Governor of the Central Provinces and Berar under the Government of India Act, 1935:]
- "Central Provinces and Berar Act".
- "Chapter." (9) "Chapter" shall mean a Chapter of the Act or Regulation in which the word occurs:
- "Chief Controlling Revenue Authority." ¹[(9-a) 'Chief Controlling Revenue Authority' or 'Chief Revenue Authority' shall mean—
- (a) in provinces where there is a Board of Revenue, that Board:—
- (b) in provinces where there is a Revenue Commissioner, that Commissioner;
- (c) in the Punjab, the Financial Commissioner; and
- (d) elsewhere, such authority as, in relation to matters enumerated in List I in the Seventh Schedule to the Government of India Act, 1935, the Central Government, and in relation to other matters, the Provincial Government, may by notification in the Official Gazette appoint:]
- (10) "Collector" shall mean, in a Presidency town, the Collector of Calcutta, Madras or Bombay, as the case may be and elsewhere the chief officer in charge of the revenue-administration of a district:
- "Collector."
- (11) 'Colony' shall mean any part of Her Majesty's dominions exclusive of the British Islands and of British India and, where parts of those dominions are under both a central and a local Legislature, all parts under the central Legislature shall for the purposes of this definition be deemed to be one colony: ¹[Provided that in any Central Act passed after the commencement of Part III of the Government of India Act, 1935, 'Colony' shall not include any dominion as defined in the Statute of Westminster, 1931, any Province or State forming part of such a dominion, or British Burma:]
- "Colony."
- (12) 'Commencement', used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force:
- "Commencement."
- (13) "Commissioner" shall mean the chief officer in charge of the revenue administration of a division:
- "Commissioner."
- (14) 'consular officer' shall include consul-General, consul, vice-consul, consular agent, pro-consul and any person for the time being authorized to perform the duties of consul-general, consul, vice-consul or consular agent:
- "Consular officer."
- ¹[(14-a) 'Crown contracts' and equivalent expressions shall include contracts made by or on behalf of the Secretary of State in Council, contracts made in the exercise of the executive authority of the Central or any Provincial Government, contracts made by the Federal Railway Authority, and contracts made in connection with the exercise of the functions of the Crown in its relations with Indian States:
- "Crown contracts."
- (14-b) 'Crown debts' and equivalent expressions shall include debts due to the Secretary of State in Council, the Secretary of State, the Central Government, any Provincial Government, the Federal Railway Authority or the Crown Representative:
- "Crown debts."
- (14-C) 'A grant' (including a transfer of land or of any interests therein or a payment of money) shall be deemed to be made by the Crown if it is made by or on behalf of His
- "Crown grants".

LEG. REF.

¹ Inserted by A.O., 1937.

CL. (11).—*Cf.* The Interpretation Act, 1889 (52 and 53 Vict., c. 63), sec. 18 (3), Col. Stats. Ind., Vol. II.

CL. (12).—For rules determining when

any given Act is to come into force, *see* sec. 5, *infra*.

CL. (14).—*Cf.* The Consular Salaries and Fees Act, 1891 (54 and 55 Vict., c. 36), sec. 3.

Majesty, the Secretary of State in Council, the Central Government, any Provincial Government, the Federal Railway Authority or the Crown Representative:

(14-d) 'Crown liabilities' and equivalent expressions shall include the liabilities of the Secretary of State in Council, the Secretary of State, the Central Government, any Provincial Government, the Federal Railway Authority or the Crown Representative:

(14-e) 'Crown property' and equivalent expressions shall include any property vested in His Majesty or otherwise held for the purposes of the Central or any Provincial Government, the Federal Railway Authority or the Crown Representative:

(14-f) 'Crown Representative' shall mean His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States:

(14-g) 'Crown revenues' and equivalent expressions shall include any revenues vesting in His Majesty:]

(15) 'District Judge' shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction:

(16) 'document' shall include any matter written, expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, which is intended to be used, or which may be used, for the purpose of recording that matter:

¹[(16-a) "Eastern Bengal and Assam Act" shall mean an Act made by the Lieutenant-Governor of Eastern Bengal and Assam in Council under the Indian Councils Acts, 1861 and 1892, or the Indian Councils Acts, 1861 to 1909:]

(17) 'enactment' shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal, Madras or Bombay Code and shall also include any provision contained in any Act or in any such Regulation as aforesaid:

(18) 'father,' in the case of any one whose personal law permits adoption, shall include an adoptive father:

²[(18-a) 'Federal Government' shall—

(a) in relation to anything done or to be done after the commencement of Part III of the Government of India Act, 1935, but before the establishment of the Federation, mean, as respects matters with respect to which the Governor-General is by and under the provisions of the said Act for the time being in force required to act in his discretion, the Governor-General, and as respects other matters, the Governor-General in Council; and

(b) in relation to anything done or to be done after the establishment of the Federation mean the Governor-General acting or not acting in his discretion, and exercising or not exercising his individual judgment, according to the pro-

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OL. (15).—As to definition of High Court, see sub-sec. (24), *infra*.

In Lower Burma the District Court is the Court of the District Judge as defined by this clause, see Lower Burma Courts Act (VI of 1900), sec. 25 (c), Bur. Code.

Cr. (16).—*Cf.* Indian Evidence Act (I

of 1872). As to definition of "written", see sub-sec. (58).

¹ Inserted by Act X of 1914.

² Cls. (18-a) and (18-b) added by A.O., 1937.

OL. (15).—As to status of High Court on Original Side, see 27 M.L.J. 645.

vision in that behalf made by and under the said Act; and shall include—

(i) in relation to functions entrusted under section 124 (1) of the said Act to the Government of a Province, the Provincial Government acting within the scope of the authority given to it under that sub-section; and

(ii) in relation to the administration of a Chief Commissioner's province, the Chief Commissioner acting within the scope of the authority given to him under section 94 (3) of the said Act:

(18-b) "Federal Railway Authority" shall mean the Federal Railway Authority constituted by the Government of India Act, 1935, or, before the establishment of that Authority, the Central Government:]

"Financial year."

(19) "financial year" shall mean the year commencing on the first day of April:

(20) a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not:

"Government."

(21) "Government" or "the Government" shall include ¹[both the Central Government and any Provincial Government:]

(22) ¹["Government securities" shall mean securities of the Central or any Provincial Government and shall include sterling securities of the Secretary of State for India in Council or the Secretary of State:]

(23) ²[* * * * *

....

(24) "High Court," used with reference to Civil proceedings, shall mean the highest Civil Court of appeal ³[not including the Federal Court] in the part of British India in which

the Act or Regulation containing the expression operates:

(25) "immovable property" shall include land, benefits to arise out of

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CL. (19).—*Cf.* The Interpretation Act, 1889 (52 and 53 Vic., c. 63), sec. 22, Col. Stats. Ind., Vol. II.

CL. (20).—*Cf.* The Bills of Exchange Act, 1882 (45 and 46 Vic., c. 61), sec. 90; and the Sale of Goods Act, 1893 (56 and 57 Vict., c. 71), sec. 62. *Cf. also* sec. 52 of the Indian Penal Code (XLV of 1860).

As to discussion in Council regarding definition of "good faith", see *Gazette of India*, 1897, Pt. VI, pp. 56 to 62 and 76 to 79.

¹ Substituted by A.O., 1937.

² Repealed by Act XVIII of 1919.

³ Inserted by A.O., 1937.

CL. (20).—*Per Sen, J.*—Good faith as defined in sec. 3 (20) is equivalent to honesty of dealing and does not entail upon the auction-purchaser the necessity of searching the registry. Even if there were facts indicative of negligence in investigating title that by itself is not predicative of lack of *bona fides*. 53 A. 334=1931 A. 277 (F.B.). See 13 I.C. 260=5 S.L.R. 181; 12 I.C. 809=4 Bur.L.T. 128.

CL. (21).—As to definition of Local Government, see sub-sec. (29), *infra*; see 6 P. W.R. 1913 (Cr.).

CLS. (21) AND (40).—"THE GOVERN-

MENT"—WHETHER INCLUDES BRITISH GOVERNMENT—"SHALL INCLUDE"—MEANING.—The expression, "includes" or "shall include" is used in interpretation clauses in two senses. The ordinary and general sense in which it is used is to enlarge the meaning of the words or phrases occurring in the body of the statute; and when it is so used, these words or phrases must be construed as comprehending not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. This expression is also susceptible of another construction which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expression defined. It may be equivalent to "mean and include" and in that case it may afford an exhaustive explanation of the meaning which for the purposes of the Act must invariably be attached to those words or expression. The expression in sec. 3, Cls. 21 and 40, is used in the restricted sense as equivalents to mean and include. 28 S.L.R. 27=1934 Sind 96.

CL. (25).—As to growing crops and timber so far as they are affected by the Indian

- "Immovable property." land and things attached to the earth, or permanently fastened to anything attached to the earth:
 (26) "imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code:

¹[(27) 'India' shall mean British India together with all territories of any Indian Ruler under the suzerainty of His Majesty, all territories under the suzerainty of such an Indian Ruler, the tribal areas, and any other territories which His Majesty in Council may, from time to time, after ascertaining the views of the Central Government and the Central Legislature, declare to be part of India:]

²[(27-a) 'Indian law' shall include any law, ordinance, order, by-law, rule or regulation passed or made at any time by any competent Legislature, authority, or person in British

India:

³[(27-b) 'Indian State' shall mean any territory, not being part of British

LEG. REF.

¹ Cl. (27) substituted for old Cl. (27) by A.O., 1937.

² Cl. (27-a) added by *ibid.*

³ Cl. 27-b substituted by Act XXXII of 1940.

Registration Act (XVI of 1908), *see* sec. 2 (6) of that Act. Doors, whether immovable property. 16 M.L.T. 429=25 I.C. 837.

MORTGAGE OF FRUIT-BEARING TREES.—Whether or not a mortgage of fruit-bearing trees is a mortgage of immovable property is a question dependent in each case upon the intention of the contracting parties and cannot be settled by an inflexible rule. Where there is a mortgage with possession of fruit-bearing trees with the intention that the mortgagee is to remain in possession during the years of the mortgage and enjoy the fruits and should not cut down the trees so as to convert them to either timber or firewood, it must be held that the trees so mortgaged were either immovable property or at least an interest in immovable property and should be effected with the formalities prescribed by sec. 59, T. P. Act. 54 All. 437=140 I.C. 491. Though trees are immovable property, there is no presumption that whenever the word "land" is used in an enactment, the trees standing thereon are included. 29 N.L.R. 1=1933 N. 53. The expression "benefits to arise out of land" in the Act was never intended to cover such a matter as the security held by a mortgagee under a simple mortgage bond, by such 'benefits' as the right to a ferry. L. R. 5 All. 674. A mortgage is not "a benefit to arise out of land" within the meaning of sec. 3, Cl. (25). 57 Cal. 328=34 C.W.N. 605. *See also* 58 Cal. 136=1931 Cal. 223. Per Lord Atkin.—"Debts may be secured whether on immovable property or on merchandise; they may be wholly secured or partly secured; the security may have been given when the debt was created or later, but in any case the debts exist as movable property and do not, if secured, become identified with the security or transformed

into land in the one case or merchandise in the other. The separation between debts and security is well established." 34 C.W. N. 1034=1931 P.C. 245=61 M.L.J. 589 (P. C.). As to mortgagee's interest, *see* 51 All. 494. A Kolhu (*i.e.*, an iron sugarcane press) fastened to the ground is immovable property. 23 I.C. 250. The term "immovable property" in the General Clauses Act may include a right of way, but is not always necessarily included. It is not excluded by T. P. Act, sec. 3. 34 I.C. 450=20 C.W.N. 1158. Malikana, if immovable property, *see* 21 I.C. 779=19 C.W.N. 410. Standing crops are immovable property. 23 M.L.J. 623=17 I.C. 185; 25 M.L.J. 447=21 I.C. 213; also standing trees, 25 A.L.J. 199. Standing timber which has been cut and removed is movable property. 133 I.C. 157=1931 A.L.J. 608=1931 All. 392 (F.B.). A right to fishery is an interest in immovable property. 43 I.C. 962=14 N.L.R. 35. General fishery, 23 Bom.L.R. 939. A simple mortgage debt is to be attached as a debt and not as immovable property. 50 I.C. 157=21 O.C. 400. *See also* 47 All. 917. The interest of the mortgagee in the mortgaged property is manifestly a "benefit to arise out of land" and is therefore itself immovable property. 12 B. 370=1934 Rang. 253 (F.B.). As to money charged on immovable property, *see* 83 I.C. 555. A pug-mill affixed to the earth is immovable property. 43 I.C. 625=11 Bur.L.T. 199. Bazar dues constitute a benefit arising out of the land and therefore a lease of bazar dues is a less of immovable property within the meaning of sec. 3 (25) of the Act. 1940 Oudh 409=16 Luck. 191. On this clause, *see also* 9 Rang. 303=1931 Rang. 109.

Cl. (26).—*See* 9 A. 240=7 A.W.N. 540.

Cl. (27).—*Cf.* The Interpretation Act, 1889 (52 and 53 Vict., c. 63), sec. 18 (5). *See* 7 C.W.N. 635.

The definition of 'land' must be applied to the word 'land' as used in the C. P. Code and therefore 'land' in C. P. Code includes trees. 10 I.C. 473=7 N.L.R. 63.

“Indian State.” India, which His Majesty recognises as being such a State whether described as a State, an Estate, a Jagir or otherwise:]

(28) “local authority” shall mean a municipal committee, district board,

“Local authority.” body of port commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund:

(29) [Omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.]

(30) “Madras Act” shall mean an Act made by the Governor of Fort St. George in Council under ¹[the Indian Councils Act, 1861, or] the Indian Councils Acts, 1861 and 1892, ²[or the Indian Councils Acts, 1861 to 1909,] ³[or the Government of India Act, 1915], ⁴[or by the local Legislature or the Governor of the Presidency of Madras under the Government of India Act]; ⁵[or by the Provincial Legislature or the Governor of Madras under the Government of India Act, 1935:]

(31) “Magistrate” shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force:

(32) “master,” used with reference to a ship, shall mean any person (except a pilot or harbour-master) having for the time being control or charge of the ship:

“Month.” (33) “month” shall mean a month reckoned according to the British calendar:

“Movable property.” (34) “movable property” shall mean property of every description, except immovable property:

⁵[(34-a) “North-West Frontier Province Act” shall mean an Act made by the local Legislature or the Governor of the North-West Frontier Province under the Government of India Act, or by the Provincial Legislature or the Governor of the North-West Frontier Province under the Government of India Act, 1935:]

(35) “North-Western Provinces and Oudh Act” shall mean an Act made by the Lieutenant-Governor of the North-Western Provinces and Oudh in Council under ⁶[the Indian Councils Act, 1861 or] the Indian Councils Acts, 1861 and 1892:

(36) “oath” shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing:

LEG. REF.

¹ Inserted by Act I of 1903.

² Inserted by Act X of 1914.

³ Inserted by Act XXIV of 1917.

⁴ Inserted by Act XVIII of 1928.

⁵ Inserted by A.O., 1937.

⁶ Inserted by Act I of 1903, sec. 3.

CL. (28).—*Cf.* The Local Authorities Loans Act (XI of 1879). The words “local authority” includes port trust, 44 L.W. 328 = 1936 M. 789.

CL. (31).—The Code now in force is Act V of 1898. Village Munsif, if Magistrate. *see* 2 Mad. 5; 2 Weir 123 = 27 Mad. 223; 2 Weir 208 = 14 M.L.J. 74; 2 Weir 577. Magistrate in the section is confined to Magistrate exercising jurisdiction under Cr.

P. Code. *See* 56 M.L.J. 628.

CL. (32).—*See* S. 742 of the Merchant Shipping Act, 1894 (57 and 58 Vict., i. 60), Col. Stats. Ind., Vol. II.

CL. (33).—*See* 13 C.W.N. 425.

CL. (34).—For a comprehensive definition of the word “property,” *see* sec. 168 of the Bankruptcy Act, 1883 (46 and 47 Vict., c. 53). Immovable property includes a debt. 4 L.W. 613 = 36 L.C. 833. Shares in company are goods but peculiar kind of movable property which cannot pass freely from hand to hand. 25 Bom.L.R. 414.

CL. (35).—Read now “United Provinces of Agra and Oudh”; *see* sec. 2 of the U.P. (Designation) Act (VIII of 1902) and *see* sub-sec. 55-a, *infra*.

"Offence."

(37) "offence" shall mean any act or omission made punishable by any law for the time being in force:

"Official Gazette."

¹[37-a) "Official Gazette" or "Gazette" shall mean the Gazette of India, or, as the case may be, the official Gazette of a province:

"Orissa Act."

(37-b) "Orissa Act" shall mean an Act made by the Provincial Legislature, or the Governor of Orissa under the Government of India Act, 1935:]

"Part."

(38) "Part" shall mean a part of the Act or Regulation in which the word occurs:

"Person."

(39) "person" shall include any company or association or body of individuals, whether incorporated or not:

"Political Agent."

(40) "Political Agent" shall include—

(a) the principal officer representing the ²[Crown] in any territory or place beyond the limits of British India, and

(b) any officer ³[* * * * *] appointed ⁴[* * * * *] to exercise all or any of the powers of a Political Agent for any place not forming part of British India under the law for the time being in force relating to foreign jurisdiction ⁵[* * * * *];

"Presidency-town."

(41) "Presidency-town" shall mean the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay, as the case may be:

"Privy Council."

(42) "Privy Council" shall mean the Lords and others for the time being of Her Majesty's Most Honourable Privy Council:

⁴[(43) "Province"

"Province."

shall mean a Presidency, a Governor's Province, a Lieutenant-Governor's Province or a Chief Commissioner's Province:

(43-a) "Provincial Government,"

"Provincial Government."

as respects anything done or to be done after the commencement of Part III of the Government of India Act, 1935, shall mean—

(a) in a Governor's Province, the Governor acting or not acting in his discretion, and exercising or not exercising his individual judgment, according to the provision in that behalf made by and under the said Act; and

(b) in a Chief Commissioner's Province, the Central Government, and, as respects anything done before the commencement of Part III of the said Act, shall mean the authority or person authorized at the relevant date to administer executive government in the Province in question:]

LEG. REF.

¹ Cls. (37-a) and (37-b) added by A.O., 1937.

² Substituted by A.O., 1937, for "Government".

³ Omitted by *ibid.*

⁴ Cls. (43) and (43-a) have been substituted by A.O., 1937.

CL. (37).—See a similar definition in sec. 4 (c) of the Code of Criminal Procedure (V of 1898). Offence committed under Stamp Act, 1882 (since repealed) while it was in force, is still an offence and may be tried under the Act. 7 M.H.C.R. App. 8.

CL. (39).—The word 'person' clearly includes a firm and when the return is made on behalf of the firm by a partner, it is the

firm that is the person who makes the return. 48 Mad. 602=1925 Mad. 1048=49 M.L.J. 124. A company is a 'person' and can sue through its liquidator *in forma pauperis*. 41 Mad. 624=34 M.L.J. 421=45 I. C. 164. "Person" includes a corporation. 72 I.C. 623.

CL. (40).—"Shall include" meaning of. See 28 S.L.R. 27=1934 Cr. C. 821=1934 Sind 96. Cited under CL. 21, *supra*.

CL. (41).—See sec. 4 (b) of the repealed Cr. P. Code (X of 1882) and *cf.* sec. 3 (25) of the Mad. General Clauses Act (Mad. Act I of 1891).

CL. (42).—*Cf.* sec. 12 (5) of the Interpretation Act, 1889 (52 and 53 Vict., c. 63).

CL. (43).—*Cf.* sec. 4 (d) of the repealed Cr. P. Code (X of 1882).

“Public nuisance.” (44) “Public nuisance” shall mean a public nuisance as defined in the Indian Penal Code:

¹[(44-a) “Punjab Act” shall mean an Act made by the Lieutenant-Governor of the Punjab in Council under the Indian Councils Acts, 1861 and 1892], [or the Indian Councils Acts, 1861 to 1909,] [or the Government of India Act, 1915,] [or by the local Legislature or the Governor of the Punjab under the Government of India Act,] ²[or by the Provincial Legislature or the Governor of the Punjab under the Government of India Act, 1935:]

(45) “registered”, used with reference to a document, shall mean registered in British India under the law for the time being in force for the registration of documents:

“Registered.” (46) “Regulation” shall mean a Regulation made ²[by the Central Government] under the Government of India Act, 1870, ³[or the Government of India Act, 1915,] ⁴[or the Government of India Act] ²[or under section 95 or section 96 of the Government of India Act, 1935:]

(47) “rule” shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment:

“Rule.” (48) “schedule” shall mean a schedule to the Act or Regulation in which the word occurs:

“Schedule.” (49) “Scheduled district” shall mean a “Scheduled district” as defined in the Scheduled Districts Act, 1874:

“Section.” (50) “section” shall mean a section of the Act or Regulation in which the word occurs:

(51) “ship” shall include description of vessel used in navigation not exclusively propelled by oars:

(52) “sign,” with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include “mark”, with its grammatical variations and cognate expressions:

⁵[(52-a) “Sind Act” shall mean an Act made by the Provincial Legislature or the Governor of Sind under the Government of India Act, 1935:]

“Sind Act.” (53) “son” in the case of any one whose personal law permits adoption, shall include an adopted son:

“Son.” (54) “sub-section” shall mean a sub-section of the section in which the word occurs:

“Sub-section.”

LEG. REF.

¹First brackets in CL (44-a) inserted by Act I of 1903, sec. 3; second inserted by Act X of 1914; third added by Act XXIV of 1917; and 4th added by Act XVIII of 1928.

²Inserted by A.O., 1937.

³Added by Act XXIV of 1917.

⁴Inserted by Act XVIII of 1928.

⁵CL (53-a) added by A.O., 1937.

CL (45).—*Cf.* sec. 3 (11) of the Mad. General Clauses Act (Mad. Act I of 1891). As to law now in force, *see* the Indian Registration Act (XVI of 1908).

CL (47).—The provisions of sec. 20 to 24, *infra*, apply to rules defined in this sub-

section.

CL (51).—*Cf.* sec. 742 of the Merchant Shipping Act, 1894 (57 and 58 Vict., c. 60).

CL (52).—*See also* definition of “in sub-sec. 58,” *infra*. *See* 32 C. 550=2 Cr.L.J. 405. Mark by a person able to write. 78 L. C. 79. Meaning of signature. 50 C. 180. The writing of a word or expression as ‘Sahi’ at the foot of a document cannot be considered to be a ‘mark’ made by that person under sec. 3 (52), in the absence of proof that in fact the particular person was unable to write his own name. 14 Luck. 393=1939 Oudh 96.

CL (53).—*See* 34 P.B. 1883. Where the personal law of the parties admits adoption the word ‘son’ will include an adopted son.

¹[(54-a) "suits by or against the Crown" and equivalent expressions shall include suits by or against the Secretary of State, the Secretary of State in Council, the Central Government, a Provincial Government or the Crown Representative:]

(55) "swear," with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing:

²[(55-a) "United Provinces Act" shall mean an Act made by the Lieutenant-Governor of the North-Western Provinces and Oudh (or of the United Provinces of Agra and Oudh) in Council under the Indian Councils Act, 1861, or the Indian Councils Acts, 1861 and 1892,] ³[or the Indian Councils Act, 1861 to 1909,] ⁴[or the Government of India Act, 1915,] ⁵[or by the Local Legislature or the Governor of the United Provinces under the Government of India Act,] ⁶[or by the Provincial Legislature or the Governor of the United Provinces under the Government of India Act, 1935:]

"Vessel." (56) "vessel" shall include any ship or boat or any other description of vessel used in navigation:

"Will." (57) "will" shall include a codicil and every writing making a voluntary posthumous disposition of property:

(58) expressions referring to "writing" shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form: and

"Year." (59) "year" shall mean a year reckoned according to the British calendar.

4. (1) The definitions in section 3 of the following words and expressions, that is to say, "affidavit", "barrister," Application of foregoing definitions to previous enactments. ⁷[* * * *] "District Judge," "father," ⁷[* * *] ⁸[* * *] ⁷[* * *] "immovable property", "imprisonment," ⁷[* * *], "magistrate", "month", "movable property," "oath," "person," "section," "son," "swear," "will," and "year," apply also, unless there is anything repugnant in the subject or context,

LEG. REF.

1 Cl. (54-a) added by A.O., 1937.

2 Inserted by Act I of 1903, sec. 3.

3 Inserted by Act X of 1914.

4 Inserted by Act XXIV of 1917.

5 Added by Act XVIII of 1928.

6 Inserted by A.O., 1937.

7 The words "British India", "Government of India," "High Court" and "Local Government" omitted by A.O., 1937.

8 Words "Her Majesty" or "the Queen" omitted by Act XVIII of 1919.

Minor adopted son of deceased held to be a 'defendant' and therefore entitled to compensation under sec. 2 (1) (d) of the Workmen's Compensation Act, 1923. 12 L. 50= 1931 Lah. 661.

Cl. (55).—See also definition of "affidavit" and "oath" *supra*, sub-secs. (3) and (36), respectively, and as to oath, see the Indian Oaths Act (X of 1873).

Cl. (56).—Cf. sec. 742 of the Merchant Shipping Act, 1894 (57 and 58 Vict., c. 60). This definition supplements the definition of ship in sub-sec. (51), *supra*. See also defi-

nition of vessel in sec. 48 of the Indian Penal Code, 1860 (Act XLV of 1860), and in sec. 3 (4) of the Northern India Canal and Drainage Act (VIII of 1873) and in sec. 3 (f) of the Sea Customs Act (VIII of 1878).

Cl. (57).—See the definition of "will" in sec. 2 of the Indian Succession Act (XXXIX of 1925). Mere authority to adopt though revocable and taking effect on the death of a person, cannot be considered a will, though the document is styled a will. There must be a disposition of property in addition to the authority to adopt, if it is to be treated as a will. 9 L.W. 385=49 L. C. 929. A mere direction for management of the property by a manager during minority is not a disposition by a will. (*Ibid.*)

Cl. (58).—Cf. sec. 20 of the Interpretation Act, 1889 (52 and 53 Vict., c. 63).

Cl. (59).—As to financial year, see sub-sec. 19, *supra*. Where the probabilities are not, and the evidence does not show, that the parties usually went by the Gregorian Calendar, provisions of sec. 3 (59) do not apply. 1922 Nag. 265.

to all ¹[Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

(2) The definitions in the said section of the following words and expressions, that is to say, "abet," "chapter," "commencement," "financial year," "local authority," "master," "offence," "part," "public nuisance," "registered," "schedule," "ship," "sign," "sub-section," and "writing," apply also, unless there is anything repugnant in the subject or context, to all ²[Central Acts] and Regulations made on or after the fourteenth day of January, 1887.

³[4-A. (1) The definitions in section 3 of the expressions "British India," "Central Act," "Central Government," "Central Legislature," "Chief Controlling Revenue Authority," "Chief Revenue Authority," "Crown contracts," "Crown debts," "Crown grants," "Crown liabilities," "Crown property," "Crown Representative," "Crown Revenues," "Federal Government," "Federal Railway Authority," "Gazette," "Government," "Securities," "High Court," "India," "Indian law," "Indian State," "Official Gazette," "Provincial Government," and "suits by or against the Crown," apply also, unless there is anything repugnant in the subject or context to all Indian laws.

(2) In any Indian law, references to the "Provincial Government" or "Central Government" in any provision conferring power to make appointments to the civil services of, or civil posts under, the Crown in India include references to such person as the Provincial Government or the Central Government, as the case may be, may direct, and in any provision conferring power to make rules prescribing the conditions of service of persons serving His Majesty in a civil capacity in India, include references to any person authorised by the Provincial Government or the Central Government, as the case may be, to make rules for the purpose.

(3) The references in any Indian law to servants of or under, or to service of or under, a Government or a Province, to property of, or belonging to, or vested in, the Secretary of State in Council or a Government or a Province, and to forfeitures to a Government or a Province, shall be construed as references respectively to persons in the service of the Crown, to the service of the Crown, to property vested in the Crown and to forfeitures to the Crown.]

General Rules of Construction.

5. (1) Where any ³[Central Act] is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent of the Governor-General.

⁴[(2) Where any ³[Central Act] is reserved, under section 68 of the Government of India Act, 1915, ⁵[or under section 32 of the Government of India Act, 1935.] for the signification of His Majesty's pleasure thereon, then, if no later date is expressed, it shall come into operation, if assented to by His Majesty, on the day on which that assent is duly notified.]

(3) Unless the contrary is expressed, a ³[Central Act] or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

⁵[5-A. Where any Act made by the Governor-General under section 44 of the Government of India Act, 1935, is not expressed to come into operation on a particular day, it shall come into operation on the date on which it is enacted by the Governor-General.]

LEG. REF.

¹ Substituted A.O., 1937.

² Added by *ibid.*

³ Substituted by A.O., 1937.

⁴ Substituted by Act XXIV of 1917.

⁵ Inserted by A.O., 1937.

SEC. 5, CL. (3).—*Cf.* sec. 36 (2) of the Interpretation Act, 1889 (52 and 53 Vic., c. 63). 1939 A.L.J. 7=1939 All. 154. As to power to make rules between the passing and commencement of an Act which does not come into force at once, *see* sec. 22,

6. Where this Act, or any ¹[Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(a) receive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the Repealing Act or Regulation had not been passed.

LEG. REF.

¹ Substituted by A.O., 1937.

infra. Section applies only to offences and sentences passed under Acts which came into force after General Clauses Act came into force. L.B.R. (1872-1892) 478; not to Acts and Regulations passed prior to passing of the Act. Rat. 57. See also 9 N.L.R. 49; 1939 A.L.J. 7=1939 All. 154.

SEC. 6.—*Cf.* sec. 38 of the Interpretation Act, 1889 (52 and 53, Vic., c. 63). As to the effect and application of the section, see 15 R.D. 757=12 L.R. (Rev.) 351; 15 R. D. 710. This section applies only to cases where the change in the law is the result of the repeal of an enactment and does not extend where it is due to an addition to it. 13 I.C. 264=5 S.L.R. 184 (22 C. 767, Foll.). See also 58 A. 495. According to sec. 6 the rights that have become secured under the old Act cannot be the subject of fresh re-examination in the light of subsequent legislation. 1939 A.L.J. (Supp.) 49=1939 R. D. 303. It is doubtful if an application for setting aside an *ex parte* decree comes under a right of privilege under sec. 6. 37 I.C. 292=101 P.R. 1916. In the event of its being deemed to be a right, its acquisition must be under the C. P. Code and not under the Limitation Act. (*Ibid.*) A vested right under the old Code which had been repealed by the new Code is saved by sec. 6 if the right had already vested before the coming into force of the new Code. 9 I.C. 337=14 O.C. 10; 8 Pat.L.T. 397. A new law of limitation or an amendment of such law cannot divest a person of a vested right under the old law. 1936 A.L.J. 1373=1936 All. 858. See also 20 C.W.N. 952=34 I.C. 27; 1 P.L.J. 214; 97 I.C. 607=1926 Pat. 561. The Defence of India Rules are not a Central Act or a Regulation within the meaning of sec. 6, General Clauses Act and nothing in that Act nor r. 3 (1). Defence of India Rules can extend the scope of sec. 6, General Clauses Act. 23 Pat. 240=1944 P.W.N. 147=A.L.R. 1944 Pat. 217.

CL. (b).—An acknowledgment of liability only extends the period of limitation and does not confer title and is not a thing done within sec. 6 (b) of the Act. 35 All. 227=40 I.A. 74=25 M.L.J. 131 (P.C.) (affirming 32 A. 38=6 A.L.J. 931).

CL. (c).—Where an execution sale was held under the old C. P. Code, 1882, the auction-purchaser had a contingent right to sue for recovery of the purchased money in case the judgment-debtor had no saleable interest. 45 I.C. 109=40 M. 1009. The right is not affected by the new provision of O. 21, R. 93 which negatives a right of suit in such a case. (*Ibid.*) An agreement executed when Agra Tenancy Act II of 1901 was in force is not affected by the repeal of that Act. A document takes effect from the date of its execution, not of its attestation or registration. 14 L.R. 108 (Rev.)=17 R.D. 83.

CL. (d).—Offence may be tried under repealed enactment if committed while the old Act was in force. 7 M.H.C.R. App. 89=1 Weir 781.

CL. (e).—See 58 All. 495=160 I.C. 277=1936 A. 3. The rule laid down in sec. 6 (e) applies to those cases only, where an Act or Ordinance has been repealed by a subsequent enactment. It has no reference to temporary or expiring statutes which automatically lapse at a certain date, or on the happening of a certain contingency, without fresh legislation. 43 P.L.R. 103=1941 Lah. 175=1 L.L.R. (1941) Lah. 773. Trial of criminal cases to be in accordance with rules in force at time of commencement. 6 M. 836; what is a legal proceeding, 16 C. 267; includes both judicial and ministerial. 15 C. 357. Sanction obtained before amendment of sec. 195, C. P. Code, in 1923—Amending Act abolishing provision as to sanction and revocation, effect of. See 91 I.C. 395=1925 M. 911. An agreement executed when Act II of 1901 was in force is not affected by the repeal of that Act. A document takes effect from the date of its execution, not of its attestation or registration. 14 L.R. 108 (Rev.)=17 R.D. 83. It is contrary to the long

¹[6-A. Where any ²[Central Act] or Regulation made after the commence-

Repeal of Act making
textual amendment in Act
or Regulation.

ment of this Act repeals any enactment by which the text of any ²[Central Act] or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.]

7. (1) In any ²[Central Act] or Regulation made after the commence-

Revival of repealed
enactments.

ment of this Act, it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

(2) This section applies also to all ²[Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

³[8. (1)] Where this Act, or any ²[Central Act] or Regulation made after

Construction of referen-
ces to repealed enactments.

the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so-re-enacted.

³[(2) Where any Act of Parliament repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any ²[Central Act], or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.]

9. (1) In any ²[Central Act] or Regulation made after the commencement

LEG. REF.

¹ Added by Act XIX of 1936.

² Substituted by A.O., 1937.

³ Re-numbered as sec. 8 (1) and cl. (2) added by Act XVIII of 1919.

established practice of the Board to entertain appeals which have no relation to existing rights created or purported to be created; the Judicial Committee would therefore decline to hear arguments as to the validity of an Act which has, since the decision of the Court below, been repealed and cannot, therefore, be brought into operation—Such an appeal is of no practical interest. 1939 M.W.N. 142=1939 P.C. 53 (P.C.).

SECS. 6 AND 30: APPLICABILITY TO TEMPORARY ORDINANCES.—No doubt the General Clauses Act would certainly be applicable to the two Ordinances 2 and 10 of 1932 but sec. 6 is applicable to a case where a previous Ordinance has been "repealed" by a subsequent Ordinance or by a subsequent Act and would not necessarily apply to a case where a temporary Ordinance automatically expires after the period, during which it is in operation, is over. Hence although sec. 30 makes the Act applicable to the Ordinances, sec. 6 has no application to such temporary Ordinances. (1933 Cal. 280, Dist.) 1933 A.L.J. 875=1933 All. 669 (F.B.).

SEC. 6-A.—Effect of the section on sec. 7 of the Criminal Law Amendment Act. See (1938) 2 M.L.J. 863.

SEC. 7.—Cf. sec. 11 of the Interpretation Act, 1889 (52 and 53, Vic., c. 63).

REPEAL OF A REPEALING ENACTMENT, EF-

FFECT OF.—The mere repeal of a Repealing Act or the repealing portion of a Repealing Act does not, by itself, revive the original Act or the repealed portion thereof. 1 Weir 781=7 M.H.C.B. App. 8. See also 6 M. 336; 25 C. 333. The repeal of a statute repealing a certain enactment does not revive the repealed enactment. The law on this point as embodied in sec. 7 of Act X of 1897 is the same as in England. 25 C. 333=2 C.W.N. 11 (12 M. 94; 14 B. 381, Ref. and Appr.).

SEC. 8.—Cf. sec. 38 (1) of the Interpretation Act, 1889 (52 and 53 Vic., c. 63). See a similar provision in sec. 3 of the Code of Criminal Procedure (V of 1898). An amending section cannot be said to take retrospective effect so as to validate a pending action which would otherwise be barred under the old section. 35 C.W.N. 1147. An order of Government delegating its powers under a rule of the Defence of India Act to District Magistrates is not an "instrument" or an enactment within the meaning of sec. 8 (1) of this Act. A delegation cannot therefore be deemed to cover the delegation of such powers as might thereafter be brought into existence for the first time by re-enactment of the rules. 46 Bom.L.R. 495=A.I.R. 1944 Bom. 259.

SEC. 9.—This section would not apply in terms to a decree or order of Court, but it is desirable that for the sake of uniformity the same interpretation should be given to an expression occurring in a judicial order as would be given to it in a statute.

Commencement and termination of time.

of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from" and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

(2) This section applies also to all ¹[Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

10. (1) Where, by any ¹[Central Act] or Regulation made after the commencement of this Act, any act or proceeding is

directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877, applies.

(2) This section applies also to all ¹[Central Acts] and Regulations made on or after the fourteenth day of January, 1887.

11. In the measurement of any distance, for the purposes of any ¹[Central

Measurement of distances.

Act] or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a

horizontal plane.

12. Where, by any enactment now in force or hereafter to be in force, any

Duty to be taken *pro rata* in enactments.

duty of customs or excise, or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.

13. In all ¹[Central Acts] and Regulations, unless there is anything repugnant in the subject or context—

(1) words importing the masculine gender shall be taken to include females; and

(2) words in the singular shall include the plural, and *vice versa*.

²[13-A. In all ¹[Central Acts] and Regulations, references to the Sovereign or to the Crown shall, unless a different intention appears, be construed as references to the Sovereign for the time being.]

References to the Sovereign.

LEG. REF.

¹ Substituted by A.O., 1937.

² Inserted by Act XVIII of 1919.

I.L.R. (1938) Bom. 734=40 Bom.L.R. 892=1938 Bom. 447.

SEC. 10.—*See* Madras General Clauses Act (Madras Act I of 1891), sec. 11. *See* 2 Weir 200; 22 C. 176. This section is applicable to those cases where period of limitation has been given in the section and to the condition put in the decree. 41 A. 47=48 I.C. 353. This section does not apply to the period of grace allowed by sec. 31 (1) of the Limitation Act. 36 B. 268=12 I.C. 811. When a certain day is fixed for complying with an order of the Court the party is entitled to have reasonable opportunity of presenting his case or substantiating it in the proper course. 35 I.C. 650. Sec. 10 does not apply to an application

under sec. 54 of the Provincial Insolvency Act, though the same result is achieved by sec. 4 of the Limitation Act. 1933 M.W.N. 1049. Sec. 10 applies to a case in which an act is allowed or ordered to be done by an Act of the Legislature; it does not apply to an act ordered to be done by a compromise decree. 17 Pat. 191=19 Pat.L.T. 825=1938 Pat. 451. As to applicability of section to petitions under Provincial Insolvency Act *see* 1942 A.L.J. 592 (F.B.)

SEC. 11.—*Cf.* sec. 34 of the Interpretation Act, 1889 (52 and 53 Vic., c. 63).

SEC. 12.—As to definition of "enactment", *see* sec. 3, sub-sec. (17), *supra*.

SEC. 13: WORDS IN SINGULAR NUMBER.—The General Clauses Act provides that words in the singular shall include the plural and *vice versa*; this provision applies only where there is nothing repugnant in the subject or context. 33 C. 292=10 C.W.N. 32. The

Powers and Functionaries.

14. (1) Where, by any ¹[Central Act] or Regulation made after the commencement of this Act, any power is conferred ²[* * * *], then, ³[unless a different intention appears,] that power may be exercised from time to time as occasion requires.

(2) This section applies also to all ¹[Central Acts] and Regulations made on or after the fourteenth day of January, 1887.

15. Where, by any ³[Central Act] or Regulation, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office.

16. Where, by any ¹[Central Act] or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having ⁴[for the time being] power to make the appointment shall also have power to suspend or dismiss any person appointed ⁵[whether by itself or any other authority] in exercise of that power.

17. (1) In any ¹[Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

(2) This section applies also to all ¹[Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

18. (1) In any ¹[Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

(2) This section applies also to all ¹[Central Acts] made after the third day of January, 1861, and to all Regulations made on or after the fourteenth day of January, 1887.

19. (1) In any ¹[Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior to prescribe the duty of the superior.

(2) This section applies also to all ¹[Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

LEG. REF.

¹ Substituted by A.O., 1937.

² Omitted by *ibid.*

³ Inserted by *ibid.*

⁴ Inserted by Act XVIII of 1928.

⁵ Substituted for 'by it' by *ibid.*

=19 A.L.J. 798.

SEC. 15.—*See* similar provision in sec. 39 of the Code of Criminal Procedure (V of 1898).

SEC. 17 (1).—It is competent to an acting Magistrate to grant sanction for the prosecution of an offence wherever the permanent Magistrate could have done so. 42 M. 69=35 M.L.J. 736=49 I.C. 161.

word "person" in Cr. P. Code, secs. 234 and 239 does not include "persons". 63 I.C. 449

Provisions as to Orders, Rules, etc., made under Enactments.

20. Where, by any ¹[Central Act] or Regulation, a power to issue any ²[notification], order, scheme, rule, form or bye-law is conferred, then expressions used in the ²[notification], order, scheme, rule, form, or bye-law, if it is made after the commencement of this Act, shall,

unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act or Regulation conferring the power.

21. Where, by any ¹[Central Act] or Regulation, a power to [issue notifications]³ orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add, to amend, vary or rescind any ⁴[notifications], orders, rules or bye-laws so ³[issued].

Construction of orders, etc., issued under enactments.

Power to make to include power to add, to amend, vary or rescind, orders, rules or by-laws.

22. Where, by any ¹[Central Act] or Regulation which is not to come into force immediately on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any Court or office or the appointment of any

Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after the passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.

23. Where, by any ¹[Central Act] or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:—

(1) the authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;

LEG. REF.

¹ Substituted by A.O., 1937.

² Inserted by Act I of 1903, sec. 3.—*Cf.* sec. 31 of the Interpretation Act, 1889 (52 and 53, Vic., c. 63), and sec. 10 of the Madras General Clauses Act (Madras Act I of 1891).

³ Substituted by Act I of 1903, sec. 3.

⁴ Inserted by Act I of 1903.

SEC. 21.—*Cf.* sec. 32 (3) of the Interpretation Act, 1889 (52 and 53, Vic., c. 63). The Inspector of Factories approving a system of working a particular factory can, under sec. 21, cancel the approval. 59 I.C. 857=22 Cr.L.J. 153. But where an appeal is pending from the order of cancellation, it is not desirable, so long as the appeal is pending, to institute a criminal prosecution in respect of the factory having been worked in contravention of the order of cancellation. 59 I.C. 857=22 Cr.L.J. 153.

SEC. 22.—*Cf.* sec. 37 of the Interpretation Act, 1889 (52 and 53, Vic., c. 63). Where a notification was made under sec. 3 of the Provincial Insolvency Act of 1907 investing certain officer with certain powers, the same remains in force without a fresh notification

under the Act V of 1920, as sec. 3 has been re-enacted word for word in the new Act. 80 I.C. 858=1925 C. 335. Where the accused, who had kept in their compound a larger number of cattle than they were permitted to do under the bye-laws framed under sec. 142 (r) of the Municipal Act, were acquitted by the Magistrate on the ground that by sec. 10 of Act I of 1931, sec. 142 (r) had been deleted, with the result that the bye-laws were no longer in force. *Held*, that sec. 9 of Act I of 1931 re-enacted the provisions of sec. 142 (r) in sec. 124 (a) of the Act and though no fresh bye-laws had been made under sec. 124 (a), the bye-laws made under sec. 142 (r) should be deemed to have been made under the re-enacted provisions under sec. 24 of the General Clauses Act (I of 1898) and so in force throughout and the acquittal of the accused was erroneous. 11 R. 532=1934 R. 12. Subsequent passing of the Registration Act, 1908—Effect —Notification exempting agricultural leases. 28 I.C. 577=12 A.L.J. 792. Notifications under earlier Acts continue in force by implication. 32 C.W.N. 576.

(2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication, so requires, in such manner as the Central Government or the Provincial Government prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make the rules or bye-laws, and where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;

(5) the publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made.

24. Where any ¹[Central Act] or Regulation is after the commencement of this Act, repealed and re-enacted with or without

Continuation of orders
etc., issued under enact-
ments repealed and re-en-
acted.

modification, then, unless it is otherwise expressly provided, any ²[appointment, notification] order; scheme, rule, form or bye-law, ²[made or] issued under the repealed Act or Regulation shall, so far as

it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been ²[made or] issued under the provisions so re-enacted, unless and until it is superseded by any ²[appointment, notification], order, scheme, rule, form or bye-law ²[made or] issued under the provisions so re-enacted ³[and when any ¹[Central Act] or Regulation, which, by a notification under section 5 or 5-A of the Scheduled Districts Act, 1874⁴ or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section].

Miscellaneous.

25. Sections 63 to 70 of the Indian Penal Code and the provisions of the

Recovery of fines.

Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or bye-law, unless the Act, Regulation, rule or bye-law contains an express provision to the contrary.

26. Where an act or omission constitutes an offence under two or more

Provision as to offences
punishable under two or
more enactments.

enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments but shall not be liable to be punished twice for the same offence.

LEG. REF.

¹ Substituted by A.O., 1937.

² Inserted by Act I of 1903, sec. 3.

³ Inserted by Act XVII of 1914—*Cf.* sec. 18 of the Madras General Clauses Act (Madras Act I of 1891).

⁴ Repealed by A.O., 1937.

SEC. 24.—An ordinance is not an enactment and an ordinance which has expired, is not an enactment which is repealed. A.I.R. 1941 Rang. 1. As to the applicability and scope of sec. 24, see also 43 Bom.L.R. 99=1941 Bom. 100 (sec. 24 would come into operation where a Central Act or Regulation

has been repealed and re-enacted, and neither a Central Act or Regulation would include a rule made under an Act. 1941 Bom. 100).

SEC. 25.—See now sec. 386, *et seq* of the Code of Criminal Procedure (Act V of 1898). See L.B.R. (1893-1900) 385; L.B.R. (1898-1900) 494; 1 L.B.R. 150: Mere temporary rights of a tenant-at-will to reap the produce as tenant's are not "immovable property." 1 L. 567=58 I.C. 321. Sec. 25 if controls Sugarcane Act—Power of Court to award imprisonment in default of payment of fine. See 17 Pat.L.T. 806.

SEC. 26.—As to definition of "offence",

27. Where any¹[Central Act] or Regulation made after the commence-

Meaning of service by post. ment of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions, "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

28. (1) In any¹[Central Act] or Regulation and in any rule, bye-law, Citation of enactments. instrument or document made under, or with reference to any such Act or Regulation, any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

LEG. REF.

¹Substituted by A.O., 1937.

see *supra*, sub-sec. (37) of sec. 3. L. B. R. 218 (F.B.). Where an act is punishable under a special law and also under a general statute, the offender can be proceeded with under either or both, but cannot be punished twice for the same act. Where there is nothing in the special Act to exclude the operation of the general criminal law, it cannot be inferred that there was an intention on the part of the legislature to exclude it. 53 A. 642=1932 A. 18. Where the accused was found in possession of a stolen revolver without licence, there is no legal bar to his being charged and convicted for two offences, one under sec. 411 of the Penal Code and the other under sec. 19 of the Arms Act. The offence under the latter section is the possession of a revolver without licence; that under the former is the possession of an article knowing it to be stolen. It is immaterial that the article in both cases happens to be a revolver. 1933 A. L.J. 523=1933 A. 461. Where an act for the abatement of which conviction takes place is not a separate offence under the Penal Code but is an offence exclusively under the Salt Act, 1882, sec. 26 of the General Clauses Act is inapplicable. 1930 O. 497. As to permissibility of separate prosecutions in respect of different charges, see (1944) 1 M.L.J. 120.

CRIMINAL TRIAL.—No two punishments can be inflicted for the same act, though under two enactments. 76 I.C. 689=25 Cr. L.J. 225. See also 33 Bom.L.R. 648=1931 B. 409; 53 A. 642; 1941 M.W.N. 765 (conviction under sec. 352, Penal Code and sec. 3 (12) of Madras Town Nuisances Act). But the Court can impose a sentence of imprisonment in default of payment of fine imposed for breach of a statutory rule. 58 C. 1293=35 C.W.N. 865. Where a special enactment deals with an offence similar to the offence which is dealt with by a general enactment it does not follow that the provisions of the general enactment are repealed

to that extent. 18 Cr.L.J. 992=42 I.C. 608. The prosecution in such a case may lie under either but not both of those enactments. 42 I.C. 608 (22 C. 131 at 139, Dist.) Where a person illegally sold a certain quantity of opium and retained possession of the residue after the sale, separate sentences for possession and sale under the Opium Act and the Bihar and Orissa Excise Act do not contravene sec. 26 of the Act. 44 I.C. 974=3 P.L.J. 433. Where one Act constitutes two offences, separate punishment for each offence can be inflicted only if both offences are against the same law. 1 P.L.J. 373=38 I.C. 433. Section has no application if the offences are distinct. 138 I.C. 491=1932 M. 537. When the petitioner has been convicted for disobeying a previous notice to produce a child for vaccination, he cannot once more be convicted on the same facts under the same sub-section for failure to comply with a second notice to discontinue his breach of the previous notice. 131 I.C. 156=1931 Mad. 181=60 M.L.J. 299. Offence falling under sec. 24 of Cattle Trespass Act, 1871, and also under sec. 380, I. P. Code—Procedure. See 1930 M.W.N. 529=1931 M. 18.

SEC. 27.—*Cf.* sec. 26 of the Interpretation Act, 1889 (52 and 53, Vic., c. 63). See 24 I.C. 437=16 Bom.L.R. 204.

PRESUMPTION REGARDING LETTER SENT BY POST.—Sec. 63, Income-tax Act is to be read along with sec. 27, General Clauses Act. The words "unless the contrary is proved" in sec. 27 refer both to the service and the time. Consequently, when a notice has been posted properly addressed and pre-paid in a register cover, the presumption raised even as regards the service is not conclusive but is rebuttable. 54 All. 548=1932 A.L.J. 409=1932 All. 374.

SEC. 28.—*Cf.* sec. 35 of the Interpretation Act, 1889 (52 & 53 Vic., c. 63). Short title has been conferred on the Unrepealed General Acts of the Governor-General in Council which had previously no short title —*See* The Indian Short Titles Act (XIV of 1897).

(2) In this Act and in any ¹[Central Act] or Regulation made after the commencement of this Act, a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

29. The provisions of this Act respecting the construction of Acts, Regulations, rules or bye-laws made after the commencement of this Act shall not affect the construction of any Act, Regulation, rule or bye-law made before the commencement of this Act, Regulation, rule or bye-law made after the commencement of this Act.

²[30. In this Act, the expression ¹["Central Act"] wherever it occurs, except in section 5, and the word 'Act' in clauses (9), (12), (38), (48) and 50 of section 3 and in section 25 shall be deemed to include an Ordinance made and promulgated by the Governor-General under section 23 of the Indian Councils Act, 1861] [or section 72 of the Government of India Act, 1915] ³[or section 42 or section 43 of the Government of India Act, 1935].⁴

30-A. [* * * * *]. Rep. by A.O. 1937.

31. [* * * * *]. Rep. by A.O. 1937.

THE SCHEDULE.

Repealed by Act I of 1903, S. 4 and Sch. III.

THE GENEVA CONVENTION IMPLEMENTING ACT, (XIV OF 1936). [27th October, 1936.]

*An Act to implement Article 28 of the Geneva Convention of the
27th day of July, 1929.*

WHEREAS India was a signatory to the International Convention for the Amelioration of the Conditions of the Wounded and Sick in Armies in the Field, drawn up in Geneva and dated the 27th day of July, 1929;

AND WHEREAS it is necessary to provide for the discharge of the obligations imposed by Article 28 of that Convention in so far as provision has not been made by the Geneva Convention Act, 1911;

It is hereby enacted as follows:—

Short title and extent. 1. (1) This Act may be called THE GENEVA CONVENTION IMPLEMENTING ACT, 1936.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

2. No person shall use for the purposes of his trade or business or for any other purpose whatsoever any sign constituting a colourable imitation of the heraldic emblem of the red cross on a white ground formed by reversing the federal colours of Switzerland.

LEG. REF.

¹ Substituted by A.O., 1937.

² This section was inserted by Act XVII of 1914.

³ Inserted by Act XXIV of 1917.

⁴ Inserted by A.O., 1937.

SEC. 29.—*Cf.* sec. 40 of the Interpretation Act, 1889 (52 and 53 Vict., c. 63).

SECS. 30 AND 6: APPLICABILITY.—TEMPORARY ORDINANCES.—No doubt the General Clauses Act would certainly be applicable to the two Ordinances 2 and 10 of 1932, but

sec. 6 is applicable to case where a previous Ordinance has been "repealed" by a subsequent Ordinance or by a subsequent Act and would not necessarily apply to a case where a temporary Ordinance automatically expired after the period, during which it is in operation is over. Hence although sec. 30 makes the Act applicable to the Ordinances, sec. 6 has no application to such temporary Ordinances. (1933 Cal. 280, Dist.) 145 I.C. 683=34 Cr.L.J. 1030=1933 A.L.J. 875=A.I.R. 1933 All. 669 (F.B.).

3. No person shall use for the purposes of his trade or business the Prohibition of use of heraldic, emblem of the white cross on a red emblem of White Cross on ground, being the federal colours of Switzerland, or red ground or imitations thereof. any sign constituting a colourable imitation of that heraldic emblem.

4. Any person contravening the provisions of S. 2 or S. 3 shall be punishable with fine which may extend to fifty rupees, and when such contravention is committed by a company, association or body of individuals, then, without prejudice to the liability of such company, association or body, every member thereof who is knowingly a party to the contravention shall be liable to the like penalty.

5. No Criminal Court shall take cognizance of any offence punishable Previous sanction for under this Act except with the previous sanction of the [Central Government] ¹[* *].

6. Nothing in the foregoing sections shall affect the right of any person, to continue to use for a period of two years from the commencement of this Act any sign or emblem which it was not unlawful for him to use at the commencement of this Act.

THE GLANDERS AND FARCY ACT (XIII OF 1899).²

[20th March, 1899.]

[Rep. in parts by Acts 12 of 1910; 10 of 1914; and 12 of 1927; and Amended by Acts 11 of 1901; 9 of 1920 and 38 of 1920].

An Act to consolidate and amend the law relating to Glanders and Farcy.

WHEREAS it is expedient to consolidate and amend the law relating to Glanders and Farcy; It is hereby enacted as follows:—

1. (1) This Act may be called THE GLANDERS AND FARCY ACT, 1899.

(2) It extends to the whole of British India; ³[* * *].

2. (1) In this Act, unless there is anything repugnant in the subject or Definition of "diseased." context, "diseased" means affected with glanders or farcy or any other dangerous epidemic disease among horses which the Provincial Government may, by ⁴notification in the Official Gazette specify in this behalf ⁵[* *].

(2) The provisions of this Act relating to horses shall apply also to ⁶[camels], asses and mules.

LEG. REF.

¹ The words "or the Local Government" omitted by the A.O., 1937.

² For Statement of Objects and Reasons, see Gazette of India, 1898, Pt. V, p. 353; for Report of the Select Committee, see *ibid.* p. 51; for Proceedings in Council, see *ibid.*, 1898, Pt. VI, p. 394; *ibid.*, 1899, Pt. VI, pp. 25, 86 and 119.

This Act has been declared to be in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation, 1872 (III of 1872), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (III of 1899), B. & O. Code, Vol. I.

It has been extended, under sec. 3 of the British Baluchistan Laws Regulation, 1913 (II of 1913), to British Baluchistan, see Bal. Code.

It has been extended under sec. 3 of the Angul Laws Regulation, 1913 (III of 1913), to the Angul District, see B. and O. Code, Vol. I.

³ The word "and" and sub-section (3) were repealed by sec. 3 and Sch. II of the Repealing and Amending Act, 1914 (X of 1914).

⁴ For notification under this sub-section as amended by Act XI of 1901, as regards the Naini Tal, Dehra Dun and Saharanpur Districts, see Gazette of India, 1902, Pt. I, p. 30; as to "Surra" for Bombay City, see *ibid.*, 1904, Pt. I, p. 948.

For notification declaring "Lymphangitis Epizootica" and "Surra" to be dangerous epidemic diseases within the meaning of sec. 2 (1), see Gazette of India, 1910, Pt. I, p. 669; as to Poona Cantonment, see *ibid.*, 1904, Pt. I, p. 948; as to certain local areas, see Gazette of India, 1906, Pt. I, p. 205. See also different Local Rules and Orders.

⁵ Certain words were repealed by the Repealing Act, 1927 (XII of 1927).

⁶ This word was inserted by sec. 2 of the Glanders and Farcy (Amendment) Act, 1920 (IX of 1920).

Application of Act to local areas by Provincial Government.

¹3. (1) The Provincial Government may, by notification² in the Official Gazette, apply this Act or any provision of this Act to any local area, to be specified in such notification, within the province.

(2) In any such notification the Provincial Government may further direct that the Act or any provision so applied shall apply in respect of—

(a) all or any of the diseases mentioned or specified in a notification under section 2, sub-section (1),

(b) all animals or any class of animals mentioned in section 2, sub-section (2).]

4. (1) When this Act has been so applied to a local area, the Provincial Government may, by notification in the Official Gazette, appoint³ such persons as it thinks fit to be

Inspectors under this Act and to exercise and perform, within the whole of the local area or such portions thereof as it may prescribe, the powers conferred and the duties imposed by this Act on such officers.

(2) Every person so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code.

5. Within the local limits for which he is so appointed, any such Inspector as aforesaid may, subject to such rules as the Provincial Government may make in this behalf, enter and search any field, building or other place for the purpose of ascertaining whether there is therein any horse which is diseased.

Power of seizure.

6. Within such limits as aforesaid, the Inspector may seize any horse which he has reason to believe to be diseased.

7. (1) On any such seizure as aforesaid, the Inspector shall cause the horse seized to be examined as soon as possible by such Veterinary Practitioner as the Provincial Government may appoint in this behalf:

Provided that, when the Inspector is also a Veterinary Practitioner so appointed, he may make the examination himself.

(2) For the purposes of the examination, the Veterinary Practitioner may submit the horse to any test or tests which the Provincial Government may prescribe.

Horse to be destroyed if found diseased: otherwise restored.

8. (1) If the Veterinary Practitioner certifies in writing that the horse is diseased, the Inspector shall cause the same to be immediately destroyed:

Provided that, in the case of any disease other than glanders or farcy, horses certified to be diseased as aforesaid may, subject, to any rules⁵ which the Provincial Government may make in this behalf, be either destroyed or otherwise treated or dealt with as the Veterinary Practitioner may deem necessary.

(2) If, after completing the examination, the Veterinary Practitioner does not certify that the horse is diseased, the Inspector shall at once deliver the same to the person entitled to the possession thereof.

LEG. REF.

¹ This section was substituted by sec. 3, Act IX of 1920.

² For such notification, see different Local Rules and Orders.

³ For instances of Notifications under this section, see different Local Rules and

Orders.

⁴ For notifications appointing Veterinary Practitioners, see different Local Rules and Orders.

⁵ For such rules, see different Local Rules and Orders.

9. (1) When any diseased horse has been in any building, shed or other

When horse diseased,
place where it has been to
be disinfected, etc.

enclosed place, or in any open lines, the Inspector may issue a notice to the owner of the building, shed, place or lines, or to the person in charge, thereof, directing him to have the same disinfected and the internal fittings thereof or such other things found therein or near thereto as the Provincial Government may by rule prescribe, destroyed.

things thereof or such other things found therein or near thereto as the Provincial Government may by rule prescribe, destroyed.

(2) On the failure or neglect of such owner or other person as aforesaid to comply with the notice within a reasonable time, the Inspector shall cause the building, shed, place or lines to be disinfected and the fittings or other things to be destroyed, and the expense (if any) thereby incurred may be recovered from the owner or other person as if it were a fine.

10. The owner or any person in charge of a diseased horse shall give immediate information of the horse being diseased to the Inspector or to such authority as the Provincial Government may appoint¹ in this behalf.

Owner or person in
charge of diseased horse to
give notice.

11. No person in charge of any horse which has been in the same field,

Prohibition against re-
moval, without license, of
horse which has been with
diseased horse.

building or place as, or in contact with, a diseased horse, shall remove such horse except in good faith for the purpose of preventing infection, or under a license to be granted by the Inspector and subject to the conditions of the licence.

12. (1) Whoever, being an Inspector appointed under this Act, vexati-

Vexatious entries, searches
and seizures.

ously and unnecessarily enters or searches any field, building or other place, or seizes or detains any horse on the pretence that it is diseased, shall be punishable

with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(2) No prosecution under this section shall be instituted after the expiry of three months from the date on which the offence has been committed.

13. Whoever refuses or neglects to comply with any notice issued by the

Penalty for refusing to
comply with notice under
section 9, or for removing
horse contrary to section 11.

Inspector under section 9, or removes any horse in contravention of section 11, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

14. (1) The Provincial Government may make rules to carry out the purposes and objects of this Act.

Power to make rules

(2) In particular and without prejudice to the generality of the foregoing power, such rules as aforesaid may—

(a) regulate entries, searches and seizures by Inspectors under this Act;

(b) regulate the use of tests and the isolation of horses, subjected thereto, and provide for recovering the expense of detaining, isolating and testing horses from the owners or persons in charge thereof as if it were a fine;

(c) regulate the destruction or treatment, as the case may be, of horses certified under section 8 to be diseased and the disposal of the carcasses of diseased horses;

(d) regulate the disinfecting of buildings and places in which diseased horses have been, and prescribe what things found therein or near thereto shall be destroyed; and

(e) regulate the grant of licenses under section 11 and the conditions on which those licenses shall be granted.

(3) All rules under this section shall be published in the local official Gazette, and, on such publication, shall have effect as if enacted by this Act.

(4) In making any rule under this section, the Provincial Government may direct that a breach of it shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

Appointment of same person to be both Inspector and veterinary practitioners.

15. Any Veterinary Practitioner may be appointed by the Provincial Government to be both Inspector and Veterinary Practitioner for all or any of the purposes of this Act or of any rule thereunder.

Protection to persons acting under Act.

16. No suit, prosecution or other legal proceeding shall lie against any person for anything which is, in good faith, done or intended to be done under this

Act.

17. [Repeal]. Repealed by S. 3 and Sch. II of the Repealing and Amending Act, 1914 (X of 1914).

SCHEDULE.

[Repealed by S. 3 and Sch. II of the Repealing and Amending Act, 1914 (X of 1914.)]

THE GOVERNMENT OF INDIA ACT, 1935.

(26 GEO. V, CH. 2.) (EXTRACTS.)

PART III.

CHAPTER IV.

[N.B.—See also 3 and 4, Geo. VI, Ch. 5, sec. 4.]

LEGISLATIVE POWERS OF GOVERNOR.

88. (1) If at any time when the Legislature of a Province is not in session the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require:

Power of Governor to promulgate ordinances during recess of Legislature.

SEC. 88: ORDINANCES DURING RECESS.—Dealing with the Ordinances under this section it was said: "We are dealing with ordinances made upon the advice of Ministers. They are ordinances made in the field of special responsibility by the Governor, which are the kind of Ordinances that would be made here by the Government in a time of emergency as to which the Government of the day has to obtain parliamentary approval within a given time. I think the real check is the check of ministerial responsibility to the Provincial Council. These ordinances are made upon the advice of Ministers who are themselves responsible to the Provincial Council." (*Par Deb. Vol. 299, Col. 1532.*)

SECS. 88, 89: GOVERNOR'S ORDINANCE.—The Governor-General is the sole judge as regards the exercise of his powers and he is not bound to give any reasons for promulgating an ordinance such as the Criminal Law Amendment Act of 1935, which when once promulgated becomes a lawful Act. 48 L.W. 813=(1938) 2 M.L.J. 863. See also 1943 Pat. 24 (F.B.)=22 Pat. 160; 1943 Bom. 169=45 Bom.L.R. 323=I.L.R. (1943) Bom. 331. 1943 Cal. 285=44 Cr.L.J. 673. See also notes under sec. 240.

CASES UNDER GOVT. OF BURMA ACT.—The

Court will not inquire whether circumstances in fact existed which rendered immediate action necessary before the promulgation of an ordinance. That is for the Governor to decide. The Court should not assume the burden of deciding for what purpose the action was necessary. Where in an ordinance the purpose is expressed to be that of enabling the Governor satisfactorily to discharge certain functions the Governor is the only judge of that. 1941 Rang.L.R. 101=193 I.C. 114=1941 Rang. 49. An ordinance duly promulgated has the same force and effect as an Act of the Legislature. 1941 Rang.L.R. 101=1941 Rang. 49.

ORDINANCE — PROMULGATION — DATE.—Promulgation of an ordinance without doubt connotes the fact of making the public aware of the existence of the new law. Promulgation of a new law takes place through the medium of the Official Gazette. It is wrong for the notifications which appear in the Gazette when an ordinance is first published therein to say, as they do: "The Governor has promulgated the following ordinance"; they should say "The Governor hereby promulgates the following ordinance." An ordinance therefore is promulgated on the date on which it is published in

Provided that the Governor—

(a) shall exercise his individual judgment as respects the promulgation of any ordinance under this section, if a Bill containing the same provisions would under this Act have required his or the Governor-General's previous sanction to the introduction thereof into the Legislature; and

(b) shall not without instructions from the Governor-General, acting in his discretion, promulgate any such ordinance, if a Bill containing the same provisions would under this Act have required the Governor-General's previous sanction for the introduction thereof into the Legislature, or if he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the Governor-General.

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance—

(a) shall be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature or, if a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council:

the Gazette. 193 I.C. 91=1941 Rang. 5.

ORDINANCES — PROMULGATION — PUBLICATION — RELATION BETWEEN.—Promulgation and publication in the Official Gazette are not synonymous. There is a distinction between the two. Publication in the Official Gazette is not *sine qua non* of promulgation though it is a record that promulgation has taken place and a means of announcing the fact to the widest possible circle of individuals. Reading of an ordinance by the speaker to the House of Representatives is sufficient promulgation. 1941 Rang.L.R. 101=193 I.C. 114=1941 Rang. 49.

ORDINANCES — PREAMBLE—DESIRABILITY.—It is not legally necessary that an ordinance should have a Preamble setting out that the Governor is satisfied as required by the terms of the section and also the purpose for which the ordinance is promulgated. Legally all that is necessary is that the Governor should declare that he promulgates the ordinance; but the adoption of this suggestion might make for the better understanding by the public of the reason and necessity for the issue of an ordinance. 1941 Rang.L.R. 101=193 I.C. 114=1941 Rang. 49.

GOVERNOR'S POWERS—SCOPE OF—ORDINANCES—IMPLICATION UNDERLYING.—The Governor's functions are capable of being exercised in any of three different ways. Some are exercisable in his discretion which means that he need not ask for the aid or advice of his Ministers at all; a second group is exercisable, notwithstanding the advice of Ministers, in the exercise of his individual judgment; and a third group is exercisable under the guidance of his Ministers. Matters which are said to fall within the individual judgment of the Governor may fall within the second and third group according to the opinion formed by the Governor as to the course which he should take. Where therefore an ordinance issued is expressed

it is implied that an opinion has been formed by the Governor and an individual judgment has been exercised by him. 1941 Rang. L.R. 101=193 I.C. 114=1941 Rang. 49. Whether ordinance has retrospective operations, *see* 1941 Rang.L.R. 321=1931 Rang. 151.

HIGH COURT, IF CAN GO INTO QUESTION AS TO AN ORDINANCE BEING WITHIN OR OUTSIDE THE POWERS OF THE GOVERNOR.—High Court is not precluded from enquiring whether an ordinance promulgated by the Governor is or is not within his powers. The Court can go into the question whether any provision or an ordinance promulgated is or is not void, on the ground that such provision, if it had been enacted in an Act of the Legislature would not have been valid. 193 I.C. 91=1941 Rang. 5. Ordinance—Duration—Computation of time. *See* 1941 Rang. 49=1941 Rang.L.R. 101.

The rationale and necessity for the power conferred by this section was thus explained on behalf of the Government to the committee of the House of Commons.

"This Bill sets up substantially Provincial autonomy, and the administration is carried on by Ministers. The Committee has already passed a clause which places on the Governor certain special responsibilities. Obviously, you cannot place special responsibilities on a man unless you give him the means of fulfilling those responsibilities. So far as executive action is concerned, and any executive action taken is in his name, he can, of course, act in his individual judgment or discretion if the Bill empowers him to do so, but, obviously also, if you look at the special responsibilities placed upon him, occasions may arise where, in order to fulfil those responsibilities, it is necessary for him to proceed by ordinance. Therefore, everyone on the Committee, wherever he sits, and whatever his general views about democracy, must agree that, granted that these special

(b) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Provincial Legislature assented to by the Governor; and

(c) may be withdrawn at any time by the Governor.

(3) If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Provincial Legislature assented to by the Governor, it shall be void.

89. (1) If at any time the Governor of a Province is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion, or to exercise his individual judgment, he may promulgate such ordinances as in his opinion the circumstances of the case require.

(2) An ordinance promulgated under this section shall continue in operation for such period not exceeding six months as may be specified therein, but may by a subsequent ordinance be extended for a further period not exceeding six months.

(3) An ordinance promulgated under this section shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance—

(a) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Provincial Legislature;

(b) may be withdrawn at any time by the Governor; and

(c) if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith through the Governor-General to the Secretary of State and shall be laid by him before each House of Parliament.

(4) If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Provincial Legislature, it shall be void.

Provided that for the purposes of the provisions of this Act relating to the effect of an Act of a Provincial Legislature which is repugnant to an Act of

vornor, it is quite clear that, in order to fulfil them, it may be necessary for him to proceed by Ordinance. Therefore, it would be quite wrong to put the responsibility upon him and not to confer the Ordinance-making power. The Committee having passed Clause 52 and the other Clauses giving the Governor special responsibilities, that must be unanswerable." (*Par. Deb. Vol. 299, Col. 1542.*)

Under the Government of India Act, 1919, sec. 72 the power of promulgating Ordinances was vested only in Governor-General and Provincial Governors had no such power. If any such ordinance was needed for any particular Province, it had to be passed by the Governor-General. Where a detainee's application for *habeas corpus* is dismissed, but subsequently he is released by the Government on their own initiative in spite of the dismissal of the *habeas corpus* application it must be held that there is no longer any pending matter in which leave can be granted to appeal to His Majesty in Council. I.L.R. (1944) Kar. (F.C.) 1=(1944) F. L.J. 11=57 L.W. 212 (1)=A.I.R. 1944 F. C. 22=(1944) 1 M.L.J. 155 (F.C.). Act does not empower the High Court to interfere

with a conviction and sentence passed in a criminal trial, apart from the appellate or revisional powers which it possesses under the Cr. P. Code. I.L.R. (1944) Nag. 728=1944 F.L.J. 190=1944 N.L.J. 280=A.I.R. 1944 Nag. 286.

SEC. 89: "ASSUME TO HIMSELF ALL OR ANY OF THE POWERS."—"In the event of a breakdown of the constitutional machinery, the Governor is not bound to take over the whole Government of the Province and administer it himself on his own undivided responsibility. The intention is to provide also for the possibility of a partial breakdown and to enable the Governor to take over part only of the machinery of Government, leaving the remainder to function according to the ordinary law. Thus the Governor might, if the breakdown were in the legislative machinery of the Province alone, still carry on the Government with the aid of his Ministers, if they were willing to support him; we are speaking of course of such a case as the refusal of the Legislature to function at all, and not merely of lesser conflicts or disputes between it and the Governor." (J.P.C. Report para. 109).

the Federal Legislature, an ordinance promulgated under this section shall be deemed to be an Act of the Provincial Legislature which has been reserved for the consideration of the Governor-General and assented to by him.

(5) The functions of the Governor under this section shall be exercised by him in his discretion but he shall not exercise any of his powers thereunder except with the concurrence of the Governor-General in his discretion:

Provided that, if it appears to the Governor that it is impracticable to obtain in time the concurrence of the Governor-General, he may promulgate an ordinance without the concurrence of the Governor-General, but in that case the Governor-General in his discretion may direct the Governor to withdraw the ordinance and the ordinance shall be withdrawn accordingly.

90. (1) If at any time it appears to the Governor that, for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, it is essential that provision should be made by legislation, he may by message to the Chamber or Chambers of the Legislature explain the circumstances which in his opinion render legislation essential and either—

(a) enact forthwith as a Governor's Act a Bill containing such provisions as he considers necessary; or

(b) attach to his message a draft of the Bill which he considers necessary.

(2) Where the Governor takes such action as is mentioned in paragraph (b) of the preceding sub-section, he may, at any time after the expiration of one month, enact, as a Governor's Act, the Bill proposed by him to the Chamber or Chambers either in the form of the draft communicated to them, or with such amendments as he deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by the Chamber or either of the Chambers with reference to the Bill or to amendments suggested to be made therein.

(3) A Governor's Act shall have the same force and effect, and shall be subject to disallowance in the same manner, as an Act of the Provincial Legislature assented to by the Governor and, if and so far as it makes any provision which would not be valid if enacted in an Act of that Legislature, shall be void:

Provided that, for the purposes of the provisions of this Act relating to the effect of an Act of a Provincial Legislature which is repugnant to an Act of the Federal Legislature, a Governor's Act shall be deemed to be an Act reserved for the consideration of the Governor-General and assented to by him.

(4) Every Governor's Act shall be communicated forthwith through the Governor-General to the Secretary of State and shall be laid by him before each House of Parliament.

(5) The functions of the Governor under this section shall be exercised by him in his discretion, but he shall not exercise any of his powers thereunder except with the concurrence of the Governor-General in his discretion.

CHAPTER VI.

PROVISIONS IN CASE OF FAILURE OF CONSTITUTIONAL MACHINERY.

93. (1) If at any time the Governor of a Province is satisfied that a situation has arisen in which the government of the Province cannot be carried on in accordance with the provisions of this Act, he may by Proclamation—

(a) declare that his functions shall, to such extent as may be specified in the Proclamation, be exercised by him in his discretion;

(b) assume to himself all or any of the powers vested in or exercisable by any Provincial body or authority;

and any such Proclamation may contain such incidental and consequential provisions as may appear him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Provincial body or authority:

Provided that nothing in this sub-section shall authorize the Governor to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend, either in whole or in part, the operation of any provision of this Act relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) A Proclamation under this section—

(a) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament;

(b) unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months:

Provided that, if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this sub-section it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years.

(4) If the Governor, by a Proclamation under this section, assumes to himself any power of the Provincial Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature, and any reference in this Act to Provincial Acts, Provincial laws, or Acts or laws of a Provincial Legislature shall be construed as including a reference to such a law.

(5) The functions of the Governor under this section shall be exercised by him in his discretion and no Proclamation shall be made by a Governor under this section without the concurrence of the Governor-General in his discretion.

* * * * *

102. (1) Notwithstanding anything in the preceding sections of this chapter, Federal Legislature shall, if the Governor-

Power of Federal Legislature to legislate if an emergency is proclaimed.

General has in his discretion declared by Proclamation (in this Act referred to as a "Proclamation of Emergency") that a grave emergency exists where-

by the security of India is threatened, whether by war or internal disturbance, have power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List:

SEC. 102.—"Emergency" means something in existence which calls for immediate action. 44 Cr.L.J. 673=1943 Cal. 285.

The official report of the Proceedings of the House of Lords can be accepted as proof that the proclamation of emergency made by the Governor-General under sec. 102 has been approved by the House. 75 C.L.J. 90=(1942) F.L.J. (H.C.) 180=1942 Cal. 464.

STATE OF EMERGENCY—GOVERNOR-GENERAL—SOLE JUDGE: Per *Niyogi, J.*—The Governor-General is the sole judge of whether a state of emergency exists and therefore it must be assumed that there was an emergency when he declared that there was. The Governor-Gen-

eral is not bound to give any reason for promulgating an Ordinance. It is sufficient for him to declare that an emergency has arisen to enable him to issue Ordinance. I.L.R. (1943) Nag. 73=6 F.L.J. (H.C.) 53=1943 N.L.J. 16=A.I.R. 1943 Nag. 36; 22 Pat. 555=1943 Pat. 348=24 Pat.L.T. 302.

WHEN COMES INTO OPERATION: Per *Niyogi, J.*—Sec. 102 comes into play when the security of India is threatened. There may be war or internal disorders but the existence of either factor is neutral unless either one or the other becomes a menace to the security of India and gives rise to a grave emergency. As sec. 102 contemplates a threat to the security arising

Provided that no Bill or amendment for the purposes aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion, and the Governor-General shall not give his sanction unless it appears to him that the provision proposed to be made is a proper provision in view of the nature of the emergency.

(2) Nothing in this section shall restrict the power of a Provincial Legislature to make any law which under this Act it has power to make, but if any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature has under this section power to make, the Federal law, whether passed before or after the Provincial law, shall prevail, and the Provincial law shall to the extent of the repugnancy, but so long as the Federal law continues to have effect, be void.

(3) A Proclamation of Emergency—

(a) may be revoked by a subsequent Proclamation;

(b) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament; and

(c) shall cease to operate at the expiration of six months, unless before the expiration of that period it has been approved by Resolutions of both Houses of Parliament.

(4) A law made by the Federal Legislature which that Legislature would not but for the issue of a Proclamation of Emergency have been competent to make shall cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

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PART X. CHAPTER II.

CIVIL SERVICES.

General Provisions.

240. (1) Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure.

Tenure of office of persons employed in civil capacities in India.

from either of the two factors in the absence of the other, the word "or" occurring between "war" and "internal disturbances" in sec. 102 cannot be read as "and" although it is conceivable that both factors may come into operation at one and the same time. I.L.R. (1943) Nag. 73=1943 N.L.J. 16=A.I.R. 1943 Nag. 36.

Niyogi and Digby, JJ.—The Civil Courts in India have inherent jurisdiction to enquire into the validity of any laws passed by the Indian Legislature or by the Provincial Legislature. The Legislatures in India are constituted under the Government of India Act, 1935, and their powers are circumscribed by the limits imposed by that Act. Their laws are therefore subject to scrutiny by the High Courts in a manner in which the laws passed by the British Parliament are not. The Governor-General has been invested with powers in certain specified circumstances to enact laws or to make and promulgate ordinances subject to certain conditions; but his legislative power is no greater than that of the Indian Legislature. The High Court therefore has authority to enquire into the validity of the Special Criminal Courts Ordinance. I.L.R. (1943) Nag. 73=1943 N.L.

J. 16=A.I.R. 1943 Nag. 36. See also 45 Bom.L.R. 323; 1943 Pat. 245 (S.B.).

SEC. 240: TENURE OF OFFICE OF CIVIL SERVANTS.—This section reproduces in substance the provisions of sec. 96-B of the Government of India Act, 1919. The slight variations in the language of the opening words of this section compared with the old section serve to emphasise that the tenure of all civil services is at pleasure, if ever it was open to doubt. The use of the words "subject to the provisions of this Act and the rules made thereunder" before specifying the tenure gave rise to the argument in *Venkata Rao v. Secretary of State*, (1937) 1 M.L.J. 529=64 I.A. 55, that the Statute gave servants of the Crown a right enforceable by action to hold office in accordance with the rules and that they could only be dismissed as provided by the rules and in accordance with the procedure prescribed thereby. Their Lordships of the Judicial Committee negatived this contention observing: "Sec. 96-B in express terms states that office is held at pleasure. There is therefore no need for the implication of this term and no room for its exclusion. The argument for a limited and special kind of em-

ployment during pleasure but with an added contractual term that the rules are to be observed is at once too artificial and too far-reaching to commend itself for acceptance". (See *Venkata Rao v. Secretary of State*, (1937) 1 M.L.J. 529 (535)=64 I.A. 55). The omission of those words from the section makes it clear that the tenure is an unqualified one at pleasure. The exceptions provided for in the opening words relate to the office of Judges of the High Courts and the Federal Court, and of the Auditor-General of India and the Auditor-General of Home Accounts whose tenure of office is during good behaviour and who are removable only on the ground of misbehaviour or infirmity of mind or body if the Judicial Committee of the Privy Council on reference being made to them by His Majesty report that the official ought in any such ground to be removed. It is a fundamental principle, based on public policy, that the Crown should have the unfettered discretion to remove a public servant at pleasure, and even a contract to engage him for a fixed term, if there be no statute law authorising it, would not be available to him, such a contract being void as against public policy. This power to dismiss at will can only be controlled by a statute but cannot be abridged or controlled by rules or regulations of service, even if those rules or regulations are framed under powers given by a statute. Consequently, the dismissal or discharge of a civil servant in violation of the Fundamental Rules would not entitle him to an appeal to the Civil Court but would leave him to appeal only to the administrative authorities. 43 C.W.N. 1186=68 C.L.J. 320=1938 Cal. 759. See also 46 L.W. 242=1937 Mad. 777. A servant of the Crown in India holds his appointment at the pleasure of the Crown and is liable to dismissal at the will and pleasure of the Crown, notwithstanding a contract to the contrary, unless the Crown has deprived itself of its prerogative in some way expressly recognised by law, nor can an action for wrongful dismissal be entertained even though a special contract be proved. A refusal to employ a person to whom employment has been offered does not stand on a different footing, because the power to dismiss an employee at pleasure involves the power to refuse to employ a person accepting an offer of employment. 39 Bom. L. R. 807=1937 Bom. 449. The words 'subject to the rules' appearing in sec. 96-B, of Government of India Act, are not superfluous and ineffective. The section contains a statutory and solemn assurance that the tenure of office held by servants of the Crown though at pleasure, will not be subject to capricious or arbitrary action but will be regulated by rule. The provisions for appeal in the rules are made pursuant to the principle so laid down. Redress therefore in such cases is not obtainable from the Courts by action. It is so even where there has been serious and complete failure to adhere to important and fundamental rules, as for instance in the case of

a person who has been dismissed from service without any investigation into the charge. The remedy of the person aggrieved does not lie by a suit in Court but by way of appeal of official kind. 64 I.A. 55=I. L. R. (1937) Mad. 532=1937 P. C. 31=(1937) 1 M. L. J. 529 (P. C.). See also 1937 Rang. L. R. 35=1937 Rang. 89 (S. B.); 165 I. C. 834=1936 O.W.N. 1140=1937 Oudh 209. Although by virtue of sec. 96-B, a statutory right is created between the Crown and the servant, it is not to be implied that any provisions in Statute 23 of 1871, repugnant to the terms of the Statute creating such right are repealed or rendered inapplicable to such a case. Statute of 1919 does not confer right of action to enforce the rules made thereunder. I.L.R. (1937) Mad. 517=64 I.A. 40=41 C.W.N. 545=1937 P.C. 27=(1937) 1 M.L.J. 515 (P.C.). In a case in which after Government officials, duly competent and duly authorised in that behalf, have arrived honestly at one decision, their successors in office after the decision has been acted upon and is in effective operation, cannot purport to enter upon a reconsideration of the matter and to arrive at another and totally different decision. Where a Sub-Inspector of Police was granted an invalid pension by a competent authority and thus duly ceased to be in service, and the officer succeeding the authority, which had granted the pension, reconsidered the matter and ordered his removal from the service. *Held*, that the servant had suffered a wrong and therefore had every right to complain of the stoppage of pension as a breach of rules relating to pensions. 64 I.A. 40=I.L. R. (1937) Mad. 517=1937 P.C. 27=(1937) 1 M.L.J. 515 (P.C.). R. 55 of the Civil Services (Classification, Control and Appeal) Rules, which provides for the case of a departmental inquiry into charges against a Government servant who is subject to the rule, contains a safeguard to the effect that none of the graver penalties—dismissal, removal or reduction—which the authority competent under the rule to depute some posed upon the person charged unless he has been given an adequate opportunity of defending himself. But the rule does not state that the authority concerned shall itself hold the inquiry. The authority is competent under the rule to depute some subordinate officer to hold the inquiry. The purpose of the rule is to enable a Government servant to defend himself when his conduct is the subject of a charge which is to be departmentally investigated. And so long as the conditions of the rule are followed, there is nothing prejudicial to the Government servant in the circumstance that the inquiry is held not by the authority itself which imposes the punishment but by some subordinate officer deputed by that authority for the purpose. 1937 M.W.N. 821=46 L.W. 531=1937 Mad. 735=(1937) 2 M.L.J. 189. See also 1937 Oudh 209; 44 C.W.N. 79=71 C.L.J. 95. In so far as the provisions of R. 55 of the Civil Services

an individual to decide how and when to do an act. A.I.R. 1944 Lah. 240.

AUTHORITY OF SECRETARY OF STATE TO REMOVE PERSON FROM I.C.S.—Sec. 240 contains provisions for the benefit of the members of a public service. The intention of Parliament is to protect the members of those services against arbitrary action by Government swayed by political majorities or even political bias. These provisions are a limitation on the power of the Crown to dismiss at pleasure and sub-sec. (4) deliberately curtails the common law right of the Crown. The Secretary of State has therefore no authority to remove a person from the I.C.S., if the enquiries are illegal or *ultra vires*. A.I.R. 1944 Lah. 240.

The Secretary of State as the appointing authority has authority to remove a person from the Indian Civil Service. The power to dismiss is not restricted to His Majesty under the Royal Sign Manual. But it is incumbent on the Secretary of State for India to hold an inquiry before removing the person from service. A.I.R. 1944 Lah. 240.

DEFECTS IN PROCEDURE—“CUMULATIVE EFFECT HAMPERING OF DEFENCE.—A defect in procedure will not help the servant even if the enquiry be not in strict conformity with the Civil Service Rules. If however the cumulative effect of the various defects is the hampering the defence the enquiry would be bad. A.I.R. 1944 Lah. 240.

FURTHER ENQUIRY—LEGALITY.—As a matter of law, a further enquiry in continuation of a prior enquiry can be ordered. A.I.R. 1944 Lah. 240.

L, who was a member of the Indian Civil Service was informed that the Punjab Government had decided to hold a departmental enquiry under Rule 55 of the Civil Services (Classification, Control and Appeal) rules into his conduct, and the copies of the charges framed against him were also enclosed. He was asked to furnish a written statement of his defence, which he did. An officer, *S*, was appointed to hold the departmental enquiry who after making an enquiry submitted his report to the Government. This report was not disclosed to *L* in spite of his repeated requests for a copy of it. The Government informed *L* that *S* who had held the preliminary enquiry was unable to complete it and that its completion had been entrusted to another officer, *B*. *B* informed *L* of this and asked the latter to arrange to meet him on a later date when all the available materials would be gone into. *L* took up the position that the enquiry against him was over and that if it was said to be incomplete, he might be given a copy of the report of *S* and the order of the Government thereon. The Government refused to give either and persisted in that attitude to the very end. Then *L* met *B* and after protesting that he was not being given adequate opportunity of defending himself as provided by Rule 55 of the Civil Service Regulations, stated what he had to say in his defence. *B* made his report which was sent on to the Federal

Public Service Commission together with some findings and recommendations of the Punjab Government thereon for their consideration. The Punjab Government was later informed that the commission concurred in the views of that Government that *L* was unfit to be retained in the I.C.S. and that he be removed from service. *L*'s removal from the I.C.S. was notified in the Gazette and he was informed of his removal and given a copy of the letter from the Federal Public Service Commission. After carrying on some correspondence with the Government in seeking to get redress, *L* finally filed a suit for a declaration that the order of his removal from the I.C.S. was not passed in due course of law and was wrongful, illegal and *ultra vires* of the Government. *Held* (*Varadachariar, J. dissenting*), that *L* was wrongfully dismissed from the Indian Civil Service. 49 C.W.N. (F.R.) 63.

Per Spens, C.J. (Zafulla Khan J., concurring)—The power of the Secretary of State to dismiss, after the coming into operation of the Constitution Act of 1935, members of the Indian Civil Service, who were appointed by the Secretary of State in Council prior to the commencement of Part III of the Act, is implied in the Constitution Act itself. Even otherwise an exercise of the power of dismissal from one of His Majesty's services by the principal Secretary of State concerned is the proper constitutional manner in which the power of the crown should be exercised. The general rule of law is that except as otherwise provided by statute, servants of the crown hold their appointments at the pleasure of the crown. Where in the case of any particular servants of the crown, statutory limitations or qualifications on the right of dismissal are found in statutes in which the general rule is not expressly enacted but left to have operation, if at all, only by implication, it is possible for Courts to hold that those limitations and qualifications are mandatory and effective and breach of them gives rise to a cause of action. On the other hand, where such limitations and qualifications are found only in rules made under a statute, which whilst expressly enacting that servants of the crown hold office during His Majesty's pleasure also provides that such tenure is subject to the provisions of the rules made thereunder, none the less, breach of the provisions of such rule may afford no cause of action at all. Again it may also well be that any limitation or qualification on the power of the crown to dismiss its servants at will attempted to be imposed by contract or agreement between some authority purporting to contract on behalf of the Crown and that servant is not legally enforceable and will give to the servant no cause of action if in fact he be dismissed in breach of any such agreement. There is no reason to confine the construction of the opening words of sec. 240 of the Constitution Act "Except as expressly provided by

256. No recommendation shall be made for the grant of magisterial powers

or of enhanced magisterial powers to, or the withdrawal of any magisterial powers from, any person save after consultation with the District Magistrate which he is of the district in which he is working, or with the Chief Presidency Magistrate, as the case may be.

* * * *

CHAPTER V.

GENERAL.

270. (1) No proceedings civil or criminal shall be instituted against any person in respect of any act done or purporting to be

Indemnity for past acts.

done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date, except with the consent, in the case of a person who was employed in connection with the affairs of the Government of India or the affairs of Burma, of the Governor-General in his discretion, and in the case of a person employed in connection with the affairs of a Province, of the Governor of that Province in his discretion.

this Act" to provisions of the Act outside sec. 240 itself. The words are apt enough to include a limitation or qualification on what follows in sub-sec. (1) by provisions found. 49 C.W.N. (F.R.) 63=A.I.R. 1945 F. C. 47=(1945) F.L.J. 129 (case law discussed).

SEC. 256: PROPER AUTHORITY DIRECTED TO BE CONSULTED UNDER—NON-COMPLIANCE WITH DIRECTION—APPOINTMENT, IF RENDERED INEFFECTIVE.—When it is proposed to grant magisterial powers or enhanced magisterial powers to a person, the proper authority to be consulted in pursuance of the direction contained in sec. 256 of the Constitution Act is the District Magistrate of the District, in which the person concerned is working at the time when the recommendation is made, or the Chief Presidency Magistrate if the person concerned is at the time working under him. The services of a Magistrate were borrowed from another province, and on these being placed at the disposal of the Bengal Government, he was appointed Additional Presidency Magistrate at Calcutta. On a contention that his appointment was made without consulting the Chief Presidency Magistrate Calcutta, and was therefore ineffective and inoperative. *Held*, that in the circumstances the consultation should have been made with the District Magistrate of the District in which the Magistrate concerned was working in his own province when the question of his appointment came under consideration. *Held*, further, that the direction laid down in sec. 256 was directory and not mandatory, and non-compliance with it would not render an appointment otherwise regularly and validly made ineffective or inoperative. (1945) F. L.J. 103.

SEC. 270: INDEMNITY FOR THE PAST.—This section carries out the recommendations of the Joint Parliamentary Committee in Para. 283 of their Report. They stated: "The White Paper proposes that there shall be a full indemnity against civil and criminal proceedings in respect of all

acts before the commencement of the Constitution Act done in good faith and done or purported to be done in the execution of duty. In view of threats which have been made in certain quarters, especially against the Police, we think that it is justifiable to give this measure of protection to men who have done no more than their duty in every difficult and trying circumstances." Explaining the section, it was stated in Parliament: "The section deals with past acts. It does not take the exact form of an indemnity, but it is an indemnity of a kind. As far as the future is concerned, obviously it would not be right to give what would appear to be in any sense an indemnity in advance. There are no doubt special circumstances which make it desirable to have something in the nature of an indemnity. In regard to the future, as I have indicated, obviously it would be very undesirable, and indeed wrong, to appear to be casting a cloak in advance irrespective of the type of charge that might be made." (*Par. Deb. Vol., Col. 877*.) In regard to the future the protection is afforded by the next section, sec. 271.

SECS. 270 AND 271: PROTECTION AFFORDED TO PUBLIC SERVANT—NATURE AND EXTENT OF.—Sec. 270 (1) applies not only to criminal proceedings, but also to the institution of civil proceedings. In the institution of criminal proceedings, the protection of public interests is the main concern, and it may well be left to the Local Government to determine the question of the expediency of a prosecution from that point of view. But when a citizen seeks a civil remedy against a public servant, the Legislature must be presumed to have been very cautious in depriving the aggrieved citizens of redress in a Court of law, and any restrictions on such a remedy imposed in the interest of the public servant should not be lightly extended so as to unduly restrict the remedy of the citizen. 50 L.W. 95=43 C.W.N. (F.C.R.) 50=2 Fed.L.J. 153=1939 F.C. 43=(1939) 2 M.L.J. (Supp.) 23.

Sec. 270 is very wide in its terms and prohibits the initiation of proceedings in respect of the acts described therein against all servants of the Crown, employed in connection with the affairs of the Province, whether they are "Gazetted Officers" or not. 184 I.O. 680=1939 Lah. 479.

Per *Niyogi and Sen, JJ.*—If, a Crown servant acts in his official capacity under the orders of his superior officer honestly thinking that it is his duty to obey him, he will be purporting to act in the execution of his duty even if his act is not justified or authorised by law, and he will be protected by sec. 270 (1) of the Act. I.L.R. (1944) Nag. 650=1944 F.L.J. 250=A.I.R. 1944 Nag. 337.

Per *Niyogi and Digby, JJ.*—Sec. 270 (1) accords protection to servants of the Crown employed in connection with the affairs of the Government of India against proceedings instituted after that section came into force on the 1st April, 1937, in respect of acts done or purported to be done in execution of duty before the relevant date, although the relevant date has not been fixed by His Majesty under sec. 320 (1) of the Act. I.L.R. 1944 Nag. 650=A.I.R. 1944 Nag. 337. The State could not be held liable for the improper conduct of public servants unless of the Government or had been subsequently adopted and ratified by it. (1944) 1 M.L.J. 399=48 C.W.N. (F.R.) 85=57 L.W. 410. It is quite obvious from a perusal of the various sections of Part X of the Government of India Act that crown services include the subordinate as well as the superior civil services and there is no warrant for holding that the chapter in general and sec. 270 in particular apply only to the case of the superior civil services. A member of the Bombay Subordinate Medical Service is a servant of the crown and doing duty as such within the meaning of sec. 270, and therefore the consent of the Governor is necessary for his prosecution in respect of an act done by him in the execution of his duty as a servant of the crown. I.L.R. (1938) Bom. 770=40 Bom.L.R. 825=1938 Bom. 419. The word "duty" in sec. 270 is not necessarily confined to a legal duty. Civil servants who are Medical Officers are obviously bound to obey the rule in the Medical Code, made for the guidance of such officers and it is their duty to obey them. I.L.R. (1938) Bom. 770=40 Bom.L.R. 825=1938 Bom. 419. When the acts of the official trustee complained of are done during the course of administration of the trust as an ordinary trustee under sec. 7 (1) (a) of the Official Trustees Act, his acts cannot be said to be done 'in the execution of his duty as a servant of the Crown' and hence the consent of the Governor is not necessary in respect of a suit against such a trustee for breaches in respect of a private trust. 1940 Rang.L.R. 273=1940 Rang. 207. See also 49 C.W.N. (F.R.) 55=(1945) F.L.J. 44.

A plea of want of the requisite consent

under sec. 270, is unsustainable in the case of a trial under the Criminal Law (Amendment) Ordinance, 1943, since the Governor-General has himself made and promulgated the Ordinance, for the express purpose of setting up tribunals for the trial of persons mentioned in the 1st Schedule thereto. 23 Pat. 457=1944 Pat. 378.

"PURPORTING TO BE DONE"—MEANING OF —TEST TO FIND OUT.—The words "purporting to be done" in sec. 270 (1), must be given their full meaning. Clearly, used in their context, they mean something more than "done". There must be something in the nature of the act complained of that attaches it to the official capacity of the person doing it. I.L.R. (1941) Kar. 328=4 F.L.J. (H.C.) 383=1941 Sind 204. Per *Bowland, J. (Obiter)*.—If an act done by public officer is apparently an official act, its character as such will not be changed by allegations that it was done in bad faith or that it had not that character which it purports to have. The applicability of the statute [sec. 270 (1)] depends on what the act purports to be and is not affected by any allegations that the apparent state of things is not the real one. The allegation that an official act was maliciously and corruptly done will not derogate from its official character if it had that character, and what applies to the attribution of malice or corrupt motive in the mind of a single officer applies no less where the same malice is attributed to him jointly with others. The taking of cognizance of an offence on complaint, by a sub-divisional officer, whether done in good or bad faith, is clearly an official act of that officer, purporting to be done in the execution of his duty as a Magistrate. It is an act which he cannot do in any other capacity and one without which there can be no institution of a criminal proceeding and it can form no foundation for a suit against him. 20 Pat. 417=(1941) P.W.N. 225=1941 Pat. 385.

CHARGE UNDER SECS. 409 AND 477-A, I. P. CODE, AGAINST PUBLIC SERVANT—CONSENT OF GOVERNOR.—The consent of the Governor would be *prima facie* necessary in respect of the latter charge. The question whether or not the particular act complained of is one "purporting to be done in execution of his duty" as a public servant is substantially one of fact, to be determined with reference to the act complained of and to the attendant circumstances. 1939 P.W.N. 429=50 L.W. 95=43 C.W.N. (F.C.R.) 50=I.L.R. (1940) Lah. 400=(1939) 2 M.L.J. (Supp.) 23. See also 1941 Sind 204. The offence under sec. 408 or sec. 409, I. P. C., is not one in respect of which the protection of sec. 270 of the Government of India Act can be claimed. 49 C.W.N. (F.R.) 55=(1945) F.L.J. 44 (F.C.). See also 1942 A.M.L.J. 73. (Theft of Government property). To attract the provision of sec. 270 (1) it was not sufficient merely to establish that the person proceeded against was a public servant and that while acting as a public ser-

(2) Any civil or criminal proceedings instituted, whether before or after the coming into operation of this Part of this Act, against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date shall be dismissed unless the Court is satisfied that the acts complained of were not done in good faith, and, where any such proceedings are dismissed, the costs incurred by the defendant shall, in so far as they are not recoverable from the persons instituting the proceedings, be charged, in the case of persons employed in connection with the functions of the Governor-General in Council or the affairs of Burma, on the revenues of the Federation, and in the case of persons employed in connection with the affairs of a Province, on the revenues of that Province.

(3) For the purposes of this section—

the expression “the relevant date” means, in relation to acts done by persons employed about the affairs of a Province or about the affairs of Burma, the commencement of Part III of this Act and, in relation to acts done by persons employed about the affairs of the Federation, the date of the establishment of the Federation;

references to persons employed in connection with the functions of the Governor-General in Council include references to persons employed in connection with the affairs of any Chief Commissioner’s Province;

a person shall be deemed to have been employed about the affairs of a Province if he was employed about the affairs of the Province as constituted at the date when the act complained of occurred or is alleged to have occurred.

vant, or taking advantage of his position as a public servant, he did certain acts; it must be established that the *act complained of* was an official act. The act of receiving illegal gratification could not be an act done or purporting to be done in the execution of duty, and the conviction of a station master by a special tribunal of an offence under sec. 161, I. P. C. is not bad for want of consent of the Governor General under sec. 270 (f). 23 Pat. 517=48 C.W.N. (F.R.) 109=1944 A.L.J. 258=(1944) F.L.J. 167=A.I.R. 1944 F.C. 66=(1944) 1 M.L.J. 503 (F.C.). Sec. 270 (1) applies to prosecutions of officers of the central services instituted during the transitional period under the Defence of India Rules, R. 81. (1944) F.L.J. 44=46 P.L.R. 130=1944 Lah. 51 (F.B.). Charge of cheating against Deputy Inspector of Schools—Inducing District Educational Council by false information to admit school to aid—Prosecution—Sanction of Governor is necessary. 191 I.C. 51=1940 M.W.N. 534=1940 Mad. 813. Postman misappropriating amount of money by forging thumb impression of payee and returning form to Post Office—Charge under secs. 409, 467 and 471, I. P. Code—Sanction of Governor-General is necessary. 1941 M. 38=52 L.W. 516=1940 M.W.N. 1116=(1940) 2 M.L.J. 564. S. 270 of the Government of India Act is intended to protect public servants for acts committed before the relevant date in respect of which proceedings may be started against them. The motive with which the acts are done is immaterial. What has to be looked at is that the offence must be in respect of an act done or purporting to be done in execution of a duty, *i.e.*, in the discharge of an official duty. Plaintiff brought a suit claiming damages against two defendants who were Income-tax Officers, the 1st defend-

ant being the superior officer of the 2nd defendant, alleging that the 2nd defendant purporting to act under the orders of the 1st defendant trespassed into the plaintiff's premises and took away all the plaintiff's account books wrongfully against his will and consent. The defendants raised a preliminary point that the suit was not maintainable without the consent of the Governor-General under sec. 270 of the Government of India Act. *Held*, that the acts alleged against the defendants were so closely connected with their position as Income-tax Officers as to make it impossible to say that they were not the kind of acts which are contemplated under the section, and sec. 270 of the Government of India Act operated as a bar to suit in the absence of the consent of the Governor-General. 1942 I.T.R. 413=55 L.W. 687=1942 F.L.J. (H.C.) 151=(1942) 2 M.L.J. 523=1943 Mad. 167.

A suit for damages for wrongful arrest alleged to have been made by police officers (servants of the Crown) falls within the ambit of sec. 270 (2) of the Act, and the onus of proving want of *bona fides* in making the arrest would lie on the plaintiff and it is not for the defendants to prove *bona fides*. 55 L.W. 611 (1)=1942 F.L.J. (H.C.) 185=(1942) 2 M.L.J. 417. Where the charges against certain servants of the Crown not only stated that the alleged criminal acts were done by them while they were engaged in the execution of their duties as such servants but they also showed that their official capacity was involved in the acts complained of as amounting to a crime. *Held*, that the consent prescribed in sec. 270 was required for initiating proceedings against them. 184 I.C. 680=1939 Lah. 479. Under the rules framed by the Governor of the Punjab it is not necessary

271. (1) No Bill or amendment to abolish or restrict the protection afforded to certain servants of the Crown in India by section one hundred and ninety-seven of the Indian Code of Criminal Procedure, or by sections eighty to eighty-two of the Indian Code of Civil Procedure, shall be

Protection of public servants against prosecution and suit.

introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.

(2) The powers conferred upon a Local Government by the said section one hundred and ninety-seven with respect to the sanctioning of prosecutions and the determination of the Court before which, the person by whom and the manner in which, a public servant is to be tried, shall be exercisable only—

that orders passed by the Governor must be signed by a particular secretary. Hence a signature by the Home Secretary on a consent under sec. 270 is in order and the transmission of the consent by him is valid. 184 I.C. 680=1939 Lah. 479. Where the consent is stated to have been granted by the Governor of a Province and there is no indication that in doing so the Governor was acting with his Ministers, it must be presumed that he granted it "in his discretion." 184 I.C. 680=1939 Lah. 479. Under sec. 270, the consent of a Governor is a condition precedent to the institution of the proceedings, and the necessity for such consent cannot be made to depend upon the case which the accused or the defendant may put forward after the proceedings have been instituted, but must be determined with reference to the nature of the allegations made against the public servant in the suit or criminal proceeding. 43 C.W.N. (F.C.R.) 50=2 Fed.L.J. 153=1939 F.C. 43 =I.L.R. (1940) Lah. 400=(1939) 2 M.L.J. (Supp.) 23. In cases to which sec. 270 of the Constitution Act applies, the words of the section require that if proceedings be instituted before sanction under the section is obtained, such proceedings are wholly void and new proceedings must be instituted after the sanction is obtained. 49 C.W.N. (F.R.) 55=(1945) F.L.J. 44 (F.C.). The provisions of sub-sec. (1), sec. 270 are mandatory, and admit of no reservation or exception. They contain a positive prohibition against the institution of civil and criminal proceedings against the persons described in the section in respect of the acts mentioned, without such consent. In other words, the Government's consent is an essential pre-requisite to the competency of the Court to entertain the proceedings. It is the very foundation of the Court's jurisdiction, and its absence renders the entire proceedings void *ab initio*. Such an illegality cannot be cured under sec. 537, Cr. P. Code, even when no prejudice has been shown to have been caused. Where therefore the initiation of proceedings is illegal for want of consent, but those proceedings are transferred to another Court which begins with the case afresh, subsequent production of consent even though it is before the commencement of the trial *de novo*, cannot validate what was invalid at

its inception. 184 I.C. 680=1939 Lah. 479 =I.L.R. (1940) Lah. 102=42 P.L.R. 51.

Per *Sen, J.*—If an objection is raised at an early stage before any evidence is led that the prosecution against a Crown servant is not maintainable for want of requisite consent under sec. 270 (1) of the Government of India Act, it has to be decided on the allegations in the charge sheet. But where the objection is taken in appeal after the trial has been concluded and judgment has been delivered by the trial Court, it is open to the appellate Court to decide the question on the findings arrived at by the trial Court. J.L.R. (1944) Nag. 650.

ACTS OF A PUBLIC SERVANT DONE AFTER APRIL, 1937.—As part III of the Government of India Act came into force only in April, 1937, the act referred to in sec. 270 (1) of the Government of India Act, is an act done prior to April, 1937. Hence sec. 270 (1) can have no application to the acts of a public servant after April, 1937. 1940 O.W.N. 494=1940 Oudh 382=15 Luck. 740. [See also Notes under sec. 271, *infra*.]

APPLICABILITY — WRONGFUL RESTRAINT OR CONFINEMENT — WHAT AMOUNTS TO — POLICE SUB-INSPECTOR AND CONSTABLES PREVENTING PASSENGERS FROM BOARDING TRAIN UNDER INSTRUCTIONS FROM SUPERIOR OFFICER UNDER MISAPPREHENSION — ACTS DONE 'BONA FIDE' IN DISCHARGE OF STATUTORY DUTY — LIABILITY FOR DAMAGES — CONSENT OF GOVERNOR FOR SUIT — NECESSITY — PROVINCIAL GOVERNMENT — LIABILITY FOR ACTS OF SERVANTS. — Government cannot be held liable for damages either when an officer takes an action in pursuance of a statutory duty or when the act committed by him happens to be in excess of his authority unless in the latter case the act is either done by the Government's express orders or is subsequently ratified and adopted by it. Nor can any action be maintained against the Government for a tort committed by its servants if in passing the order in the performance of which the tort is committed the Government was discharging its governmental functions as a sovereign. I.L.R. (1942) Mad. 696=1942 Mad. 539=(1942) 2 M.L.J. 14.

SUB-SEC. (1).—This applies to cases where in respect of acts done prior to the

(a) in the case of a person employed in connection with the affairs of the Federation, by the Governor-General exercising his individual judgment; and

(b) in the case of a person employed in connection with the affairs of a Province, by the Governor of that Province exercising his individual judgment:

Provided that nothing in this sub-section shall be construed as restricting the power of the Federal or a Provincial Legislature to amend the said section by a Bill or amendment introduced or moved with such previous sanction as is mentioned in sub-section (1) of this section.

(3) Where a civil suit is instituted against a public officer, within the meaning of that expression as used in the Indian Code of Civil Procedure, in respect of any act purporting to be done by him in his official capacity, the whole or any part of the costs incurred by him and of any damages or costs ordered to be paid by him shall, if the Governor-General exercising his individual judgment so directs in the case of a person employed in connection with the affairs of the Federation, or if the Governor exercising his individual judgment so directs in the case of a person employed in connection with the affairs of a Province, be defrayed out of and charged on the revenues of the Federation or of the Province, as the case may be.

* * * * *

"relevant date"—no proceedings had been started in Court against the official. The consent of the Governor or the Governor-General as the case may be 'acting in his discretion' is constituted a condition precedent to the institution of the proceedings.

SUB-SEC. (2).—This deals with cases which had been already instituted and are pending in Court on the "relevant date". The Court is directed to dismiss the proceedings unless it is satisfied that the acts complained of were not done in good faith. The Joint Parliamentary Committee recommended that the certificate by the Governor or Governor-General as the case may be that the act was done in good faith, should be conclusive and binding on the Court; this has not been accepted and the matter has been left to the Courts to decide.

SEC. 271: PROTECTION OF PUBLIC SERVANTS.—Speaking on this section the *Solicitor-General* said:—"In order to re-assure these officials, Indians just as much as British, who are anxious that there shall be no doubt that there is proper protection against vexatious and unjustifiable criminal proceedings, we propose to give the Governor or the Governor-General the last word. But it is most undesirable and entirely against the best interests of the services of India, or officials in any country where British ideas prevail, that you should give, or tend to give, the impression that they are hedged off and free to do as they like, and that no one can get at them. On the other hand, it is equally necessary, particularly in a country like India, that where there is a danger of their being harassed by vexatious or maliciously-motivated proceedings, they should be given fair and proper protection. After all, it not only causes mental anxiety, and so on, to a Magistrate; but is bad for the administration of law and justice if a Magistrate, because some person thinks he has a grievance, should be put into the dock and have to justify his action. "At present there is

nothing to prevent a person issuing a writ, or whatever may be the proper technical term in India, against an official for damages for some civil wrong which he alleges has been committed. I do not think it would be right as a permanent part of the Constitution, as it were, to impose a barrier, even though it be a discretionary barrier, between a member of the public and the official whom he is saying has invaded his private rights. After all, civil actions would extend to such cases as motor accidents; and they would extend no doubt to unjustified assaults. I suppose it might be possible to conceive a libel in which words might have been written or uttered in the course of carrying out official duties." "It is a great principle, and we do not wish to invade it, that if an ordinary member of the public has a wrong committed against him, be it by an official or a non-official person, he has the right to issue his writ and claim his redress in the Courts. We think it would be undesirable to put up, or even to attempt to put up, as a permanent part of this Constitution, a barrier in cases where officials are concerned. But it seems to us that what really affects an official who has a civil claim made against him is the question of costs and the question of any damages that he may have to pay." (*Par. Deb.*, Vol. 300, Cols. 879 *et seq.*)

PROTECTION OF CROWN SERVANTS.—Sec. 124 of the Government of Burma Act purports to be a general indemnity to all servants of the Crown for acts committed in the execution of their duty as such before the commencement of the Act. The protection given by this section is in addition to the existing protection given by sec. 197 of the Cr. P. Code. 1938 Rang.L.R. 116=1938 Rang. 189. There is nothing in the Government of India Act of 1935, which imposes a legal obligation upon the Governor of a Province to consult his minister before sanctioning under sec. 196, Cr. P. Code, a prose-

295. (1) Where any person has been sentenced to death in a Province, the Governor-General in his discretion shall have all such powers of suspension, remission or commutation of sentence as were vested in the Governor-General in Council immediately before the commencement of Part III of this Act, but save as aforesaid no authority in India outside a Province shall have any power to suspend, remit or commute the sentence of any person convicted in the Province:

Provided that nothing in this sub-section affects any power of any officer of His Majesty's forces to suspend, remit or commute a sentence passed by a Court martial.

(2) Nothing in this Act shall derogate from the right of His Majesty, or of the Governor-General, if any such right is delegated to him by His Majesty, to grant pardons, reprieves, respites or remissions of punishment.

* * * * *

306. (1) No proceedings whatsoever shall lie in, and no process whatsoever shall issue from, any Court in India against the Governor-General, against the Governor of a Province, or against the Secretary of State, whether in a personal capacity or otherwise, and, except with the sanction of His Majesty in Council, no proceedings whatsoever shall lie in any Court in India against any person who has been the Governor-General, the Governor of a Province, or the Secretary of State in respect of anything done or omitted to be done by any of them during his term of office in performance or purported performance of the duties thereof:

Protection of Governor-General, Governor or Secretary of State.

cution for an offence under sec. 124-A, I. P. Code. There is no provision in the Act, which requires the Governor to consult his Ministers before performing executive acts. The instrument of instructions implies that he should consult his ministers, but he is not legally required to do so. In the case of a sanction for prosecution under sec. 196, Cr. P. Code, the Governor is certainly not required to exercise his individual judgment; but that does not mean that in exercising his individual judgment he is acting unlawfully and that his action can be called in question in a Court of law. 48 L.W. 170=1938 Mad. 758=(1938) 2 M.L.J. 416. If any question arises whether any matter (a) is a matter as respects which the Governor is by or under the Act required to act in his discretion or to exercise his individual judgment, or (b) is not a matter as respects which the Governor is by or under the Act required to act in his discretion or to exercise his individual judgment then the decision of the Governor in his discretion is final. 193 I.C. 91=1941 Rang. 5.

SEC. 295: POWER OF PARDON.—This section deals in general with the power of pardon. Under sec. 401, Criminal Procedure Code, the authorities heretofore vested with such powers were the Local Governments and the Governor-General in Council and they had concurrent powers in all cases. Besides this statutory power, sec. 401 saved the right of His Majesty to exercise the prerogative of pardon and to delegate that power to the Governor-General in Council. It was thought to be inconsistent with Provincial autonomy to vest a power in the Federal executive at the centre to interfere with convictions of Courts over whom the

control, vested in the Provincial Government and Legislature, was complete. An exception has, however, been made in the case of sentences of death, and the Governor-General in his discretion has been authorised to exercise the powers formerly vested in the Governor-General in Council under sec. 401 in respect of such sentences. Subject to this exception, the powers of the Governor-General in Council under sec. 401 are taken away.

SEC. 306.—This is an enlargement of the protection formerly afforded to the Governor and Governor-General by sec. 110 of the Government of India Act, 1919. They were under that Act not subject to the Original Jurisdiction of the High Court in respect of acts ordered or done in their public capacity; they were however liable to the High Courts original criminal jurisdiction for treason or felony. They were subject to Courts in the mofussil. The present section is all comprehensive and protects the Governor-General, the Governor and the Secretary of State from all "process" whatsoever—including even a summons to appear as witness. It extends to all Courts in India—Civil and Criminal and applies not merely to their public acts but even to acts in a private capacity; e.g., even a suit for recovery of a debt will not lie. Cf. *Hill v. Briggs*, (1841) 3 Moo. P. C. 465, where a suit was held to lie for a debt against the Colonial Governor of Trinidad. There is however power reserved to His Majesty in Council to relax the provisions of this section and permit proceedings to be taken. The liability of these officials to be proceeded against in England, for their personal acts, so far these proceedings could be

Provided that nothing in this section shall be construed as restricting the right of any person to bring against the Federation, a Province, or the Secretary of State such proceedings as are mentioned in Chapter III of Part VII of this Act.

(2) The provisions of the preceding sub-section shall apply in relation to His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States as they apply in relation to the Governor-General.

THE HACKNEY-CARRIAGE ACT (XIV OF 1879).¹

[5th September, 1879.

An Act for the regulation and control of Hackney-carriages in certain Municipalities and Cantonments.

WHEREAS it is expedient to provide for the regulation and control of hackney-carriages in certain municipalities and cantonments; It is hereby enacted as follows:—

1. This Act may be called THE HACKNEY-CARRIAGE ACT, 1879:

2[* * * * *

Nothing herein contained shall affect any power conferred by any law relating to municipalities, or any rule made in exercise of any such power.

LEG. REF.

¹ For *Statement of Objects and Reasons*, see Gazette of India, 1879, Pt. V, p. 52; for Proceedings in Council, see *ibid.*, Suppl. pp. 49, 78 and 1141.

The Act has been declared in force in Upper Burma (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898), see the First Schedule *post*.

² Repealed by Act XVII of 1914.

initiated in the English Courts is not affected. Moreover, though Chapter XI of the Government of India Act is repealed, these officials could be punished for criminal action in India, by the Court of King's Bench under the Governor's Act, 1699 as amended by later Acts. The exemption from jurisdiction formerly afforded by sec. 110 extended to Executive Councillors and ministers—but the protection in their case has not been re-enacted by this Act. It was on the ground of this personal exemption that it was held that no *certiorari* could be brought against the Act of the Ministry. (*Venkataram v. Secretary of State for India*, 53 Mad. 979=60 M.L.J. 25). The English common law rule that the King can do no wrong and cannot be sued but the King's officers and servants are amenable to the jurisdiction of the King's Court, is now firmly established in India. The Governor-General and Governors have been, in the eye of the law, placed in the position of the King but the Government servants have no immunity. Therefore, the fact that direct proceedings cannot be taken against either the Governor-General or a Governor of a province for setting aside any illegal order made by either of them is no longer any ground for extending any protection to the servants of the Crown acting under such order or for

refusing any relief to the subject aggrieved by the execution of such order. 48 C.W.N. 766. A suit filed against the Governor of a province instead of against the province as required by sec. 79, C. P. Code, is hit by sec. 306 of the Government of India Act. That being so, the Court cannot entertain any application in such a suit. The facts that the Governor appeared in the suit, resisted the interlocutory application and also made a substantive application for stay of the suit, do not estop the defendant from relying on sec. 306. I.L.R. (1944) 1 Cal. 181. Order of Provincial Government under sec. 36, Madras District Municipalities Act, and issued in name of Governor under sec. 59, Government of India Act, revising prior order—Application for writ of *certiorari* is not maintainable. 50 L. W. 538=1939 Mad. 940=I.L.R. (1940) Mad. 204=(1939) 2 M.L.J. 801. Where the Hindu Religious Endowments Board has abused its powers in notifying a temple under Chapter VI-A of the Madras Hindu Religious Endowments Act, the High Court has power to quash the Board's orders on which the notification is based, and if the basis of the notification is illegal, the notification is illegal. Even if the notification in such circumstances remained a lawful notification, the Court would still be in a position to take effective action. The provisions of sec. 306, read with sec. 109 of the Government of India Act, 1935, do not make the notification under the Madras Hindu Religious Endowments Act an act of the Governor which cannot be challenged in Courts. Where on the facts it is found that the Board's action in notifying a temple was arbitrary and an abuse of its powers, the order of the Committee of the Board and that of the full Board on appeal under sec. 65-A of the Madras Hindu Religious En-

2. In this Act—

“hackney-carriage” means any wheeled vehicle drawn by animals and used for the conveyance of passengers, which is kept, or offered, or plies, for hire; and

“committee” means a municipal committee, or a body of municipal commissioners, constituted under the provisions of any enactment for the time being in force.¹⁻²

3. [The Provincial Government concerned may, by notification in the Official Gazette, apply this Act to any municipalities in the United Provinces, the Punjab, the Central Provinces, Assam, Ajmeer-Merwara or Coorg.]

When this Act has been so applied to any municipality, the committee of such municipality may from time to time make rules⁴ for the regulation and control of hackney-carriages within the limits of such municipality, in the manner in which, under the law⁵ for the time being in force, it makes rules or bye-laws for the regulation and control of other matters within such limits.

Every rule made under this section shall, when confirmed by the [commissioner] and published for such time and in such manner as the [commissioner] may from time to time prescribe, have the force of law:

Power of [commissioner] to rescind rules. Provided that the [commissioner] may at any time rescind any such rule.

4. [* * * * *].

Power to extend operation of rules beyond limits of municipality or cantonment.

concerned:

[* * * * *].

What rules under section 3 may provide for.

6. The rules to be made under section 3¹⁰ [* * * *] may, among other matters,—

(a) direct that no hackney-carriage, or no hackney-carriage of a particular description, shall be let to hire, or taken to ply, or offered for hire, except under a license granted in that behalf;

(b) direct that no person shall act as driver of a hackney-carriage except under a license granted in that behalf;

(c) provide for the issue of the licenses referred to in clauses (a) and

LEG. REF.

¹⁻² See Bur. Act III of 1898.

³ First para of sec. 3 substituted by A. O., 1937.

⁴ For rules made under this section, see Burma Gazette, 1883, Pt. I, p. 289; *ibid.*, 1888 Pt. I, p. 585; *ibid.*, 1907, Pt. I, p. 385.

⁵ See Bur. Act III of 1898, sec. 30.

⁶ The word “commissioner” substituted by Act IV of 1914.

⁷ Sec. 4 omitted by A.O., 1937.

⁸ Inserted by *ibid.*

⁹ Omitted by *ibid.*

¹⁰ The words and figures ‘or sec. 4’ omitted by A.O., 1937.

downments Act should be quashed. I.L.R. (1941) Mad. 807=1941 Mad. 878=(1941) 2 M.L.J. 175.

Sec. 306 which protects a Governor, is no bar to the issuing of an injunction against a Provincial Government. I.L.R. (1943) Lah. 617=6 F.L.J. (H.C.) 40=45 P.L.R. 71

=A.I.R. 1943 Lah. 41 (F.B.). See also 47 Bom.L.R. 500.

SEC. 2.—As to the effect of mere advertisement for hire—see 4 L.B.R. 80; 7 Cr. L.J. 71.

SEC. 5.—For list of notifications extending the operation of rules made under this Act, see Bur. R. M., Vol. I, p. 72.

SEC. 6: ABSENCE OF NUMBER—CARRIAGE BEING RE-PAINTED.—Where in answer to the charge that the number had not been painted in a prominent place on the carriage, the proprietor of a hackney-carriage explained that the carriage had been re-painted and was awaiting for the number and where as a matter of fact five days after the challan the carriage was actually re-inspected and passed correct and where the lamps of the carriage bore the number, *Held*, that the owner’s explanation was correct and that no offence was committed. 88 I.C. 594=2 O. W. N. 443=26 Cr.L.J. 1170=1925 Oudh 447.

(b), prescribe the conditions (if any) on which such licenses shall be granted, and fix the fees, (if any) to be paid therefor;

(d) regulate the description of animals, harness and other things to be used with licensed carriages, and the condition in which such carriages, and the animals, harness and other things used therewith shall be kept, and the lights (if any) to be carried after sunset and before sunrise;

(e) provide for the inspection of the premises on which any such carriages, animals, harness and other things are kept;

(f) fix the time for which such licenses shall continue in force, and the events (if any) upon which within such time they shall be subject to revocation or suspension;

(g) provide for the numbering of such carriages;

(h) determine the times at which, and the circumstances under which, any person keeping a hackney-carriage shall be bound to let or refuse to let such carriage to any person requiring the same;

(i) appoint places as stands for hackney-carriages and prohibit such carriages waiting for hire except at such places;

(j) limit the rates or fares, as well for time as distance, which may be demanded for the hire of any hackney-carriage; and prescribe the minimum speed at which such carriages when hired by time shall be driven;

(k) limit the number of persons, and the weight of property, which may be conveyed by any such carriage;

(l) require the owner or person in charge of any such carriage to keep a printed list of fares in English and such other language as may be prescribed affixed inside such carriage in such place as may be determined by the rules, and prohibit the destruction or defacement of such list;

(m) require drivers to wear a numbered badge or ticket, and to produce their licenses when required by a Magistrate or other person authorized by the rules in this behalf, and prohibit the transfer or lending of such licenses and badges; and

(n) provide for the deposit of property found in such carriages, and the payment of a fee by the owner of such property on the delivery thereof to him.

Penalty for breach of rules.

7. Any person breaking any rule made under this Act shall be punished with fine which may extend to fifty rupees.

8. The amount of any fees received and the amount of any expenses incurred in giving effect to this Act shall ¹[* *] be

Disposal of fees and payment of expenses.

credited and debited, respectively, to the municipal fund ¹[* *].

9. If any dispute arises between the hirer of any hackney-carriage and the owner or driver of such carriage as to the amount of

Power of Magistrate to decide disputes regarding fares.

the fare payable by such hirer under any rule made under this Act, such dispute shall, upon application made in that behalf by either of the disputing parties,

LEG. REF.

¹ Omitted by A.O. 1937.

SECS. 6 AND 7: DRIVING UNLICENSED CARRIAGES.—Rule 1 of the rules framed under this Act for the Umballa Cantonment does not render driving an unlicensed carriage punishable under sec. 7 of the Act, 7 P. R. 1892 Cr. *Refusal by driver to ply hackney carriage for hire—Liability of driver and owner*—The driver of a hackney-carriage is not punishable for infringement of R. 15 of the rules under the Act for refusal to ply it for hire because he does not “keep” the carriage, nor is the “owner” liable for refusal of

his servant. It must be shown that the hirer applied to the owner and was refused by him. 15 Cr.L.J. 552; 7 Bur.L.T. 301; 24 I.C. 960; 8 L.B.R. 91. Breach of the condition of a licence as set out in Rule 7, not being a breach of a rule, is not punishable under sec. 7. U.B.R. (1892—1896), Vol. I, p. 125.

SEC. 9: SUMMARY AND NOT EXCLUSIVE REMEDY.—Sec. 9 is merely intended to provide a simple and summary means of settling disputes between the hirers and letters of hackney-carriages, and parties are not thereby excluded from having recourse to the Civil Courts. 1893 A.W.N. 203.

be heard and determined by any Magistrate or Bench of Magistrates within the local limits of whose jurisdiction such dispute has arisen; and such Magistrate or Bench may, besides determining the amount so in dispute, direct that either party shall pay to the other such sum as compensation for loss of time as such Magistrate or Bench thinks fit.

Any sum determined to be due or directed to be paid under this section shall be recoverable as if it were a fine.

The decision of any Magistrate or Bench in any case under this section shall be final.

When any such case is heard by a Bench, any difference of opinion arising between the members of such Bench shall be settled in the same manner as differences of opinion arising between such members in the trial of criminal cases.

10. If, at the time any dispute mentioned in section 9 arises, any Magistrate or Bench of Magistrates having jurisdiction in

In case of dispute hirer may require driver to take him to Court.

respect of such dispute is sitting within the local limits to which the rules apply, the hirer of the carriage may require the driver thereof to take him in the same to the Court of such Magistrate or Bench for the purpose of making an application under that section.

Any driver neglecting or refusing to comply with such requisition shall be punished with imprisonment for a term which may extend to one month, or with fine not exceeding fifty rupees, or with both.

THE IDENTIFICATION OF PRISONERS ACT (XXXIII OF 1920).

Year.	No.	Short Title.	Amendments.
1920	XXXIII	The Identification of Prisoners Act, 1920.	Am. (in Bombay), Bom. Act II of 1922.

An Act to authorise the taking of measurements and photographs of convicts and others.

WHEREAS it is expedient to authorise the taking of measurements and photographs of convicts and others; it is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called THE IDENTIFICATION OF PRISONERS ACT, 1920; and

(2) It extends to the whole of British India, including British Baluchistan, the Sonthal Parganas and the Districts of Angal.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “measurement” includes finger impressions and foot-print impressions.

(b) “police officer” means an officer in charge of a police station, a police officer making an investigation under Chapter XIV of the Code of Criminal Procedure, 1898, or any other police officer not below the rank of Sub-Inspector; and

(c) “prescribed” means prescribed by rules made under this Act.

Taking of measurements etc., of convicted person.

3. Every person who has been—

(a) convicted of any offence punishable with rigorous imprisonment for a term of one year or upwards, or of any offence which would render him liable to enhanced punishment on a subsequent conviction; or

(b) ordered to give security for his good behaviour under section 118 of

SEC. 2, (b).—The definition would include an Excise Officer who in the conduct of an investigation of an offence exercises the power conferred by the Code of Criminal Procedure, 1934 Cal. 580; 63 Cal. 780=40 C.W.N. 415=A.I.R. 1936 Cal. 65.

the Code of Criminal Procedure, 1898, shall, if so required, allow his measurements and photograph to be taken by a police officer in the prescribed manner.

4. Any person who has been arrested in connexion with an offence punishable with rigorous imprisonment for a term of one year or upwards shall, if so required by a police officer, allow his measurements to be taken in the prescribed manner.

Taking of measurements,
etc. of non-convicted persons.

5. If a magistrate is satisfied that, for the purposes of any investigation or proceeding under the Code of Criminal Procedure, 1898, it is expedient to direct any person to allow his measurements or photograph to be taken, he may make an order to that effect, and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in the order and shall allow his measurements or photograph to be taken, as the case may be, by a police officer:

Power of Magistrate to
order a person to be measured
or photographed.

Provided that no order shall be made directing any person to be photographed except by a Magistrate of the first class.

Provided, further, that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.

6. (1) If any person who under this Act is required to allow his measurements or photograph to be taken resists or refuses to allow the taking of the same, it shall be lawful to use all means necessary to secure the taking thereof.

Resistance to the taking
of measurements, etc.

(2) Resistance to or refusal to allow the taking of measurements or photographs under this Act shall be deemed to be an offence under section 186 of the Indian Penal Code.

7. Where any person who, not having been previously convicted of an offence punishable with rigorous imprisonment for a term of one year or upwards had had his measurements taken or has been photographed in accordance with the provisions of this Act, is released without trial or discharged or acquitted by any Court, all measurements and all photographs (both negatives and copies) so taken shall, unless the Court or (in a case where such person is released without trial) the District Magistrate or Sub-divisional Officer for reasons to be recorded in writing otherwise directs, be destroyed or made over to him.

Destruction of photographs
and records of measurements,
etc., on acquittal.

8. (1) The Provincial Government may make rules for the purpose of carrying into effect the provisions of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may provide for—

- (a) restrictions on the taking of photographs of persons under section 5;
- (b) the places at which measurements and photographs may be taken;
- (c) the nature of the measurements that may be taken;
- (d) the method in which any class or classes of measurements shall be taken.

(e) the dress to be worn by a person when being photographed under section 3; and

(f) the preservation, safe custody, destruction and disposal of records of measurements and photographs.

9. No suit or other proceeding shall lie against any person for anything

SEC. 5.—Where an order by a Magistrate under sec. 5 clearly states that the Magistrate is satisfied that for the investigation of the case the photographs and the measurements of the accused are necessary, the

mere circumstance that no reasons are specifically stated by the Magistrate in his order does not make the order illegal. 63 Cal. 780—40 C.W.N. 415—A.I.R. 1936 Cal. 65.

Bar of suits.

done, or intended to be done, in good faith under this Act or under any rule made thereunder.

THE IMMIGRATION INTO INDIA ACT (III OF 1924).

1st March, 1924.

An Act to regulate the entry into and residence in British India of persons domiciled in other British Possessions.

WHEREAS it is expedient to make provision for regulating the entry into and residence in British India of persons domiciled in the British Possessions on a basis of reciprocity; It is hereby enacted as follows:—

Short title, commencement and extent. 1. (1) This Act may be called THE IMMIGRATION INTO INDIA ACT, 1924.

(2) It shall come into force on such date as the Central Government may notify in the Official Gazette.

(3) It shall extend to the whole of British India including British Baluchistan.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "British Possession" means any Part of His Majesty's Dominions other than British India, the United Kingdom and Ireland, and includes Protectorates and territories which are or may be administered by a Dominion as a mandatory on behalf of the League of Nations;

(b) "entry" includes landing at any port in British India during the period of the ship's stay on her way to a destination outside British India.

3. The Central Government may make rules for the purpose of securing that persons not being of Indian origin, domiciled in any British Possession, shall have no greater rights and privileges, as regards entry into and residence in British India, than are accorded by the law and administration of such possession to persons of Indian domicile.

Rules as regards entry, into and residence in British India.

4. The Central Government may, without prejudice to the generality of the powers contained in section 3 of this Act, make rules—

(a) to provide for the establishment of a suitable agency to administer the rules and to define its functions and powers;

(b) to provide suitable penalties for the contravention of such rules or attempt to contravene them, or the abetment of such contravention; and

(c) to authorise the arrest of any person contravening or reasonably suspected of contravening any such rule, and to prescribe the duties of public servants and others in regard to such arrests.

5. If any person alleged to be domiciled in any British Possession and to be subject to the provisions of this Act, raises the plea that he is not so domiciled or that the provisions of the said Act do not apply to him, the onus of proving the truth of such plea shall lie on the aforesaid person.

Person claiming exemption to establish case.

THE INDEMNITY ACT (XXVII OF 1919).

[N.B.—The whole of this Act was repealed by Act I of 1938.]

THE INDIAN INCOME-TAX ACT (XI OF 1922.)

(Extracts).

CHAPTER VIII.

OFFENCES AND PENALTIES.

Failure to make payments or deliver returns of statements or allow inspection.

51. If a person fails without reasonable cause or excuse—

(a) to deduct and pay any tax as required by section 18 or under sub-section (5) of section 46;

(b) to furnish a certificate required by sub-section (9) of section 18 or by section 20 to be furnished;

(c) to furnish in due time any of the returns mentioned in ¹[section 19A], ²[section 20-A], section 21, ³[sub-section (2) of] section 22, or section 38;

(d) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (4) of section 22, such accounts and documents as are referred to in the notice;

(e) to grant inspection or allow copies to be taken in accordance with the provisions of S. 39; he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

52. If a person makes a statement in a verification mentioned in ⁴[section 19-A or] ⁵[section 20-A or section 21] or] section 22 ⁶[or sub-section (2) of section 26-A] or sub-section (3) of section 30, ⁷[or sub-section (3) of section 33] ⁸[* * *] which is false, and which he either knows or believes to be false, or does not believe to be true, he shall ¹⁰[be punishable, on conviction before a Magistrate, with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.]

LEG. REF.

¹ Inserted by S. 3 of Act XXIV of 1926.

² Inserted by S. 21 of Act XVIII of 1933.

³ Inserted by S. 63 of Act VII of 1939.

⁴ Inserted by S. 4 of Act XXIV of 1926.

⁵ Inserted by S. 22 of Act XVIII of 1933.

⁶ Inserted by S. 64 of Act VII of 1939.

⁷ Inserted by S. 9 of Act XXI of 1930.

⁸ Substituted by Act XXIII of 1941.

⁹ The words, brackets and figures, "or sub-section (2) of section 33-A or sub-section (3) of section 50-A" omitted by S. 64 of Act VII of 1939.

¹⁰ Substituted for the words "be deemed to have committed the offence described in S. 177 of the Indian Penal Code." by *ibid*.

SECS. 51 AND 52: OFFENCES UNDER BOTH SECTIONS ARE DIFFERENT.—An offence under S. 52 is of a nature different from an offence under S. 51 and therefore an accused cannot be convicted of offence under S. 51 without calling upon him to meet that charge on his being found not guilty of offence under S. 52. 146 I.C. 848=1933 N. 358. Where there is a question of sanction and the sanctioning authority has sanctioned the prosecution under one section only, and the accused has been found not guilty of that offence, he cannot be found guilty of the other offence. 146 I.C. 848=1933 N. 358.

SECS. 51 TO 53.—No one can be prosecuted under the Act except at instance of the Collector under S. 36. 23 I.C. 504=15 Cr.L.J. 296=12 A.L.J. 258. The Collector and not the District Magistrate can direct proceedings to be taken for an offence under the Income-tax Act. 38 I.C. 993=18 Cr.L.J. 433=15 A.L.J. 163. Where a person was charged with making false statements in his petition of objection for the assessment of income-tax and the petition was not signed or verified and the order to prosecute him did not disclose what particular statement was false and fell within S. 193, Penal Code, *held*, that the

conviction was bad. 38 I.C. 993=15 A.L.J. 163. A conviction could not be maintained if there is no formal service of notice as required by the Act the letter having been sent by ordinary post unregistered. 17 A.L.J. 146=49 I.C. 781. The prosecution of an assessee for failure to produce his account books in obedience to a notice is not barred by reason of a prior order for penal assessment against him. 43 M. 498=38 M.L.J. 333. The only ground on which the Collector can direct a penal assessment is that the assessee has made a false return. The Collector cannot do so on ground of non-production of account books by the assessee. 43 M. 498.

SEC. 52.—An offence under S. 52 is committed on the day a return made under S. 22, is verified by a party. 1929 Cr. C. 647=1929 A. 919. The essence of offence under S. 52, and Penal Code, S. 177, lies in the verification of an untrue statement, and provided the statement was deliberately false or not believed to be true, subsequent rectification cannot make it any the less an offence, though it may be considered as an extenuating circumstance in awarding sentence. 1929 Cr. C. 647=1929 A. 919. There is nothing in the Income-tax Act which suggests that it is essential that the act of sending an income-tax return under S. 22 should be done only by an assessee. It can be done equally by an agent or other person in charge of the assessee's business. The word "person" in S. 52 and in S. 22 (2) includes a person duly authorised. An agent who sends a false statement is therefore liable to be prosecuted under S. 52. 54 L.W. 291=1941 Mad. 941=(1941) 2 M.L.J. 475. Where the assessee submits a return, but ostensibly and openly that return is not a complete one but is stated to be incomplete, there is no verification of the return as would make the return a valid one or constitute commission of an offence under S. 52. (1929 A. 919, Dist.) 146 I.C. 848=1933 N. 358. S. 52 is without

Prosecution to be at instance of Inspecting Assistant Commissioner.

53. (1) A person shall not be proceeded against for an offence under section 51. or section 52 except at the instance of the ¹[Inspecting Assistant Commissioner].

²[(2) The Inspecting Assistant Commissioner may either before or after the institution of proceedings compound any such offence.]

54. (1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit by a public servant. or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof.

(2) If a public servant discloses any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine.

LEG. REF.

¹ Substituted for the words "Assistant Commissioner" by S. 65, VII of 1939.

² This sub-section substituted by Act VII of 1939.

prejudice to the provision in S. 476, Cr. P. Code. An Income-tax Officer, being a Revenue Court, can act under S. 476, Cr. P. Code, and make a complaint of an offence committed before him. If an assessee produces and relies on false account books to show that his return of income is true while in fact it is false, he uses or attempts to use as genuine evidence which he knows to be false or fabricated, and can be convicted under Ss. 193 and 196, I. P. Code. 20 N.L.J. 214. S. 52 deals only with a false statement in the verification clause and does not cover the case of a false statement in the return of income to which the verification clause is attached. The proceedings before the Income-tax Officer cannot be said to start until there is some inquiry into the income of the assessee, and a statement made in the return of income-tax is not evidence given in a proceeding before the Income-tax Officer. S. 52 provides for the punishment of such an offence under S. 177, I.P. Code; it cannot become punishable under S. 193, I.P. Code, as well. 20 N.L.J. 214. Complaint for offence under—Income-tax Officer not recording finding that further enquiry was expedient—Right of appeal not affected—Proceeding, if initiated. 8 R. 25.

Sec. 54.—The wording of S. 54 (1) is perfectly clear. It is emphatic in its language and mandatory in its provisions. Though, as a matter of practice, the Income-tax authorities may allow a partner to inspect the books of his firm which have been deposited with him that is in no way any departure or exception to the provisions of

S. 54. No person, even if he is a partner in the firm whose books are in the possession of the Income-tax Officer is entitled to production or even to an examination as of right of the books, which that officer has, when the same has been produced before him in the course of proceedings under the Income-tax Act. If an application is taken out in a suit in Court by a partner of the firm to call upon the Income-tax Officer to produce the book, the Income-tax Officer is entitled to refuse to produce it. 1941 I.T.R. 693. S. 54 only lays a prohibition on the Court; it does not confer any exemption on the Income-tax Officer who is subject to every process of the Court. 1939 I.T.R. 331=1939 Mad. 546= (1939) 1 M.L.J. 791. S. 54 does not merely exclude evidence with regard to contents of any documents which may be produced before the income-tax authorities for purpose of assessment, but it forbids any evidence with regard to such documents. It is wide enough to exclude evidence to the effect that account-books have been produced before the Income-tax Officer. 1935 L. 272. See also 1944 All. 114 (Assessee himself can disclose contents of documents referred to in the section.) The intention of S. 54 is to encourage assessee to make a full and true disclosure of all relevant facts within his knowledge knowing that any statement made by him will not subsequently be used against him. It is certainly open to an assessee to object to answering interrogatories on statements made by him in such proceedings on the ground that they are privileged. 151 I.C. 104=1934 N. 181. S. 54 does not in so many words say that the public officer is prohibited from producing any such document as is specified, but as the production is made punishable as an offence, there is an implied prohibition

¹[* *] ¹[(3) Nothing in this section shall apply to the disclosure—

(a) of any such particulars for the purposes of a prosecution under ²[* *] the Indian Penal Code in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution under this Act; or

(b) of any such particulars to any person acting in the execution of this Act where it is necessary to disclose the same to him for the purposes of this Act, or

(c) of any such particulars occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand, or

³[(d) of any such particulars to a Civil Court in any suit to which Government is a party, which relates to any matter arising out of any proceeding under this Act, or

(e) of any such particulars to the Auditor General of India for the purpose of enabling him to discharge his functions under section 144 of the Government of India Act, 1935, or

(f) of any such particulars to any officer appointed by the Auditor General of India or the Central Board of Revenue to audit income-tax receipts or refunds, or

(g) of any such particulars, relevant to any inquiry into the conduct of an official of the Income-tax Department, to any persons appointed Commissioners under the Public Servants (Inquiries) Act, 1850, or to an officer otherwise appointed to hold such inquiry, or to a Public Service Commission established under the Government of India Act, 1935, when exercising its functions in relation to any matter arising out of any such inquiry, or]

⁴[(gg) of any such particulars, relevant to any inquiry into a charge of misconduct in connection with income-tax proceedings against a lawyer or registered accountant, to the authority referred to in sub-section (3) of section 61, when exercising the functions referred to in that sub-section,]; [or]^{4a}

⁵[(h) of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Indian Stamp Act, 1899, to impound an insufficiently stamped document, or]

LEG. REF.

¹ The words "Provided that" omitted and the proviso numbered as sub-section (3) by S. 66 of Act VII of 1939.

² The words and figures "section 193 of" omitted by S. 9 of Act XXII of 1930.

³ Inserted by S. 66 of Act VII of 1939.

⁴ Inserted by S. 4 of Act XII of 1940.

^{4a} Inserted by Act XXV of 1942.

⁵ Original Cl. (cc) inserted by S. 23 of Act XVIII of 1933 and was re-lettered as cl. (h) by S. 66 of Act VII of 1939.

against its production by a public servant. There is nothing in S. 54 to justify the extreme view that all the documents referred to in that section are made inadmissible in evidence. The section provides, first of all, that the documents specified shall be treated as confidential, and, secondly that no Court shall require a public servant to produce them. The Legislature only meant that they are to be treated as confidential by the income-tax authorities and not that the documents are confidential in whosoever's hands they may be. The main operative part of the section is that the Court cannot require any public servant to produce these documents. There is no justification

for extending the operation of the words beyond their natural and proper meaning. If a document can be given in evidence, without requiring a public servant to produce it, there is nothing in the section to preclude that from being done. There is nothing to prevent a police officer from producing a document lawfully seized from the income-tax authorities which those authorities themselves would not be able to produce. 44 Bom.L.R. 618=1942 I.T.R. 429=A.I.R. 1942 Bom. 289. See also 1942 Mad. 276=(1942) 1 M.L.J. 36. The object of S. 54 clearly is to make the income-tax returns and statements confidential as between the assessee and the income-tax department, and against the whole world, except for certain limited purposes provided by the section itself. A Court cannot, on the application of a defendant, order the plaintiff to obtain certified copies of his returns and statements of his agent made before the Income-tax Officer, as that would clearly be an evasion of the prohibition contained in the section. Such copies are inadmissible in evidence unless the plaintiff desires their retention. 1938 Rang.L.R. 243=1938 Rang. 276. See also I.L.R. (1943) Bom. 152=45 Bom.L.R. 31=1943

¹[(i) of such facts, to an authorised officer of the United Kingdom, or of any Indian State or of any part of His Majesty's Dominions which has entered into an agreement with British India for the granting of double taxation relief, as may be necessary for the purpose of enabling such relief or a refund under section 49 of this Act to be given, or

(j) of such facts, to an officer of a Provincial Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax imposed by it on agricultural income, or

(k) of such facts, to any authority exercising powers under the Sea Customs Act, 1878, or any Act of the Central Legislature imposing a duty of excise as may be necessary for enabling it duly to exercise such powers, or

(l) of such facts, ²[to any person charged by law with the duty of inquiring into the qualifications of electors] as may be necessary to establish whether a person is or is not entitled to be entered on an electoral roll, or

(m) ³[of] so much of such particulars, to the appropriate authority, as may be necessary to establish whether a person has or has not been assessed to income-tax in any particular year or years, where under the provisions of any law for the time being in force such fact is required to be established.]

⁴[* * *] ⁴[(4)] Nothing in this section shall apply to the production by a public servant before a Court of any document, declaration or affidavit filed, on the record of any statement or deposition made in a proceeding under ⁵[section 25-A or] section 26-A, or to the giving of evidence by a public servant in respect thereof.

⁶[* * *] ⁶[(5)] No prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

THE INDUSTRIAL STATISTICS ACT (XIX OF 1942).

[3rd April, 1942.

An Act to facilitate the collection of statistics of certain kinds relating to industries.

WHEREAS it is expedient to facilitate the collection of statistics of certain kinds relating to industries; It is hereby enacted as follows:—

Short title, extent and commencement. 1. (1) This Act may be called THE INDUSTRIAL STATISTICS ACT, 1942.

(2) It extends to the whole of British India.

(3) It shall come into force in a Province on such date as the Provincial Government may, by notification in the official Gazette, appoint in this behalf for such Province.

LEG. REF.

¹ These clauses were substituted for the original cl. (d), by S. 66 of Act VII of 1939.

² Substituted by Act XXIII of 1941.

³ Inserted by S. 4 of Act XII of 1940.

⁴ From the original proviso which was inserted by S. 10 of Act XXI of 1930, the words "Provided further that" were omitted and the proviso numbered as sub-S. (4) by S. 66 of Act VII of 1939.

⁵ These words, letter and figure were inserted by *ibid.*

⁶ The words "Provided further that" were omitted and the proviso numbered as subsection (5), *ibid.*

Bom. 77 (Proceedings under the Act are to be treated as confidential). See also I.L.

R. (1944) All. 221=1944 A.L.J. 118=1944 All. 114. A statement on oath made by a partner of a business before the Income-tax Officer is not inadmissible in evidence, and the Court is not precluded by S. 54 from admitting in evidence a certified copy of the statement given to one of the partners by the Income-tax authorities. 50 L.W. 681=1939 I.T.R. 560=1940 Mad. 308. See also 1943 Bom. 77. Public Servant in S. 54, refers to a public servant to whom disclosure has been made under the Income-Tax Act and not any public servant. 1942 I.T.R. 429=44 Bom.L.R. 618=1942 Bom. 289=I.L.R. (1942) Bom. 767. Income-tax return—Certified copy of—Admissibility in evidence to prove contents of return. See 50 L.W. 815=(1940) 2 M.L.J. 257.

Definition. 2. In this Act "prescribed" means prescribed in rules made under this Act or in any form prescribed by those rules.

3. (1) The Provincial Government may, by notification in the Official Gazette, direct that statistics shall be collected relating to any of the following matters, namely:—

- Collection of statistics.
- (a) any matter relating to factories,
 - (b) any of the following matters so far as they relate to welfare of labour and conditions of labour, namely:—
 - (i) prices of commodities,
 - (ii) attendance,
 - (iii) living conditions, including housing, water-supply and sanitation,
 - (iv) indebtedness,
 - (v) rents of dwelling-houses,
 - (vi) wages and other earnings,
 - (vii) provident and other funds provided for labour,
 - (viii) benefits and amenities provided for labour,
 - (ix) hours of work,
 - (x) employment and unemployment,
 - (xi) industrial and labour disputes,

and thereupon the provisions of this Act shall apply to the collection of those statistics.

(2) In clause (a) of sub-section (1), "factory" means a factory as defined in clause (j) of section 2 of the Factories Act, 1934, or any premises deemed to be a factory in pursuance of a declaration made under sub-section (1) of section 5 of that Act.

Appointment of statistics authority.

4. The Provincial Government may appoint an officer to be the statistics authority for the purposes of the collection of any statistics under this Act.

5. (1) The statistics

Power of statistics authority to call for returns and information.

authority may serve or cause to be served on any person a notice requiring him to furnish, at such intervals and in such form and with such particulars as may be prescribed, such information or returns relating to any matter in respect of which statistics are to be collected and to such authority or person and in such manner and at such times as may be prescribed.

(2) The notice referred to in sub-section (1) may be served by post.

6. The statistics authority or any person authorized by him in writing in this behalf shall, for the purposes of the collection of any statistics under this Act, have access to any relevant record or document in the possession of any person required to furnish any information or return under this Act, and may enter at any reasonable time any premises wherein he believes such record or document to be, and may ask any question necessary for obtaining any information required to be furnished under this Act.

Right of access to record or document.

7. (1) No individual return, and no part of an individual return, made, and no information with respect to any particular undertaking given, for the purposes of this Act, shall, without the previous consent in writing of the owner for the time being of the undertaking in relation to which the return or information was made or given, or his authorized agent, be published in such manner as would enable any particulars to be identified as referring to a particular undertaking.

(2) Except for the purposes of a prosecution under this Act or under the Indian Penal Code, no person not engaged in connexion with the collection of statistics under this Act shall be permitted to see any individual return or information referred to in sub-section (1).

Restriction on the publication of returns and information.

Penalties.

8. If any person required to furnish any information or any return—

(a) wilfully refuses or without lawful excuse neglects to furnish such information or return as required under this Act, or

(b) wilfully furnishes or causes to be furnished any information or return which he knows to be false, or

(c) refuses to answer or wilfully gives a false answer to any question necessary for obtaining any information required to be furnished under this Act, or if any person impedes the right of access to relevant records and documents or the right of entry conferred by section 6, he shall for each such offence be punishable with fine which may extend to five hundred rupees, and in the case of a continuing offence to a further fine which may extend to two hundred rupees for each day after the first during which the offence continues; and in respect of false information, returns or answers the offence shall be deemed to continue until true information or a true return or answer has been given or made.

9. If any person engaged in connexion with the collection of statistics under this Act wilfully discloses any information or the contents of any return given or made under this

Penalty for improper disclosure of information or returns.

Act otherwise than in the execution of his duties under this Act or for the purposes of the prosecution of an offence under this Act or under the Indian Penal Code, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both imprisonment and fine.

10. No prosecution under section 8 shall be instituted except by or with

Cognizance of offences.

the sanction of the statistics authority and no prosecution under section 9 shall be instituted except by or with the sanction of the Provincial Government.

Power of the Central Government to give directions.

11. The Central Government may give directions to a Provincial Government as to the carrying into execution of this Act in the Province.

12. (1) The Provincial Government may, subject to the condition of previous publication by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power of Provincial Governments to make rules.

(2) Without prejudice to the generality of the foregoing powers, rules may be made under their section regulating the exercise of the right of access to documents and the right of entry conferred by section 6.

THE INDIAN NAVAL RESERVE FORCES (DISCIPLINE) ACT, 1939.¹

[*Repealed in part by Act XXV of 1942.*]

An Act to provide for the discipline of members of the Indian Naval Reserve Forces raised in British India on behalf of His Majesty.

WHEREAS it is expedient to provide for the discipline of members of the Indian Naval Reserve Forces raised in British India on behalf of His Majesty, and in furtherance of that purpose to amend the First Schedule to the Indian Navy (Discipline) Act, 1934;

It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called THE INDIAN NAVAL RESERVE FORCES (DISCIPLINE) ACT, 1939.

LEG. REF.

¹ This Act was enacted by the Governor-

General under S. 67-B of the Government of India Act; it has not yet come into force.

(2) It extends to the whole of British India, and applies to members of the Indian Naval Reserve Forces wherever they may be.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

2. The Indian Naval Reserve Forces shall consist of the Royal Indian Fleet Reserve, the Royal Indian Naval Reserve, the Royal Indian Naval Volunteer Reserve and the Royal Indian Naval Communications Reserve.

The Indian Naval Reserve Forces.
Power to make rules for regulation of Naval Reserve Forces.

3. The Central Government may make rules for the Government, discipline and regulation of the Indian Naval Reserve Forces.

4. Every member of the Indian Naval Reserve Forces, while undergoing training on board any vessel or otherwise, in pursuance of rules made under section 3, or when called into actual service in the Royal Indian Navy, on board any vessel or otherwise in pursuance of the said rules, shall be subject to the Naval Discipline Act as set out in the First Schedule to the Indian Navy (Discipline) Act, 1934, in the same manner as a person in or belonging to the Indian Navy and shall continue to be so subject until duly released from such training or service, as the case may be.

5. (1) If any member of the Indian Naval Reserve Forces, when required, in pursuance of rules made under section 3, to attend on board any vessel or at any place for the purpose of undergoing training, fails without reasonable excuse to attend in accordance with such requirement, he shall be punishable with fine which may extend to two hundred rupees.

(2) If any member of the Indian Naval Reserve Forces, when called into actual service in the Royal Indian Navy and required by such call to join any vessel or attend at any place, fails without reasonable excuse to comply with such requirement at or within such time as the Central Government may, by order, direct, he shall be liable to be apprehended and punished in the same manner as a person in or belonging to the Indian Navy deserting or improperly absenting himself from duty, except that the punishment shall not exceed imprisonment which may extend to two years.

6. Where any member of the Indian Naval Reserve Forces is required, in pursuance of rules made under section 3, to attend on board any vessel or at any place for the purpose of undergoing training, or is called into actual service in the Royal Indian Navy, a certificate purporting to be signed by an officer appointed in this behalf under the said rules and stating that the said member failed to attend in accordance with such requirement or call shall, without proof of the signature or appointment of such officer, be evidence of the matter stated therein.

7. No Court inferior to that of a Presidency Magistrate or Magistrate of the first class shall try an offence punishable under sub-section (1) of section 5.

Modification of the Naval Discipline Act. [8. In the Naval Discipline Act as set out in the First Schedule to the Indian Navy (Discipline) Act, 1934,—

(a) in section 86, for the words commencing "a person holding" and ending "in the Indian Navy" the following shall be substituted, namely:—
"an officer holding any such position in the Indian Naval Reserve Forces during and in respect of the time when he is subject to the provisions of this Act";

(b) in section 87, for the words "commencing the Indian Naval Volunteer Reserve" and ending "he is liable" the following shall be substituted, namely:—

"the Indian Naval Reserve Forces to the extent specified in section 4 of the Indian Naval Reserve Forces (Discipline) Act, 1939".—[Section 8 Repealed by Act XXV of 1942.]

THE INDIAN STATES (PROTECTION) ACT (XI OF 1934).¹

[20th April, 1934.]

An Act to protect the Administrations of States in India which are under the Suzerainty of His Majesty from activities which tend to subvert, or to excite disaffection towards, or to obstruct such Administrations.

WHEREAS it is expedient to protect the Administrations of States in India which are under the suzerainty of His Majesty from activities which tend to subvert, or to excite disaffection towards, or to obstruct such administrations; it is hereby enacted as follows:—

Short title, extent and commencement. 1. (1) This Act may be called THE INDIAN STATES (PROTECTION) ACT, 1934.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) This section and sections 2 and 3 shall come into force at once; the remaining sections of this Act shall come into force in any district or area only when and for such time as the Provincial Government, by notification in the Official Gazette, directs.

2. Whoever, within or without British India, conspires to overawe, by means of criminal force or the show of criminal force, the Administration of any State in India, shall be punished with imprisonment which may extend to seven years, to which fine may be added.

Conspiracy to overawe Administration of a State in India. 3. The Indian Press (Emergency Powers) Act, 1931, as amended by the Criminal Law Amendment Act, 1932, shall be interpreted—

(a) as if in sub-section (1) of section 4 of the Act, after clause (i) the following word and clause were inserted, namely:—

"or

(j) to bring into hatred or contempt or to excite disaffection towards the Administration established in any State in India";

(b) as if in Explanation 2 and Explanation 3 to the said sub-section after the word "Government" the words "or Administration", and after the letter and brackets "(d)" the words, letter and brackets "(j)" were inserted; and

(c) as if after Explanation 4 to the said sub-section the following Explanation were inserted, namely:—

"Explanation 5.—Statements of fact made without malicious intention and without attempting to excite hatred, contempt or disaffection shall not be deemed to be of the nature described in clause (j) of this sub-section."

²[* * * * *]

4. (1) When a District Magistrate or in a Presidency-town the Chief Presidency Magistrate is of opinion that within his jurisdiction attempts are being made to promote assemblies of persons for the purpose of proceeding from British India into the territory of a State in India and that the entry of such persons into the said territory or their presence therein is likely or will tend to cause obstruction to the Administration of the said State or danger to human

LEG. REF.

¹ Except Ss. 1 to 3, the other sections have not yet come into force.

² The second half of the section omitted by A.O., 1937.

life or safety or a disturbance of the public tranquillity or a riot or an affray within the said territory, he may, by order in writing stating the material facts of the case, prohibit within the area specified in the order the assembly of five or more persons in furtherance of the said purpose.

(2) When an order under sub-section (1) has been made, and for so long as it remains in force, any assembly of five or more persons held in contravention of the order shall be an unlawful assembly within the meaning of section 141 of the Indian Penal Code, and the provisions of Chapter VIII of the Indian Penal Code and of Chapter IX of the Code of Criminal Procedure, 1898, shall apply accordingly.

(3) An order under sub-section (1) shall be notified by proclamation published in the specified area in such places and in such manner as the Magistrate may think fit, and a copy of such order shall be forwarded to the Provincial Government.

(4) No order under sub-section (1) shall remain in force for more than two months from the making thereof, unless the Provincial Government, by notification in the Official Gazette, otherwise directs.

5. (1) Where, in the opinion of a District Magistrate or in a Presidency-town the Chief Presidency Magistrate, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by written order stating the material facts of the case and served in the manner provided by section 134 of the Code of Criminal Procedure, 1898, direct any person to abstain from a certain act if such Magistrate considers that such direction is likely to prevent or tends to prevent obstruction to the Administration of a State in India or danger to human life or safety or a disturbance of the public tranquillity or a riot or an affray within the said State.

(2) An order under sub-section (1) may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.

(3) An order under sub-section (1) may be directed to a particular individual, or to the public generally.

(4) A District Magistrate or Presidency Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under sub-section (1) by himself or by his predecessor in office.

(5) Where such an application is received, the Magistrate shall afford to the applicant an early opportunity of appearing before him either in person or by pleader and showing cause against the order; and if the Magistrate rejects the application wholly or in part, he shall record in writing his reasons for so doing.

(6) No order under sub-section (1) shall remain in force for more than two months from the making thereof unless the Provincial Government by notification in the Official Gazette, otherwise directs.

6. (1) Whoever wilfully disobeys or neglects to comply with any direction contained in an order made under sub-section (1) of section 5, or in such order as altered under sub-section (4) of that section, shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

(2) An offence under this section shall be an offence for which a police-officer may arrest without warrant.

7. No Court shall take cognizance of any offence punishable under section 2 unless upon complaint made by order of, or under authority from the ¹[Central Government if the offence is committed outside British India, and the Provincial Government in other cases.]

LEF. REF.

¹ Substituted for "Governor-General in Council or the Local Government" by A.O., 1937.

THE INDIAN STATES (PROTECTION AGAINST DISAFFECTION) ACT, 1922.¹

An Act to prevent the dissemination by means of books, newspapers and others documents of matter calculated to bring into hatred or contempt, or to excite disaffection against, Princes or Chiefs of States in India or the Governments or Administrations established in such States.

WHEREAS it is expedient to prevent the dissemination by means of books, newspapers and other documents of matter, calculated to bring into hatred or contempt, or to excite disaffection against, Princes or Chiefs of States in India or the Governments or Administrations established in such States; It is hereby enacted as follows:—

Short title and extent. 1. (1) This Act may be called THE INDIAN STATES (PROTECTION AGAINST DISAFFECTION) ACT, 1922.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

Definition. 2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “book” and “newspaper” have the meanings respectively assigned to them by the Press and Registration of Books Act, 1867;

(b) “disaffection” includes disloyalty and all feelings of enmity; and
(c) “document” includes any painting, drawing, photograph, or other visible representation.

3. (1) Whoever edits, prints or publishes, or if the author of, any book, newspaper or other document which brings or is intended to bring into hatred or contempt, or excites, or is intended to excite disaffection towards, any Prince or Chief of a State in India or the Government or Administration established in any such State, shall be punishable with imprisonment which may extend to five years, or with fine, or with both.

(2) No person shall be deemed to commit an offence under this section

LEG. REF.

¹ Made by the Governor-General under S. 67-B of the Government of India Act.

SEC. 3: SCOPE AND EFFECT OF SECTION.—Under this section, the imputation contained in any publication is itself not punishable but the words expressly mentioned there, *viz.*, editing, printing or publishing or being the author of any document so edited, etc. It is these alone in respect of which punishment may be inflicted jointly or severally. 37 Cr.L.J. 474 (2)=161 I.C. 635=A.I.R. 1936 Nag. 55. Inspector-General of Police, Bhopal, with the sanction of the Governor-General in Council lodged a complaint in the Court of a Magistrate having two jurisdictions, that of a Headquarters Magistrate and that of a Magistrate exercising jurisdiction over railway lands in Bhopal State. The complaint was against the editor, printer and publisher of an Urdu Weekly “Riyasat” for publishing an article tending to excite disaffection towards the Chief of Bhopal State or his government or administration in Bhopal. The Magistrate was subordinate to different High Courts in two different jurisdictions. The complainant applied for amplification of his complaint by the inclusion of Itarsi as one of the places of publication of the above offending article. The Magistrate passed the following order: “The result of this petition for amplification

will be that the case will henceforward cease to be a railway case for State administered areas if it was one and be transferred to my ordinary file of criminal cases of this Court. This be done.” After this order the accused objected that the Magistrate had no jurisdiction to hear the case as he had transferred a case from a Court subordinate to one High Court to another Court subordinate to the other High Court, which the Governor-General in Council could alone do by a notification in the Gazette of India. *Held*, that the trying Magistrate in his capacity as the Railway Magistrate for Bhopal was incompetent to deal with the complaint of an offence committed at Itarsi but in his capacity as Headquarters Magistrate was competent to do so. *Held*, further, that as the original papers filed by the complainant contained material clearly amounting to an allegation of publication at Itarsi, the Railway Magistrate for Bhopal was no longer bound to dismiss the complaint in its entirety; he was entitled to return the complaint for presentation to the Court that could try the offence committed at Itarsi and this was in effect what he did. A.I.R. 1930 Nag. 291.

RIGHT OF PERSON CHARGED UNDER—PLEA IN MITIGATION OF PENALTY.—Where a person is charged under sec. 3 of the Act, he has a right to *plead extenuating circumstances* such as a worthy motive in mitigation of the

in respect of any book, newspaper or other document which, without exciting or being intended to excite hatred, contempt or disaffection, contains comments expressing disapprobation of the measures of any such Prince, Chief, Government or Administration as aforesaid with a view to obtain their alteration by lawful means, or disapprobation of the administrative or other action of any such Prince, Chief, Government or Administration.

4. The provisions of sections 99-A to 99-G of the Code of Criminal Procedure, 1898, and of sections 27-B to 27-D of the Indian Post Office Act, 1898, shall apply in the case of any book, newspaper or other document containing matter in respect of which any person is punishable under section 3 in like manner as they apply in the case of a book, newspaper or document containing seditious matter within the meaning of those sections.

5. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall proceed to the trial of any offence under section 3, and no Court shall proceed to the trial of any such offence except on complaint made, by, or under authority from, the ¹[Provincial Govern-

ment],

THE INSURANCE ACT (IV OF 1938).

(Extracts.)

PART V.

MISCELLANEOUS.

102. (1) Except as otherwise provided in this Act, any insurer who makes default in complying with or acts in contravention of any requirement of this Act and, where the insurer is a company, any director, managing agent, manager or other officer of the company, or where the insurer is a firm, any partner of the firm who is knowingly a party to the default, shall be punishable with fine which may extend to one thousand rupees and, in the case of a continuing default, with an additional fine which may extend to five hundred rupees for every day during which the default continues.

(2) ²[Any provident society as defined in Part III which makes default in complying with or acts in contravention of any of the requirements of this

LEG. REF.

¹Substituted for "Governor-General in Council" by A.O., 1937.

²Substituted for the words "Any provident society which makes default in complying with any of the requirements of Part III" by S. 55, Act XIII of 1941.

penalty to be imposed in the event of conviction and that for the purpose of making good that plea it may be necessary for him to show that the offensive allegations were true. 106 I.C. 709=29 Cr.L.J. 117=1927 Lah. 710.

OFFENCE OF PUBLICATION—PLACE OF TRIAL.—The word 'publishing' must be construed in a strict and narrow sense of the initial publication at the place declared by the printer and publisher. It does not include circulation. 37 Cr.L.J. 474 (2)=161 I.C. 635=A.I.R. 1936 Nag. 55. The offence under this section is committed only at the declared place of publication and not at any other place where the newspaper is circulated. The offence is, therefore, triable only at that place. (*Ibid.*)

SECS. 3 AND 5: TRIAL IN RESPECT OF THREE DISTINCT OFFENCES—SANCTION IN RESPECT OF ONE ONLY—LEGALITY.—Where a person is tried in respect of three distinct offences of his being editor, the printer, and the author of the offending article and the sanction is in respect of one offence, the trial is illegal for want of sanction and the whole proceedings are vitiated. 155 I.C. 450=1935 Cr.C. 418=1935 Nag. 90.

SECS. 5: SANCTION IN RESPECT OF PARTICULAR OFFENCE—IF COVERS OTHER OFFENCES.—Where a sanction authorises the complainant to make complaint of an offence under sec. 3 of the Act and very clearly restricts the prosecution to one of four offences under the section specifically, there is no room for the contention that the prosecution was sanctioned in regard to all. 155 I.C. 450=1935 Cr.C. 418=1935 Nag. 90.

SCOPE—LIABILITY UNDER.—Under sec. 5 any one or more of the four persons, *vis.*, author, editor, printer and publisher of libellous matter are liable. 155 I.C. 450=1935 Nag. 90.

SEC. 102: CONSTRUCTION OF SECTION.—As

Act] and any director, managing agent, manager, secretary or other officer of the society who is knowingly a party to the default, ¹[or contravention], shall be punishable with fine which may extend to five hundred rupees or in the case of a continuing default ¹[or contravention] with fine which may extend to two hundred and fifty rupees for every day during which the default ¹[or contravention] continues.

103. (1) Any insurer or any person acting on behalf of an insurer, who ²[carries on] any class of insurance business in contravention of any of the provisions of section 3, ³[* *] section 7, ⁴[* *] or section 98, or does any one or more of the acts constituting the business of insurance ⁵[in relation to any insurance business ⁶(carried on) in contravention of any of the said sections]] shall be punishable with fine which may extend to two thousand rupees.

(2) Any person knowingly taking out a policy of insurance with any insurer or person guilty of an offence under sub-section (1) shall be punishable with fine which may extend to five hundred rupees:

Provided that nothing in ⁷[sub-section (1) or sub-section (2)] shall apply to the business of re-insurance between the head office of an insurer in British India and the head office of an insurer not having an office in British India:

⁸[(3) Any provident society or any person acting on behalf of a provident society who carries on any class of insurance business in contravention of any of the provisions of section 70, section 73 or section 83, or does any one or more of the acts constituting the business of insurance in relation to any insurance business carried on in contravention of any of the said sections shall be punishable with fine which may extend to one thousand rupees.]

104. Whoever, in any return, report, certificate, balance-sheet or other document, required by or for the purposes of any of the provisions of this Act, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to one thousand rupees, or with both.

105. ⁹[(1)] Any director, managing agent, manager or other officer or employee of an insurer who wrongfully obtains possession of any property of the insurer or having any such property in his possession wrongfully

LEG. REF.

¹ Inserted by S. 55, Act XIII of 1941.

² Substituted for the word "transacts" by S. 56, *ibid.*

³ The word and figure "S. 6" were omitted, *ibid.*

⁴ The word and figure "S. 97" were omitted, *ibid.*

⁵ Substituted for the words "in relation to any such class of insurance business" by S. 31, Act XI of 1939.

⁶ Substituted for the word "transacted" by S. 56, Act XIII of 1941.

⁷ Substituted for the words "this section", *ibid.*

⁸ This sub-section was added, *ibid.*

⁹ Re-numbered as sub-S. (1) of that section by S. 57, *ibid.*

to who are liable under the section, see 51 L. 760. (Same person holding different capacities would be liable in all capacities).

SECS. 104 AND 107: INITIATION OF PROSECUTION—POWER OF PROVINCIAL AUTHORITIES

—GOVERNMENT OF INDIA ACT, Ss. 49 (2), 100 AND 124 (2).—Merely because an offence was created by an enactment of the Central Legislature, operating in the exclusive legislative sphere of the Central Legislature, it did not follow that the provincial authorities responsible for enforcing criminal law were incompetent to prosecute or initiate prosecutions for such offences. There could be nothing *ultra vires* in a Provincial Government taking steps to secure the enforcement of the law in respect of offences created by the Insurance Act or in the Advocate-General of the Province being specified in the Act as the person to control the initiation of proceedings under the Act. A valid previous sanction is essential to the jurisdiction of the Court to entertain the proceedings. 48 C. W.N. (F.R.) 66=1944 P.W.N. 165=1944 O.A. (F.C.) 15=25 P.L.T. 131=1944 A. W.R. (F.C.) 15=I.L.R. (1944) Kar. (F.C.) 54=1944 M.W.N. 237=215 I.C. 48=A.I.R. 1944 F.C. 25=(1944) F.L.J. 60 =(1944) 1 M.L.J. 207 (F.C.).

withholds it or wilfully applies it to purposes other than those expressed or authorised by this Act shall, on the complaint of the insurer or any member or any policy-holder thereof, be punishable with fine which may extend to one thousand rupees and may be ordered by the Court trying the offence to deliver up or refund within a time to be fixed by the Court any such property improperly obtained or wrongfully withheld or wilfully misapplied and in default to suffer imprisonment for a period not exceeding two years.

¹[(2) This section shall apply in respect of a provident society as defined in Part III as it applies in respect of an insurer.]

106. ²[(1)] If on the application of ³[the Superintendent of Insurance or] an insurer or any member of an insurance company or any policy-holder or the liquidator of an insurance company (in the event of the insurer being in liquidation) the Court is satisfied that by reason of any contravention of the provisions of this Act the amount of the life insurance fund has been diminished, every person who was at the time of the contravention a director, manager, liquidator or an officer of the insurer shall be deemed in respect of the contravention to have been guilty of misfeasance in relation to the insurer unless he proves that the contravention occurred without his consent or connivance and was not facilitated by any neglect or omission on his part; and the Court shall have all the powers which a Court has under sections 235 and 237 of the Indian Companies Act, 1913, and shall also have the power to assess the sum by which the amount of the life insurance fund has been diminished by reason of the misfeasance and to order any person guilty thereof to contribute to that fund the whole or any part of that sum by way of compensation.

¹[(2) This section shall apply in respect of a provident society as defined in Part III as it applies in respect of an insurer.]

⁴[106-A. (1) When application is made to the Court for the making of any order to which this section applies the Court shall, unless the Superintendent of Insurance has himself made the application or has been made a party thereto, send a copy of the application together with intimation of the date fixed for the hearing thereof to the Superintendent of Insurance, and shall give him an opportunity of being heard.

(2) The orders to which this section applies are the following namely:—

(a) an order for the attachment in execution of a decree of any deposit made under section 7 or section 98;

(b) an order under section 9 or section 59 for the return of any such deposit;

(c) an order under section 36 sanctioning any arrangement for the transfer or amalgamation of life insurance business or any order consequential thereon;

(d) an order for the winding up of an insurance company or a provident society;

(e) an order under section 58 confirming a scheme for the partial winding up of an insurance company;

(f) an order under section 89 reducing the amount of the insurance contracts of a provident society.]

107. ⁵[(1)] Except where proceedings are instituted by the Superinten-

LEG. REF.

¹ This sub-section was added by Act XIII of 1941.

² S. 106 was re-numbered as sub-S. (1) of that section by S. 58, *ibid*.

³ These words were inserted, *ibid*.

⁴ Inserted by S. 14, Act XX of 1940.

⁵ Re-numbered as sub-S. (1) of that section by S. 59, Act XIII of 1941.

Provincial Government can take proceedings. See 45 Cr.L.J. 333=A.I.R. 1944 Oudh 147=1943 O.W.N. 339.

Sec. 107.—[See also notes under S. 104.] Where the allegations made against the manager of an Insurance Company amount to offences under both the Companies Act and the Insurance Act, it would be trifling

Previous sanction of Advocate-General for institution of proceedings.

dent of Insurance, no proceedings under this Act against an insurer or any director, manager or other officer of an insurer or any person who is liable under sub-section (2) of section 41 shall be instituted by any person unless he has previous thereto obtained the sanction of the Advocate-General of the province where the principal place of business in British India of such insurer is situate to the institution of such proceedings.

¹[(2) This section shall apply in respect of a provident society as defined in Part III as it applies in respect of an insurer.]

108. If in any proceedings, civil or criminal, it appears to the Court hearing the case that a person is or may be liable in respect of negligence, default, breach of duty or breach of trust but that he has acted honestly and reasonably and that having regard to all the circumstances of the case he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the Court may relieve him either wholly or partly from his liability on such terms as it may think fit.

109. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

110. (1) An appeal shall lie to the Court having jurisdiction from any of the following orders, namely:—

- (a) an order under section 3 refusing to register, or cancelling the registration of, an insurer;
- (b) an order under section 5 directing the insurer to change his name;
- (c) an order under section 42 cancelling the licence issued to an agent;
- (d) an order under section 75 refusing to register an amendment of rules;

LEG. REF.

¹ This sub-section was added by S. 59, Act XIII of 1941.

with the law to prosecute him under the Companies Act instead of under the Insurance Act. The prosecution under the Companies Act should be confined to matters which are offences only under that Act: I.L.R. (1940) 1 Cal. 575=44 C.W.N. 454=1940 Cal. 232. See also 1943 O.W.N. 339=1944 Oudh 147. (Sanction is not rendered invalid because the offences are not mentioned therein). S. 107 of the Insurance Act requires the sanction of the Advocate-General before a private prosecution could be started against an insurer or any director, manager or other officer of an insurer for any offence under the Act. The section is not confined to a prosecution under S. 41 (2) of the Act. The words "who is liable under sub-S. (2) of S. 41" in the section qualify the words "any person", otherwise, the words "no proceedings under this Act" would have no real meaning. I.L.R. (1940) 1 Cal. 575=44 C.W.N. 454=1940 Cal. 232.

SEC. 107—SANCTION BY ADVOCATE-GENERAL—PRE-REQUISITES—FORM AND CONTENTS.—Before sanction is given by the Advocate-General under S. 107 of the Government of India Act, he must have proposals before him for the initiation by some person of parti-

cular proceedings of a defined nature under the Act against one or more of specified persons and he must sanction the initiation of those proceedings by that person. If proceedings are initiated by some one other than the person to whom the sanction has been given, or if proceedings substantially different from those sanctioned are in fact initiated the provisions of the section are not complied with and there will be no jurisdiction for a Court to entertain the proceedings.

It cannot be held that the section requires any particular form of sanction or even that it should be always in writing. What is necessary is that if challenged by a defendant or accused person, the plaintiff or the prosecutor should be able to establish to the satisfaction of the Court that the requisites of the sanction have been complied with in respect of the sanction on which he relies, so that the Court can be satisfied that it has jurisdiction to entertain the particular proceedings before it. 48 C.W.N. (F.R.) 66=I.L.R. (1944) Kar. (F.C.) 54=A.I.R. 1944 F.C. 25=(1944) 1 M.L.J. 207 (F.C.). See also 1944 Oudh 147.

SEC. 110: APPEALS UNDER—PROCEDURE.—Appeals under S. 110 of the Act may be made by petitions setting out the objections *seriatim* in a manner analogous to grounds of appeal. I.L.R. (1940) 2 Cal. 127=1940 Cal. 529.

(e) an order under section 87 directing an inquiry by an auditor or actuary; or

(f) an order made in the course of the winding up or insolvency of an insurer or a provident society.

(2) The Court having jurisdiction for the purposes of sub-section (1) shall be the principal Court of civil jurisdiction within whose local limits the principal place of business of the insurer concerned is situate.

(3) An appeal shall lie from any order made under sub-section (1) to the authority authorised to hear appeals from the decisions of the Court making the same and the decision on such appeal shall be final.

[¹(4) No appeal under this section shall be entertained unless it is made before the expiration of four months from the date on which the order appealed against was communicated to the appellant.]

THE JUDICIAL OFFICERS PROTECTION ACT (XVIII OF 1850).

[4th April, 1850.]

An Act for the protection of Judicial Officers.²

Preamble.

For the greater protection of Magistrates and others acting judicially; It is enacted as follows:—

1. No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any

Non-liability to suit of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders.

Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of;

and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same.

LEG. REF.

¹ Added by S. 60 of Act XIII of 1941.

² SHORT TITLE, "The Judicial Officers Protection Act, 1850". See the Indian Short Titles Act (XIV of 1897).

SEC. 1: SCOPE OF ACT.—The Act does not probably contemplate the protection of a Judge from a suit for damages for breach of contract, but the language of the Act is sufficiently wide to grant protection even against a suit of that nature. 131 I.C. 675=1931 A.L.J. 41=1931 All. 189 (F.B.). The Act has no bearing whatsoever on the case of a contract into which a Judge may enter according to the general law of the land. Enforceability of security bond executed in the name of the judge considered. 1931 Oudh 99. If the act complained of against a judicial officer is in its nature judicial, and within his jurisdiction, he is not liable to be sued, even though the act was done maliciously. If, on the other hand, he acts without jurisdiction, his liability would depend, not on whether the act was malicious and without reasonable and probable cause, but on whether it was within the protection of the Act. (12 All. 115, Ref.) 1933 All. 749.

Where, after becoming *functus officio* a Judicial Officer adds a false statement to his

order which is designed to help one of the parties, it will be a sufficient answer to a contention based upon the Judicial Officers Protection Act, S. 1 to say that it is impossible to believe that the defendant thought that he had jurisdiction to do the act complained of. 1942 A.L.W. 63. As to procedure for instituting criminal prosecution against judges and public servants, see Act V of 1898, Sec. 197. By Sec. 1 of the Act, a judicial officer is protected if he made the order in the discharge of his judicial duties whether or not within the limits of his jurisdiction, provided that he at the time, in good faith, believed himself to have jurisdiction to pass the order. 'Jurisdiction' in the section is to be taken in the sense of authority or power to act in the matter and not in the sense of authority or power to act in a particular manner. Any person executing such an order within the 'jurisdiction' of a judicial officer is equally protected. An order of a Magistrate for the search of a shop and seizure of certain tins of oil, therein, though not in the prescribed form, and the carrying out of such an order by a police officer were held to be alike protected, even though the prosecution with reference to which the order was made, ultimately failed. I.L.R. (1938) 1 Cal. 581=42 C.W.N. 50=A.I.R.

1938 Cal. 177. The term "jurisdiction" means authority or power to act in a matter, and not authority or power to do an act in a particular manner. In the matter of warrants, the protection afforded by the section is not against suit for executing lawful warrants or orders, but against suits for executing warrants or orders, not lawful, provided that such warrants or orders have been issued by a judicial officer in a matter within his jurisdiction, and not merely in a matter in which such judicial officer has authority or power to issue the particular warrant. The term "jurisdiction" should not be construed as meaning authority or power to issue the warrant in a particular matter and in the particular manner in which it is issued. 12 A. 115. (10 M.L.J. 232, Diss.). See also 30 Bom. 241=7 Bom. L.R. 95; L.B.R. (1872-1892) 83; 8 C.L.J. 75; 2 M.H.C.R. 396; 36 Cal. 433=13 C.W.N. 458; 40 C.W.N. 50. An order of a Magistrate for the search of a shop and seizure of certain tins of oil, therein, though not in the prescribed form, and the carrying out of such an order by a police officer were held to be alike protected, even though the prosecution with reference to which the order was made ultimately failed. (*Ibid.*) Act does not apply to acts of Governor in Council. 7 Mad. 466. Secretary of State not liable for acts of judicial officer. 59 P.W.R. 1908. Act protects a judicial officer from suits not only for acts done or ordered to be done by him in the discharge of judicial duties not only within the limits of his jurisdiction but also without the limits of his jurisdiction, provided that he, at the time of doing the act or ordering it to be done, believed himself, in good faith, to have jurisdiction to do or order the act complained of. 9 C.W.N. 591=1 C.L.J. 278; 1933 All. 749; 42 C.W.N. 50. The protection afforded to judicial officers rests on public policy. And though thereby a malicious Judge or Magistrate may be given a protection designed not for him, but for the public interest, it does not follow that he can exercise his malice with impunity. His conduct can be investigated elsewhere and due punishment awarded. 7 Bom.L.R. 951. See also 30 Bom. 241. Where the Judge acting in his judicial capacity takes in good faith all the proceedings which the law permits him to take, he is protected. See 9 I.C. 535 (All.); 45 Bom. 1089=62 I.C. 93=23 Bom.L.R. 447. Extent of protection to judicial officers is the same as in English law. 2 M.I.A. 293. Municipal councillor acting as Magistrate under Bengal Act III of 1864 is judicial officer. 13 W.R. 340. When a Magistrate directs a general search of house in view of an enquiry under the Cr. P. Code in discharge of his judicial functions he may well appeal for protection under this Act. 39 Cal. 953=39 I.A. 163=23 M.L.J. 32 (P.C.); overruling 36 C. 433=9 C.L.J. 298=13 C.W.N. 458. Plaintiffs sued a Magistrate on the allegation that the latter took him into custody and brought a

false charge against him. The trial Court dismissed suit as barred by this Act. *Held*, that the allegation in the plaint disclosed a cause of action to which the Act did not apply. The defence under the Act is as much a defence on the merits as any other defence such as limitation, etc., and the Judge must before dismissing the suit take such evidence in a case as is necessary to bring the case within the Act. 39 A. 516=39 I.C. 553=15 A.L.J. 541.

ILLUSTRATIVE CASES.—Where a Magistrate acts without jurisdiction in the *bona fide* belief that he has jurisdiction, he is protected by the Act, and no suit will lie. 10 M.L.J. 232. See also 12 A. 115. Act does not protect a Magistrate who has not acted with due care and attention. The mere absence of *mala fides* is no defence. A Magistrate cannot be said to have "in good faith" believed himself to have jurisdiction to do or order the act complained of, unless he, in arriving at that belief, acted reasonably, circumspectly and carefully. 13 W.R. 13; 16 W.R. 63. See also 3 B.H.C.R. (A.C.J.) 36. Suit for damages against Magistrate for false imprisonment. Magistrate had not acted in good faith believing himself to have jurisdiction, but carelessly, precipitately and without caution. This Act did not protect him from liability. 3 B.H.C.R. App. 1 (13 W.R. 13; 12 A. 115; 6 Bom.L.R. 131, Rel.) See also 9 C. 341 (P.C.). Where in connection with an application for transfer of a case pending before a Union Bench, a Magistrate calls for a report from the President of the Union Bench the report made by the President in accordance with the Magistrate's directions is made in due discharge of duty. The President is consequently entitled to protection under the Act. The fact that allegations which ought not to be made are inserted in it does not take away the protection. 40 C.W.N. 500. Negligent and wrongful payment of money by a Judge—Cause of action not disclosed. A Judge knowingly pronouncing illegal orders is responsible to the State only, and cannot be sued so long as he keeps within his jurisdiction, though he may, in certain cases and by a particular procedure, be held criminally responsible. A contrary system would produce great inconvenience by allowing "every losing party of whom there must be one in every suit, to bring an action against the Judge, and the Judge in his turn, if unsuccessful, suing the other Judge who had pronounced against him." L.B.R. (1872-1892) 83. The Act is for the protection of judicial officers, acting judicially, and officers acting under their orders, and never for the protection of the Police or a Magistrate in the exercise of police duties. 9 C. 341=9 I.A. 152 (P.C.). There is no law which authorises the Police or a Magistrate in the exercise of Police duties or an officer in command of a cantonment, in consequence of a *bona fide* belief that a person is dangerous by reason of actual lunacy to put him into confinement, in order that he may be visited and examined

THE KHADDAR (NAME PROTECTION) ACT (VIII OF 1934.)

[13th March, 1934.]

An Act to regulate the use of the words "Khaddar" and "Khadi," when applied as a trade description of woven materials.

WHEREAS it is expedient to regulate the use of the words "Khaddar" and "Khadi" when applied as a trade description of woven materials; It is hereby enacted as follows:—

Short title, extent and commencement. 1. (1) This Act may be called THE KHADDAR (NAME PROTECTION) ACT, 1934.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) This section shall come into force at once, and section 2 shall come into force in any province on such date as the ¹[Central Government] may, by notification in the Official Gazette, appoint in this behalf.

2. The words "Khaddar" and "Khadi" whether in English or in any Indian vernacular language, when applied to any woven

Words "Khaddar" and "Khadi" to be trade description. material shall be deemed to be a trade description within the meaning of the Indian Merchandise Marks Act, 1889, indicating that such material is cloth woven on hand-looms in India from cotton yarn handspun in India.

THE LAND CUSTOMS ACT (XIX OF 1924).²

No.	Year.	Short title.	Amendments.
XIX	1924	The Land Customs Act.	Amended, XIX of 1931; III of 1937.

LEG. REF.

¹ Substituted for 'Local Government' by A.O., 1937.

² For Statement of Objects and Reasons, see *Gazette of India*, 1924, Pt. V. p. 112;

by medical officers, and to keep him in confinement, until such officers can feel themselves justified in reporting whether the person is a dangerous lunatic or not; *a fortiori*, this cannot be done in the case of a *bona fide* belief of danger from impending lunacy; so that such officer would not be protected from liability in respect of such acts. 9 C. 341=9 I.A. 152 (P.C.). The act of issuing a warrant for the arrest of the complainant to hear an order which directed him to pay compensation to the accused is not an act within the "jurisdiction" of the Magistrate within the meaning of that word, as used in this Act. 10 M.L.J. 232. A Deputy Magistrate, who without reasonable cause delays proceeding with the trial of persons whom he keeps in jail, is liable, notwithstanding the above Act, to an action in damages if the prisoners are eventually acquitted. 11 W.R. (Cr.) 19. Local nuisance—Jurisdiction of Magistrate—A Magistrate is not warranted in convicting and imprisoning a person for disobeying an order, the legality of which was then properly under the consideration of an appellate Court. 2 B.H.C.R. (Cr.) 384. *Bona fide* discharge of duty by judicial Officers—Liability of Secretary of State—A Magistrate acting *bona fide*, is not liable for anything done by him in the exercise of his duty, however

wrong the act may be. This Act while freeing the agent, the person who actually commits the tort complained of and who would be the person primarily responsible, from all responsibility could not have intended to leave the principal liable. 9 C. W.N. 495=1 C.L.J. 355.

PERSONS EXERCISING JUDICIAL FUNCTIONS MUST BE IN AN ENTIRELY IMPARTIAL POSITION.—They ought not to have any interest, pecuniary or otherwise, in the subject-matter of the litigation, and they must not be in such a position, that any bias in favour of one side or the other can be imputed to him. Actual bias need not be proved, if the relationship is such that bias may seem likely. It is impossible to say that a debtor is not, from the nature of the case, subject to bias in favour of a creditor who can call in his money. It is not enough for the Court to say it is satisfied that in a particular case no bias existed or was shown. It is necessary that the position be such that the general public may feel confident that justice has been done by an impartial tribunal, and it is of the highest importance that this principle should not be encroached upon. The Assistant Taxing Master of the High Court taxed three bills of costs of the respondent bank against the applicant. At the time he was a debtor of the respondent bank, but he did not disclose the fact at the time. *Held*, that the officer was not competent to entertain the taxation and the taxation was therefore bad *ab initio*. 177 I.C. 934=40 Bom. L. R. 904=A.I.R. 1938 Bom. 431=I. L. R. (1938) Bom. 829.

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[30th September, 1924.]

An Act to consolidate, amend and extend the Law relating to the levy of duties of customs on articles imported or exported by land from or to territory outside ¹[British] India.

WHEREAS it is expedient to consolidate, amend and extend the law relating to the levy of duties of customs on articles imported or exported by land from or to territory outside ¹ [British] India; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called THE LAND CUSTOMS ACT, 1924.

(2) It extends to the whole of British India ²[* *].

(3) It shall come into force on such date³ as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) any reference to the passing or import or export of goods “by land” shall be deemed to include the passing or import or export of goods by any inland water-way constituting a foreign frontier or part of a foreign frontier;

(b) “Chief Customs authority” means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924, and includes, in relation to any power or duty⁴ which the Central Government may, by notification in the Official Gazette, transfer from the Central Board of Revenue ⁵[and entrust to a Provincial Government or an officer of a Provincial Government under section 124 (1) of the Government of India Act, 1935, that Government or officer as the case may be];

(c) “Collector of Land Customs” means a Collector of Land Customs appointed under section 3;

(d) “dutiable goods” means any article on which a duty of land customs is leviable by virtue of a notification issued under section 5 of the Indian Tariff Act, 1894;

(e) “foreign frontier” means the frontier separating any foreign territory from any part of British India;

(f) “foreign territory” means any territory ⁶[* *] which has been declared under section 5 of the Indian Tariff Act, 1894, to be foreign territory for the purposes of that Act;

(g) “land customs area” means any area adjoining a foreign frontier for which a Collector of Land Customs has been appointed under section 3; and

[* * * * *]

LEG. REF.

and for Report of Select Committee see *ibid.*, p. 135.

¹ Inserted by Act III of 1937.

² Words ‘except Aden’ omitted by A.O., 1937.

³ This Act was brought into force on the 13th December, 1924, see Gen. R. & O., Vol. V, p. 616.

⁴ For the transference of such powers and duties to the Local Government of Burma, see *ibid.*

⁵ Substituted by A.O., 1937.

⁶ Words ‘other than territory forming part of a State in India’ omitted by Act III of 1937.

⁷ Cl. (h) defining ‘Official Gazette’ omitted by A.O., 1937.

3. (1) The Central Government may, by notification in the Official Gazette, appoint,¹ for any area adjoining a foreign frontier and specified in the notification, a person to be the Collector of Land Customs and such other persons as he thinks fit to be Land Customs Officers.

(2) The Central Government may delegate ²[* *] the Chief Customs authority any power conferred upon him by sub-section (1) and ²[* *] the Chief Customs authority may delegate³ to any Collector of Land Customs any power to appoint Land Customs Officer which has been so delegated to it.

Establishment of land customs stations and determination of routes.

4. The Chief Customs authority may, by notification⁴ in the Official Gazette,—

(a) establish land customs stations for the levy of land customs in any land customs area, and

(b) prescribe the routes by which alone goods, or any class of goods specified in the notification, may pass by land out of or into any foreign territory, or to or from any land customs station from or to any foreign frontier.

5. (1) Every person desiring to pass any goods, whether dutiable goods or not, by land out of or into any foreign territory, shall apply in writing, in such form⁵ as the Chief Customs authority may by notification in the Official Gazette prescribe, for a permit for the passage thereof, to the Land Customs Officer in charge of land customs station established in a land customs area adjoining the foreign frontier across which the goods are to pass.

(2) When the duty on such goods has been paid or the goods have been found by the Land Customs Officer to be free of duty, the Land Customs Officer shall grant a permit certifying that duty has been paid on such goods or that the goods are free of duty, as the case may be.

(3) Any Land Customs Officer, duly empowered by the Chief Customs authority in this behalf, may require any person in charge of any goods which such Officer has reason to believe to have been imported, or to be about to be exported, by land from, or to, any foreign territory to produce the permit granted for such goods; and any such goods which are dutiable and which are unaccompanied by a permit or do not correspond with the specification contained in the permit produced, shall be detained and shall be liable to confiscation:

Provided that nothing in this sub-section shall apply to any imported goods passing from a foreign frontier to a land customs station by a route prescribed in that behalf.

(4) The Chief Customs authority may, by notification⁶ in the Official Gazette, direct that the provisions of this section, or any specified provisions thereof, shall not, in any land customs area specified in the notification, apply in respect of goods of any class or value so specified.

6. A Land Customs Officer empowered in this behalf by the Chief Customs authority shall pass free of duty any goods imported or exported by land by any passenger, if he is satisfied that the goods are the passenger's personal baggage in actual use.

Penalties.

7. ⁷[(1)] Any person who—

LEG. REF.

¹ For Notification making such appointments, see Gen. R. & O., Vol. V, pp. 616-617.

² Words referring to Local Government omitted by A.O., 1937.

³ For Notifications making such delegations, see Gen. R. and O., Vol. V, p. 617.

⁴ For such Notifications, see *ibid.*, pp. 618-620.

⁵ For Notification prescribing such form,

see Gen. R. & O., Vol. V, p. 620.

⁶ For such a Notification, see Gen. R. & O., Vol. V, p. 621.

⁷ Sec. 7 has been numbered as sub-sec. (1) and sub-secs. (2) and (3) newly added by Act XIX of 1931.

SEC. 7: CARRYING NON-DUTIABLE GOODS WITHOUT PERMIT—ENQUIRY INTO OFFENCE.—Where a person carries non-dutiable goods from foreign territory to British territory

(a) in any case in which the permit referred to in section 5 is required, passes or attempts to pass any goods by land out of or into any foreign territory through any land customs stations without such permit, or

(b) conveys or attempts to convey to or from any foreign territory or to or from any land customs station any goods by a route other than the route, if any, prescribed for such passage under this Act, or

(c) aids in so passing or conveying any goods, or, knowing that any goods have been so passed or conveyed, keeps or conceals such goods or permits or procures them to be kept or concealed, shall be liable to a penalty not exceeding, where the goods are not dutiable, fifty or, where the goods or any of them are dutiable, one thousand rupees, and any dutiable goods in respect of which the offence has been committed shall be liable to confiscation.

¹[(2) Where any dutiable goods, or any goods in respect of which a notification under section 19 of the Sea Customs Act, 1878, prohibiting the bringing or taking by land of such goods into British India or any specified part thereof, has been issued, are passed by land out of any foreign territory and the Land Customs Officer is of opinion that an offence under sub-section (1) has been committed in respect of such goods and that the penalty provided in that sub-section is inadequate, he may make a complaint to a magistrate having jurisdiction.

(3) Such magistrate shall thereupon inquire into and try the charge brought against the accused person and, upon conviction, may sentence him to imprisonment of either description for a term which may extend to six months, or to fine not exceeding one thousand rupees, or to both, and may confiscate the goods in respect of which the offence has been committed.]

8. No goods other than personal baggage or goods belonging to ²[the Crown] or mails shall be delivered or passed at any land customs station, except with the special permission of the Land Customs Officer in charge thereof,—

Goods not to be passed on certain days or at certain times.

LEG. REF.

¹ See footnote 7, previous page.

² Substituted for 'Government' by A. O., 1937.

without a permit, the offence if any, would be one to be dealt with only by the Land Customs Officer himself under sec. 7 and would not constitute an offence for which a complaint could be made to a Magistrate. A.I.R. 1933 M. 888=65 M.L.J. 837.

SEC. 7 (1) (c): ONUS.—For a conviction under sec. 7 (1) (c), the onus is on the prosecution to prove that the goods were taken by land from foreign territory to British territory at a time when such goods are dutiable. 1933 M. 888=65 M. L. J. 837. When a person is charged for an offence under sec. 7 (1) (c) of the Land Customs Act the onus is on the prosecution to show that dutiable goods had been taken by land from a foreign territory. Where the case for the prosecution was that the accused had previously purchased certain bars of silver in Karaikal, had arranged to bring them to a place in British India and was caught in the process of removing them from that place to another place in British India. It was held (1) that the accused was not liable to be convicted in the absence of proof that the goods had been passed by

land from the French territory into British India, (2) that in the case of non-dutiable goods, for which the accused had no permit, the offence could be dealt with only by the land Customs Officer under sec. 7 and would not constitute an offence for which a complaint could be made to a Magistrate. Where the confession of the accused is the only evidence against him, it must be taken as a whole and nothing can be read into it which is not contained there. 65 M.L.J. 837.

SEC. 7 (2).—Where two persons were charged and convicted by a sub-Magistrate for offences under secs. 7 (1) (a) and (c) respectively of the Land Customs Act because certain goods were smuggled into British India from the adjoining French territory by them, but the Sub-divisional Magistrate on appeal though confirmed the findings of fact held that the complaint filed by the Sub-Inspector of Land Customs was not competent in order to adjudicate upon the value of the goods exceeding Rs. 50. Held, that by the Government Notification under sec. 3 (1) the Sub-Inspector under sec. 7 (2) was a Land Customs Officer and hence competent to make the complaint to Magistrate. Therefore the convictions and sentences were right. (1938) 1 M.L.J. 815=47 L.W. 576=A.I.R. 1938 Mad. 712.

(a) on any public holiday within the meaning of section 25 of the Negotiable Instruments Act, 1881, or on any day on which the passage and delivery of goods at such land customs station has been prohibited by the Chief Customs authority by notification, in the Official Gazette, or

(b) on any day except between such hours as the Chief Customs authority may, by a like notification, appoint.

9. (1) The provisions of the Sea Customs Act, 1878, which are specified in the Schedule, together with all notifications, orders, rules or forms issued, made or prescribed thereunder shall, so far as they are applicable, apply for the purpose of the levy of duties of land customs under this Act, in like manner as they apply for the purpose of the levy of duties of customs on goods imported or exported by sea.

(2) For the purpose of such application the said provisions, notifications, orders, rules and forms may be construed with such alterations as may be necessary or proper to adopt them for the said purpose, but not so as otherwise to affect the substance thereof, and in particular—

(a) references to bills of entry and to shipping bills shall be deemed to be references, respectively, to applications for permits to import and applications for permits to export such as are referred to in section 5,

(b) references to a Chief Customs Officer shall be deemed to be references to a Collector of Land Customs,

(c) references to a Customs Collector shall be deemed to be references to a Land Customs Officer for the time being in charge of a Land Customs station or duly authorised to perform all, or any special duties of an officer so in charge,

(d) references to a custom-house shall be deemed to be references to a land customs station,

(e) references to a customs-port shall be deemed to be references to a land customs area,

(f) references to a foreign port shall be deemed to be references to foreign territory,

(g) references to goods brought by sea to, and to goods shipped or brought for shipment at, a customs port shall be deemed to be references respectively to goods brought across a foreign frontier into a land customs area and to goods brought to a land customs station for export.

(h) references to Officers of Customs shall be deemed to be references to Collectors of Land Customs or Land Customs Officers appointed under this Act,—

(i) references to persons on board of any vessel or boat in any port or to persons landing shall be deemed to be references to persons who have entered a land customs area from foreign territory, and

(j) references to "this Act" shall be deemed to be references to the Sea Customs Act, 1878, as applied for the purposes of this Act, or to this Act, as the case may require.

10. [Omitted by Act III of 1937.].

THE SCHEDULE.

(See Section 9.)

Provisions of the Sea Customs Act 1878 which are made applicable for the purpose of the levy of duties of land customs.

Sections 4, 8 to 10, 21, 23, 25, 26, 29 to 36, 37 (except the proviso), 38 to 40 ¹[Section 88, Section 167, Nos. 1, 8, 9, 37 to 40 and 72 to 80, Sections ²[168] to 176, 178 to 181, 182 to 184, 186 to 197 and 200 to 204.

N.B.—Extracts from the Land Customs (Amendment) Act (III of 1937).

—The following extracts from the Land Customs (Amendment) Act (III of 1937) may also be read in connection with this Act:—

Repeals. SEC. 6. (1) The Acts mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof.

(2) All notifications published and all rules and orders made, or deemed to have been made, under any of those Acts and in force immediately before the commencement of this Act shall, so far as they are not inconsistent with the Land Customs Act, 1924, be deemed to have been published and made under that Act. [Vide Sec. 6 of Am. Act III of 1937.]

THE SCHEDULE.

ENACTMENTS REPEALED.

[See Section 6 (1).]

Year.	No.	Short title.	Extent of repeal.
<i>Acts of the Governor-General in Council.</i>			
1844	VI	The Madras Inland Customs Act, 1844.	So much as has not been repealed.
1857	XXIX	The Bombay Land-customs Act, 1857.	So much as has not been repealed.
1874	XV	The Laws Local Extent Act, 1874.	So much of the Second Schedule as relates to Act VI of 1844.
1901	XI	The Amending Act, 1901.	So much of the First Schedule as relates to the Madras Inland Customs Act, 1844, and the Madras Inland Customs (Amendment) Act, 1893.
1920	XXXVIII	The Devolution Act, 1920.	So much of the First Schedule as relates to Act XXIX of 1857.
<i>Acts of the Indian Legislature.</i>			
1934	XIV	The Sugar (Excise Duty) Act, 1934.	Sub-section (2) of section 6.
1934	XXXII	The Indian Tariff Act, 1934.	Section 7.
<i>Madras Act.</i>			
1893	II	The Madras Inland Customs (Amendment) Act, 1893.	The whole.
<i>Bombay Acts.</i>			
1915	III	The Bombay Decentralization Act, 1915.	The Second Schedule.
1921	II	The Bombay Short Titles Act, 1921.	So much of the Schedule as relates to the Bombay Land Customs Act, 1857.

LEG. REF.

¹Inserted by Act III of 1937.²Substituted for '169' by Act III of 1937.

THE INDIAN LAW REPORTS ACT (XVIII OF 1875).

Year.	No.	Short Title.	Amendments.
1920	XVIII	The Indian Law Reports Act, 1875.	Repealed in part XII of 1876. Amended, XXXVIII of 1920; XXXII of 1925 and XXXIV of 1926.

[13th October, 1875]

An Act for the improvement of Law Reports.

[Preamble.] Omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

Short title.

1. This Act may be called THE INDIAN LAW REPORTS ACT, 1875.

Local extent.

It extends to the whole of British India;

Commencement.

and it shall come into force on such day as the Central Government notifies in this behalf in the

Official Gazette.

2. [Repeal of Act II of 1875.] Rep. by the Repealing Act, 1876 (XII of 1876).

3. No Court shall be bound to hear cited, or shall receive or treat as an authority binding on it, the report of any case ¹[decided on or after the said day but any Court in British India which is a High Court for the purposes of the Government of India Act, 1935] other than a report published under the authority of ²[any Provincial Government].

Authority given only to authorised reports.

Authority of judicial decisions.

4. Nothing herein contained shall be construed to give to any judicial decision any further or other authority than it would have had if this Act had not been passed.

LEG. REF.

¹ Substituted by A.O. for "decided by any of the said High Courts or by the Chief Court of Oudh on or after the said day."

² Substituted by A.O. for "any Local Government."

SECS. 3 AND 4: UNREPORTED DECISION OF DIVISION BENCH BINDING ON SINGLE JUDGE.—All that the Law Reports Act does is to ensure that Judges who have no access to the decisions themselves shall be provided with accurate copies of them. If an officially certified copy of a judgment of the High Court were to be produced in a lower Court the lower Court would be bound to treat it in the same way as it would an

officially reported judgment. A lower Court is bound by an unpublished ruling of its own High Court but not by an *obiter dicta*. Hence a single Judge of the High Court is bound by the decision of the Division Bench, even though the decision is not reported. It is the decision and not the opinion of the Court nor the report of it that makes the precedent. I.L.R. (1944) Nag. 342=213 I.C. 241=17 R.N. 1=1944 N.L.J. 1=A.I.R. 1944 Nag. 44 (F.B.). See also 1923 All. 392 (F.B.); 37 All. 359 (P.C.). The Court has a discretion to hear cases cited from unauthorized reports—and would generally give due weight to the practice prevailing in the Courts with reference to any particular report the decision from

THE LEGAL PRACTITIONERS ACT (I OF 1846).¹

Year.	No.	Short title.	Amendments.
1846	I	Legal Practitioners' Act.	Repealed in part, XVI of 1874; XII of 1876; XII of 1861: Repealed (locally) XX of 1865; IX of 1884, S. 9. Repealed in part and amended, XII of 1891. Amended, XX of 1853, S. 4.

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- 1, 2 & 3. [Repealed.]
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5. Right of barrister to plead in all Courts.
6. Enactment to cease to have force, except for specified purposes.
7. Private agreement between parties and pleaders. Calculation of pleaders' fees out of costs awarded in regular suits.

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8. Enforcement of private agreements.
9. Remuneration for opinions.
10. Power of Sadr Amin to fine pleader. Appeal.
11. Rules applied.
12. Rower of Munsiff to fine pleader. Appeal.
13. Act not to affect certain Vakils.

[7th January, 1846.]

An Act for amending the Law regarding appointment and remuneration of Pleaders in the Courts of the East India Company.

1, 2 & 3. [Repeal of enactments.] Rep. by the Repealing Act, 1874 (VI of 1874).

LEG. REF.

¹Short Title "The Legal Practitioners Act, 1846", see the Indian Short Titles Act, 1897 (XIV of 1897), General Acts, Vol. IV. This Act has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), S. 4, to be in force in the Madras and Bombay Presidencies, except as regards the Scheduled Districts. It has been declared, by notification under S. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the Scheduled Districts of Sind. See *Gazette of India*, 1880, Pt. I, p. 672. It has been declared under S. 3 (b) of the same Act that Act I of 1846 is not in force in the Scheduled Districts of Ganjam and Vizagapatam, see *Fort St. George Gazette*, 1898, Pt. I, p. 667 and *Gazette of India*, 1898, Pt. I, p. 872. It is repealed in places to which the Pleaders, Mukhtars and Revenue Agents Act, 1865 (XX of 1865) is extended by S. 3 of that Act, and in places to which the Legal Practitioners' Act, 1879 (XVIII of 1879), applies by the Legal Practitioners' Act, 1884 (IX of 1884), S. 9. It has been repealed, in so

far as it applies to Burma, by the Burma Laws Act, 1898 (XIII of 1898), S. 18 (1) and Sch. B, Bur. Code.

which is cited at the bar. 1930 M.W.N. 955=1931 Mad. 71=130 I.C. 190. The Act has no application to a decision of the Privy Council; and Courts are at liberty to refer to unauthorized reports of the Privy Council and if the report is correct, they are bound to follow it. 48 Mad. 846=1926 Mad. 20=49 M.L.J. 498. A decision published only in a private publication is not absolutely binding. 4 Rang. 146=27 Cr. L.J. 1396=1926 Rang. 164 (F.B.). A view expressed in a judgment reported in an unofficial report is entitled to respect; and any examination of it ought to start with the assumption that it is correct. It need not be followed blindly, like one that is officially published. See 8 N.L.J. 153=1925 Nag. 414. Where the facts of the case are not stated in the report of an official publication, the report would be useless and misleading. See 27 I.A. 110=27 Cal. 951 at p. 965=4 C.W.N. 631.

4. 1[* * * *] The office of pleader in the Courts of the East India

Office of pleader open to persons duly certificated.

Company shall be open to all persons of whatever nation or religion: Provided that no person shall be admitted a pleader in any of those Courts unless he have obtained a certificate in such manner as shall be directed by the Sadr Courts that he is of good character and duly qualified for the office, any law or regulation to the contrary notwithstanding:

5. Provided, 2[* * * *] that every barrister of any of Her Majesty's

Right of barrister to plead in all Courts.

Courts of Justice in India shall be entitled as such to plead in any of the Sadr Courts of the East India Company, subject, however to all the rules in force in the said Sadr Courts applicable to pleaders whether relating to the language in which the Court is to be addressed or to any other matter.

Enactment to cease to have force, except for specified purposes.

6. 1[* * * *] 2[* * * *] Section 52, Regulation II, 1827 of the Bombay Code, shall cease to be enforced, excepting for the purpose specified in section 7 of this Act.

7. 1[* * * *] Parties employing authorized pleaders in the said Courts

Private agreement between parties and pleaders.

shall be at liberty to settle with them by private agreement the remuneration to be paid for their professional services, and 4[*] it shall not be necessary to specify such agreement in the vakalatnama:

Provided that when costs are awarded to a party in any regular suit,

Calculation of pleaders' fees out of costs awarded in regular suits.

original or appeal, decided on the merits, against another party, the amount to be paid on account of fees of pleaders shall be calculated according to the rules contained in 5[the section of the Regulation] specified in section 6 of this Act; and that when costs are awarded in other cases the

In other cases.

amount to be paid on account of such fees shall be one-fourth of what it would have been in a regular suit decided on its merits.

8. 1[* * * *] Private agreements between parties and their pleaders

Enforcement of private agreements.

respecting the remuneration to be paid for professional services shall not be enforced otherwise than by a regular suit.

9. 1[* * *] 6[* * *]

Remuneration for opinions.

Persons taking 7[*] opinions from authorized pleaders shall be at liberty to settle with them by private agreement the remuneration to be paid for such opinions.

Power of Sadr Amin to fine pleader.

10. 1[* * * *] Whenever a pleader has rendered himself liable to a fine in the Court of a principal Sadr Amin or Sadr Amin, it shall be competent to such Principal Sadr Amin or Sadr Amin to impose such fines: Provided that

LEG. REF.

¹ The words "And it is hereby enacted that" repealed by Act XVI of 1874.

² The words "nevertheless, and it is hereby enacted" repealed by *ibid*.

³ The words and figures "Section 25. . . Madras Code, and" repealed by Act XII of 1891.

⁴ The word 'that' repealed by Act XII of 1876.

⁵ Substituted by Act XII of 1891 for "the sections of Regulations".

⁶ The words and figures "so much.

and that" repealed by Act XII of 1876.

⁷ The word 'such' repealed by *ibid*.

Sec. 4.—S. 4 does not extend to barristers and attorneys of the Supreme Courts. See S. 4 of the Pleaders Act, 1853 (XX of 1853).

Sec. 6.—Object of this Act is to bring legal practitioners under the control of the Court, so that they may not be able to oppress people by extortion. See 15 C. 638. See also 1 B.H.C. (A.C.) 102.

Appeal. an appeal from all orders imposing such fines shall lie to the Zila or City Judge, whose decision thereon shall be final.

11. ¹[* * * *] The rules applicable to pleaders in the Courts of the Zila and City Judges shall henceforth be applicable, so far as they are capable of application, to pleaders in the Munsif's Courts.

Power of Munsif to fine pleader.

12. ¹[* * * *] Whenever a pleader has conducted himself in such a manner in the Court of a Munsif as would have rendered him liable to a fine if he had so conducted himself in the Court of a Zila or City Judge, it shall be competent to such Munsif to impose such fine: Provided that an appeal from all orders imposing such fine shall lie to the Zila or City Judge, whose decision thereon shall be final.

Appeal.

13. ¹[* * * *] Nothing in this Act contained shall apply to vakils who may be employed in the Courts of the Village Munsifs, or before the Village or District panchayats, or before the Collectors of Zilas, under the provisions of Regulations ²IV, V, ³VII and XII, 1816, of the Madras Code.

Act not to affect certain vakils.

THE LEGAL PRACTITIONERS ACT (XX OF 1853).⁴

Year.	No.	Short title.	Amendments.
1853	XX	The Legal Practitioners Act, 1853.	Repealed in part, XIV of 1870. Repealed (locally), XX of 1865; IX of 1884, S. 9.

LEG. REF.

¹ Vide footnote 1 at p. 749.

² For Reg. IV of 1816, the Madras Village Courts Act I of 1888 should now be read wherever that Act is in force, see S. 2 (3) of that Act.

³ Reg. VII of 1816 repealed by the Madras Civil Courts Act (III of 1873).

⁴ Short title. "The Legal Practitioners Act, 1853." See the Indian Short Titles Act, 1897 (XIV of 1897).

The Act has been declared to be in force in the Madras and Bombay Presidencies, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (XV of 1874), Ss. 4 and 5.

It has been declared by notification under S. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the Scheduled District of Sindh. See Gazette of India, 1880, Pt. I, p. 672, and in the Scheduled Districts in Ganjam and Vizagapatam, see, *ibid.*, 1898, Pt. I, p. 870.

It has been repealed in places to which the Pleaders, Mukhtars and Revenue Agents Act, 1865 (XX of 1865), is extended, see S. 3; and in places to which the

Legal Practitioners Act, 1879 (XVIII of 1879), applies by the Legal Practitioners Act, 1884 (IX of 1884), S. 9. Act XX of 1865 was repealed by Act XVIII of 1879.

It has been repealed, so far as it applies to Burma, by S. 18 (1) of the Burma Laws Act, 1898 (XIII of 1898), Bur. Code, Vol. I.

SEC. 10.—A pleader who presses a Court to put a question which the Court considers improper, and insists on a note being made of his request, is not liable to fine under Act I of 1846. No opinion was offered on the point whether such conduct on the part of a pleader amounted to an offence under S. 228 of the Penal Code. Where the pleader under the above circumstances was fined for an offence under S. 228 without being called on to make a statement in his defence, *held*, that the procedure was irregular and that though there was no appeal from the order, the High Court could in revision interfere with the order on account of such irregularity. 7 B. H. C. (A.C.J.) 102.

[8th December, 1853.]

An Act to amend the Law relating to Pleaders in the Courts of the East India Company.

WHEREAS it is expedient to amend the law relating to Pleaders in the Courts of the East India Company; It is enacted as follows:—

1. [Repeal of enactments.] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

2. ¹No pleader shall be bound to attend in any of the Courts of the East India Company, on any day fixed for the transaction of civil business, or to notify to the Court his inability to attend, unless he shall be employed in some cause or business which, according to the practice of the Court, may be heard or transacted therein on that day, anything in any law or regulation to the contrary notwithstanding.

3. Every attorney on the roll of any of Her Majesty's Supreme Courts of Judicature in India shall be entitled as such to plead in any of the Sadr Courts of the East India Company, subject however to all the rules for the time being in force in the said Sadr Courts respectively, applicable to barristers pleading therein, whether relating to the language in which the Court is to be addressed or to any other matter.

4. That part of section 4, Act No. I of 1846 which provides that no person shall be admitted a pleader in any of the Courts of the East India Company, unless he have obtained a certificate in such manner as shall be directed by the Sadr Courts that he is of good character and duly qualified for the office, shall not extend to barristers or attorneys of any of the said Supreme Courts; but every such barrister and attorney shall be entitled as such to plead in any of the Courts of the East India Company subordinate to the Sadr Courts, subject to all the rules in force in the said subordinate Courts respectively applicable to pleaders therein, so far as such rules relate to the language in which the Court is to be addressed or to any other matter connected with pleading therein.

THE LEGAL PRACTITIONERS ACT (XVIII OF 1879).

Year.	No.	Short title.	Amendments.
1879	XVIII	The Legal Practitioners Act, 1879.	Amended, IX of 1884; IX of 1896; I of 1903; I of 1908; XV of 1926; XXXVIII of 1926. Repealed in part, XVIII of 1919; XI of 1923; XXI of 1926; I of 1938.

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LEG. REF.

¹ S. 2 of this Act has been repealed in

Bombay by the Bombay Pleaders Act, XVII of 1920, Bom. Code, Vol. V.

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10. No person to practise as pleader or mukhtar unless qualified.

Revenue-agents may appear, plead and act in Munsif's Courts in suits under Bengal Act VIII of 1869.

11. Power to declare functions of mukhtars.

12. Suspension and dismissal of pleaders and mukhtars convicted of criminal offence.

13. Suspension and dismissal of pleaders and mukhtars guilty of unprofessional conduct.

14. Procedure when charge of unprofessional conduct is brought in subordinate Court or revenue office.

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42. [*Repealed.*]

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THE SECOND SCHEDULE.—VALUE OF STAMPS FOR CERTIFICATES.

THE LEGAL PRACTITIONERS ACT (XVIII OF 1879).¹

[29th October, 1879.]

An Act to consolidate and amend the Law relating to Legal Practitioners.

WHEREAS it is expedient to consolidate and amend the law relating to Legal Practitioners in the Lower Provinces of Bengal, the North-Western Provinces, the Punjab, Oudh, the

Preamble.

LEG. REF.

¹ For the Statement of Objects and Reasons, see *Gazette of India*, 1878, Pt. V, p. 381. For Reports of the Select Committee, see *ibid.*, 1879, Pt. V, pp. 51 and 841; for Civil Rules of Practice made by the High Court of Madras under this Act, the Code of Civil Procedure and certain other Acts, for observance by Subordinate Civil Courts in that Presidency except the Madras Small Cause Courts. See *Fort St. George Gazette*, 1905, Supplement, p. 1. See now Civil Rules and Circular Orders, 1928 by Madras

High Court. This Act has been declared in force in Angul and the Khondmals by the Angul District Regulation, 1894 (I of 1894), S. 3, Ben. Code, and by notification under S. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), in the Districts of Hazaribagh, Lohardaga and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum, see *Gazette of India*, 1881, Pt. I, p. 504. The District of Lohardaga (now called the Ranchi District *Calcutta Gazette*, 1899, Pt. I, p. 44) included at this time the District of Palamu

Central Provinces and Assam, and to empower¹ each of the Local Governments of the rest of British India to extend to the territories administered by it such portions of this Act as such Government may think fit; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, commence-
ment.

1. This Act may be called THE LEGAL PRACTITIONERS ACT, 1879, and shall come into force on the first day of January, 1880.

LEG. REF.

which was separated in 1894. The whole Act, except S. 36 as substituted by S. 4 of Act XI of 1896, is repealed in the North-Western Frontier Province by the N.-W. F. Province Law and Justice Regulation, 1901 (Reg. VII of 1901), S. 5, Sch. III, P. and N. W. Code.

¹ Under this power the Act has been extended, subject to certain omissions, and so far only as it relates to judicial Courts, Civil and Criminal to the Madras Presidency, except the Scheduled Districts, from 1st April, 1882, see *Fort St. George Gazette*, 1881, Pt. I, pp. 491 and 707. Ss. 3 and 4 of the Act have been extended to the Regulation Districts of the Bombay Presidency, see *Bombay Government Gazette*, 1885, Pt. I, p. 290. Sections [except clauses (a), (b), (c), (d) and (f) thereof] 34, 36 and 40 have been extended to the whole of the Bombay Presidency, except the Province of Sind (*Bombay Gazette*, 1904, Pt. I, p. 1635) and to the Province of Sind (*Ibid.*, 1905, Pt. I, p. 634).

Ch. I, S. 40, Sch. II, and so much of Chs. III, V, VI and VII as relates to pleaders, have been extended to Coorg, see *Mysore Gazette*, 1879, Pt. I, p. 355; see also Notification No. 44, dated 11th November, 1891, *Coorg District Gazette*, see 1899, Pt. I, p. 122, extending Ss. 3, 13 and 36 as amended by Act XI of 1896 so far as they relate to pleaders. S. 3 and Chs. II, III, V to VIII, and the second schedule were extended to Lower Burma, with effect from 16th April, 1900, see *Burma Gazette*, 1900, Pt. I, p. 320, *Bur.R.M. Burma Gazette* 1908, Pt. I, p. 18 (extending S. 20). Ss. 4 and 41 were extended to Ajmer-Merwara by the Chief Commissioner's Notification No. 28 C.C., dated 21st April, 1927. See *Gazette of India*, 1927, Pt. II-A, p. 214.

SEC. 1: CONSTRUCTION OF ACT AND SCOPE.—(Per *Full Bench*).—The Act does not merely consolidate pre-existing law but also amends it, which implies both addition to and derogation from the pre-existing law. It is a complete Code in itself as regards the subject it deals with. 1930 A.L.J. 402 = 1930 All. 225 (F.B.). (Per *Full Bench*): Inherent powers of the Supreme Court of Calcutta were not conferred on the Allahabad High Court by the Indian High Courts Act of 1861 and no power to exercise inherent disciplinary jurisdiction over legal practitioners independently of the Legal Practi-

tioners Act and the Indian Bar Councils Act now exists in the Allahabad High Court in respect of their professional or other misconduct. 1930 A.L.J. 402 = 1930 All. 225 (F.B.). No minor can appoint an attorney and if he does, the attorney has no valid appointment under which he can act. 1934 A.L.J. 387 = 35 Cr. L. J. 1053 = 1934 All. 589.

JURISDICTION OF HIGH COURT TO REINSTATE DEBARRED PLEADER.—CONSIDERATIONS.—The High Court has jurisdiction, in the exercise of its general power of superintendence over pleaders, to reinstate on the Roll and to re-admit a pleader who had been struck off the Roll for professional misconduct. I.L.R. (1937) Bom. 99 = 38 Bom. L.R. 1161 = 1937 Bom. 48. As to the considerations to be had by the High Court in cases of reinstatement after disbarment, see I.L.R. (1937) B. 99; 1939 Rang. 78; I.L.R. (1937) All. 411 = 1936 A.L.J. 1396 = 1937 All. 50 (F.B.); 14 Rang. 390 = 1936 Rang. 368 (S.B.); I.L.R. (1939) Bom. 99 = 38 Bom.L.R. 1161; 1939 Rang. 142 = 1939 Rang. L.R. 213 (S.B.); 45 M. L. J. 639; I.L.R. (1940) Mad. 81; I.L.R. (1940) Mad. 84; 1940 Rang. 32; (1939) 2 M.L.J. 630 (F.B.).

DUTIES OF LEGAL PRACTITIONERS.—When a solicitor takes up a case and undertakes to conduct it he is bound, whether his client is rich or poor, to proceed with due diligence, and honestly to prosecute or defend the claim, even if he is not put in funds: for it is open when he takes up the case to assure himself whether his client is a person of substance, or if necessary to insist on a sufficient advance at the outset to cover all probable costs. 34 Bom.L.R. 703 = 138 I. C. 257 = 1932 Bom. 363. It is an unwritten rule of the bar that where two counsels have been briefed in a case appearing on the daily board, one or other counsel must return his briefs in good time if there is a chance of neither being able to attend when the case is called on. 34 Bom.L.R. 1425 = 1932 Bom. 634. A resolution by the Bar Association that no member thereof should appear for the prosecution in any criminal case against any other member is a flagrant and unwarranted interference with the rights of legal practitioners, contrary to the best traditions of the Bar and to all accepted notions of forensic propriety. 36 C.W.N. 294 = 1932 Cal. 370. It is incumbent on counsel to prepare cases before coming to Court. The time of the Court should not be taken by search for relevant passages during trial in

Local extent.

This section and section 2 extend to the whole of British India.

The rest of this Act extends, in the first instance, only to the territories respectively administered by the Lieutenant-Governors of the Lower Provinces of Bengal, the North-Western Provinces and the Punjab, and the Chief Commissioners of Oudh, the Central Provinces and Assam. But any other Provincial Government may from time to time, by notification in the Official Gazette, extend all or any of the provisions of the rest of this Act to the whole or any part of the territories under its administration.

Court; client should also supply counsel with the necessary copies and records. 1939 A. L.J. 118.

DUTY OF LEGAL PRACTITIONERS—CLIENTS WITH CONFLICTING INTEREST.—There is no such thing as a general agency between pleader and client. The contract of agency becomes complete when the Vakalat is executed and ends with the termination of the suit. 50 M. 249=1927 Mad. 157=51 M. L.J. 804. See also 12 Mys.L.J. 222=39 Mys.H.C.R. 203. A pleader employed by a party to a proceeding before a Court is bound faithfully and exclusively to serve that party throughout the whole proceeding. The pleader in the mofussil is not merely an Advocate. He is the confidential legal adviser of his client and does for him those things which in the Presidency towns are often done by solicitors. A pleader must not accept a vakalatnama when he knows that he cannot act for his client throughout the proceedings. 14 Bom.L.R. 700=16 I. C. 788=36 Bom. 606. See 1939 Rang. L. R. 514=1939 Rang. 183 (S.B.).

AUTHORITY TO COMPROMISE.—An advocate has no authority to compromise the suit without a power of attorney from his client. 8 R. 290=127 I.C. 604=1930 R. 313. A vakalatnama which empowers a pleader to file a compromise cannot be held to empower him to enter into a compromise and sign it for the party. 125 I.C. 171=1930 O. 112. But see 58 M.L.J. 551 (P.C.). Although vakalat gives power to pleader to compromise still if the compromise is purported to be entered into not on the basis of such power, the compromise would not be binding on the client. 161 I.C. 919=1936 Cal. 68. The power to compromise a suit is inherent in the position of an advocate. The implied authority can however be countermanded by the express directions of the client. Where a legal practitioner was engaged by a pardanashin lady in an application for the appointment of receiver but it appeared that the client had in fact conferred a general authority on the counsel and was also aware of the negotiations leading to the compromise, held, that the advocate could compromise the suit by virtue of his implied authority and that the compromise was binding on the client. 57 I.A. 133=57 C. 1311=58 M.L.J. 551 (P.C.); 17 Lah. 456=1936 Lah. 199. But see 29 S. L.R. 437=163 I.C. 240=1936 Sind 59; I.L.R. (1939) Lah. 433=1939 Lah. 439 (Counsel should personally satisfy himself by reference to the lady herself whether she

is agreeable to the compromise or confession of judgment).

ADMISSIONS BY LEGAL PRACTITIONERS.—Admission of counsel on a point of law is not binding on his client. 1933 C. 513=144 I.C. 701; 144 I.C. 610; 1935 L. 71; 12 Mys.L.J. 190=39 Mys.H.C.R. 156. Any admission or concession on the part of a pleader on a pure question of law will not estop the party from questioning it in appeal or revision. 35 L.W. 393=1932 M. 409. See also 11 Mys.L.J. 71. An admission by counsel of a point of law, cannot be binding upon a Court and a Court need not consider itself precluded from deciding the rights of the parties on a true view of the law. 187 I.C. 770=1940 P.C. 90 (P.C.). See also 1938 L. 368. An admission by a counsel on a mixed question of fact and law is not final and binding on the client and the question can be re-opened on appeal when there is no question of springing a surprise on the other party. 137 I.C. 349=1932 O. 172; 151 I.C. 376=36 Bom.L.R. 334=1934 B. 156. An admission by counsel, even if it is one purely of fact, does not bind the client, if it is made under a misapprehension. 38 Bom.L.R. 1058. See also 22 Pat. 220. Although an admission by an Advocate on a point of law is not binding upon a party, if on the basis of such an admission a decree has been passed, the decree is binding upon the party unless it is set aside under the procedure prescribed by law. 181 I.C. 721=20 P.L.T. 685=1939 Pat. 580.

COUNSEL'S POWER TO MAKE ADMISSION IN OR REFER TO ARBITRATION OR COMPROMISE SUITS.—A counsel's powers to make admissions in or refer to arbitration or compromise suits in which he is instructed are as follows: (1) A counsel has authority to make admissions in Court on behalf of his client on matter of fact relevant to the issues in the case in which he is engaged. Admissions on questions of law would not bind the client. (2) A counsel has authority to confess judgment, withdraw or compromise, or refer to arbitration the suit in which he is instructed if his doing so is for his client's advantage or benefit even though he has no express authority from his client. (3) A counsel cannot without express authority agree to compromise or refer to arbitration matters unconnected with the subject-matter of the suit in which he is instructed. (4) Where in the course of a suit a counsel makes an admission as to a collateral matter, or gives up a doubtful claim which is not a subject-matter of the suit,

there is a presumption that the counsel acts under instructions if the admission or the giving up of the doubtful claim is for the benefit of the client. (5) It is a question of fact in each case whether the counsel acts under instructions when he compromises or refers to arbitration matters not involved in the suit and the Court on a consideration of the probabilities and the circumstances of the case can find that the counsel acted on instructions even though there is no direct evidence on the point. (6) A counsel has no power to make an admission in, or compromise or refer to arbitration, a suit if he is instructed not to do so, without express authority from his client. 1935 A.L.J. 953 =1935 All. 626. See also 58 B. 447=1934 B. 101; I.L.R. (1940) Kar. 467; 1940 A.L.J. 18; 185 I.C. 669; 40 P.L.R. 664=1938 Lah. 766; 1941 A.M.L.J. 80; 1942 O.W.N. 685=1942 O.A. 543; 1943 Oudh 128; I.L.R. (1943) Kar. 438=1944 Sind 51; 213 I.C. 364. Where the power-of-attorney expressly confers the authority to settle the suit by a compromise it is not necessary for an advocate to consult his client before entering into the compromise if he acts in good faith. 15 L. 626=151 I.C. 786 (2) =1934 L. 393. Counsel in India have the same implied authority to compromise an action as have counsel in the English Courts. But if such authority is invoked to support an agreement of compromise the circumstances must be carefully examined. In the first instance the authority is an actual authority implied from the employment as counsel. It may however be withdrawn or limited by the client; in such a case the actual authority is destroyed or restricted; and the other party if in ignorance of the limitation, could only rely upon ostensible authority. But if in fact counsel has had his authority withdrawn or restricted, the Courts will not feel bound to enforce a compromise made by him contrary to the restriction, even though the lack of actual authority is not known to the other party. 62 I.A. 196=14 P. 545=1935 P.C. 119. See also 1943 M.W.N. 544=1943 Mad. 672=(1943) 2 M.L.J. 168. The authority of a pleader who is authorised by his vakalatnama to compromise the suit in which he is engaged by a party does not extend to matters which are not the subject-matter of the suit. Where the pleader enters into a compromise which involves the sale of his client's property which is not in suit at all, the Court should not pass a decree in terms of the compromise unless the client himself is a party to it. 45 Bom. L.R. 1045=1944 Bom. 46. In an action by transferee challenging a mortgage as collusive, a compromise to the effect that mortgagee should buy out the plaintiff for agreed price, cannot be entered into by counsel as it is a *matter collateral to the suit*. 62 I.A. 196=1938 P.C. 119. Where a vakalatnama gives power to a vakil, to enter into a compromise, a compromise entered into by him is binding on his client especially when the

compromise is eminently fair and reasonable one. 1933 A. 955. Where a vakalatnama given by a party to his pleader merely authorises the latter to sign a compromise petition and does not give any specific authority to the pleader to negotiate with the other party and settle the terms of the compromise any compromise entered into by the pleader without the consent of his client, which results in a decree, must be held to be unauthorized. 41 Bom.L.R. 994=1939 Bom. 490. Where the vakalatnama which was executed by a client contained among other things the following clause "*avasyamand* (if necessary or expedient) you are to compromise the suit or raise contest." *Held*, that to decide whether it was necessary or expedient to compromise the suit, was within the discretion of the pleader, and not the Court, and that a compromise entered into by him was binding on his client. 146 I.C. 219=38 L.W. 341=1933 M. 734.

AGREEMENT TO ABIDE BY OATH—OFFER OF SPECIAL OATH TO OTHER SIDE—CLIENT—IF BOUND.—A pleader who holds a vakalatnama which distinctly authorizes him to file a petition of compromise with or without the signature of his client, to withdraw the suit by putting in petition without the party's signature, and to take whatever steps the pleader considers necessary in the suit has clearly authority to agree to the case being decided on the oath taken by the other side in a special manner. It is not open to the party to plead that he is not bound by the act of his pleader, because he has not himself signed the oath of agreement or to say that the pleader had no authority. 182 I.C. 791=20 P.L.T. 131=1939 Pat. 222. Pleaders should be careful not to make any offer on behalf of their clients to be bound by any special oath except in the presence of the party or on express written authority to that effect. 172 I.C. 421=I.L.R. (1940) Nag. 310=1938 Nag. 64.

ABANDONMENT OF PLEA.—Counsel for the defendant definitely gave up the plea regarding limitation after the evidence of all the issues had been taken, the question was held to be one of law, that the party was not bound by the statement of his counsel and that as the opposite party was not prejudiced, the plea can be taken in appeal by the party. 1933 L. 404. See also 147 I.C. 95=1934 P. 25 [Abandonment of claim for damages. See also 25 M. 367 (P.C.)]. If counsel deliberately abandons questions which are mixed questions of law, custom and facts, it is not open to the litigant to go behind the admission and re-agitate the same points in the Court of second appeal. 13 L. 185=1932 L. 343. See also 1935 L. 71=16 L. 328. Where in the trial Court an issue is not pressed by the counsel and subsequent to that there is an authoritative decision on the point, the party is not bound by the admission of his counsel in the trial Court and can raise the point in appeal. 1940 O.W.N. 1249. As to power to com-

promise or withdraw plea in income-tax proceedings, see 1940 I.T.R. 482.

AUTHORITY TO ACT—APPEARANCE WITHOUT VAKALATNAMA—PROCEDURE.—When an accused is represented by a pleader without vakalatnama in an appeal, the proper course is to adjourn the hearing of the appeal until it is produced and thus afford the accused an opportunity of being represented by a pleader. 56 I.C. 61=21 Cr.L.J. 413. A mukhtar though appearing in trial Court cannot file an appeal unless his power of attorney authorises him to do so. Mere general words in power are not sufficient (132 I.C. 895, Dist.) 1933 L. 504. As to Advocate accepting vakalat and failing to appear at the hearing, see 1939 M.L.R. 16 (C.). It is ordinarily the duty of an advocate to be present, or to make suitable arrangements for the conduct of the case, and the Courts are not to be inconvenienced by the postponement of cases until the proper advocate is available. 1939 Rang. 1=1939 Rang.L.R. 514=182 I.C. 77.

AUTHORITY—CONSTRUCTION—GENERAL POWERS FOLLOWED BY SPECIFIC INSTANCES OF SPECIAL AUTHORITY.—Per *F.B. (Mukerji, J., dissenting.)*—In the case of an appointment of a vakil by vakalatnama to conduct a case, it is *prima facie* implied that he has full power to conduct the case in the way he considers best and therefore such a document should be construed liberally. If the vakalatnama confers very wide powers in very general terms on the vakil, and authorizes him to conduct the case and to take other proceedings and expressly states that whatever is done by the vakil should be accepted by the litigant and then it goes on to specify certain particularly important powers like those of appointing arbitrators and compromising disputes, etc., unless there is a special clause excluding his authority to act in a particular way in the course of the suit, such an authority should be implied. The mere fact that certain important powers are emphasised in particular does not in any way derogate from the general authority conferred upon him. It follows, therefore, that when general authority to conduct a case is conferred upon a vakil and it is followed by special powers to compromise a case and to refer the dispute to arbitration, the power to abide by the oath of a witness whether under the Oaths Act or by way of an agreement or compromise is necessarily implied. 146 I.C. 84=1933 A.L.J. 1127=1933 A. 861 (F.B.).

AUTHORITY—PRESUMPTION OF—ISSUE OF NOTICE.—When a member of the Bar writes a letter purporting to be instructed by a client, there is a presumption, until the contrary is proved, that the letter is written under instructions. 144 I.C. 996=1933 R. 147.

ACTS REQUIRED FOR PROPER CONDUCT OF TRIAL—IMPLIED AUTHORITY OF PLEADER.—A counsel appearing in the case from the very nature of his duties and for the purposes of a proper conduct of the case must be deemed

to have implied authority to admit or deny a document, to press or withdraw an issue in the case, to examine a witness or call no witness and do such other acts which are required for the proper management and conduct of the trial. 14 Luck. 723=1939 Oudh 257.

STATUS OF BARRISTER PRACTISING AS AN ADVOCATE IN INDIA.—The right of a Barrister-at-Law to appear in the High Court or in the Courts subordinate to it arises from his enrolment as an Advocate and not otherwise. The peculiar position of a Barrister-at-Law in England disappears here on his enrolment as an Advocate; his rights, duties and disabilities are the same as those of any other non-Barrister Advocate. He can see the client, settle his fees, and act for him, with or without the intervention of a solicitor. A Barrister practising as an Advocate in the High Court can accordingly sue his client for recovery of fees due. (25 A. 509, overruled.) 55 All. 570=1933 A. L.J. 451=1933 A. 417 (F.B.). See also I.L.R. (1943) Lah 721=44 Cr.L.J. 181. (Status of pleader in Court). I.L.R. (1943) Lah. 721=44 Cr.L.J. 181. (Rules of conduct of Bench and the Bar.)

ADVOCATES AND PLEADERS—NO DISTINCTION.—Though the methods of appointments of advocates and higher or lower grade pleaders are different and the discipline by which they are controlled arises from different sources, their duties as representing their clients are similar and the principles applying in one class of legal advisers ought to be applied in the case of another. 1939 Rang.L.R. 514=1939 Rang. 183 (S.B.).

ADVOCATE AND COURT.—It is difficult to lay down any hard and fast rule as to what expressions a lawyer can use with impunity while addressing the Court and what should ordinarily be tolerated by it. Hyper-sensitiveness on the one side or rudeness on the other must be avoided at all costs. An over-subservient Bar would be one of the greatest misfortunes that could happen to the administration of justice. At the same time, a lawyer is under obligation to do nothing that shall detract from the dignity of the Court, of which he is himself a sworn officer and assistant. He should at all times pay deferential respect to the judge, and scrupulously observe the decorum of the Court room. 44 P.L.R. 511=A.I.R. 1943 Lah. 14.

ETIQUETTE—MEMBER OF CO-OPERATIVE SOCIETY—APPEARANCE FOR SOCIETY.—Merely because a legal practitioner is a member of a Co-operative Society he is not prevented by any rule of professional etiquette from accepting instructions from the Society of which he is a member. There can be no impropriety in his doing so provided that his engagement is not directly due to his being a member. But it is improper for a legal practitioner who is Director to appear for remuneration for the Society in its legal business. 56 M. 970=1933 M. 682=65 M. L.J. 367.

DUTIES AND OBLIGATION ON DRAFTING PLEADINGS—GRAVE AND SERIOUS ALLEGATIONS.

—Per *Thom, J.*—No counsel is entitled to frame a serious charge against a party to a litigation unless he is in possession of admissible and relevant evidence upon which, if accepted, counsel could reasonably ask the Court to hold the allegations true. It may well be that the evidence in support of the allegations is untrue and it is certainly not the duty of a counsel in the ordinary course to test the truth of the witnesses whom he intends to put into the witness box but at the conclusion of the evidence which he has led he should be in a position to submit as a reasonable proposition to the Court that the evidence which he has led if accepted establishes the allegations for which he had made himself responsible. If he is not in possession of such evidence to support them he is not entitled to make grave and serious allegations. 1935 All. 425 (F. B.). Per *Iqbal Ahmad, J.*—It is in the interest of administration of justice that too rigid a test of the conduct of an advocate in the matter of drafting pleadings should not be emphasized and that the test should be such as not to deter a counsel from fearlessly placing before the Court such allegations as their clients instruct them to make, so long as those allegations do not appear manifestly reckless and unfounded. It is no doubt the duty of counsel to use their own judgment, experience and discretion and not to make irrelevant or unduly insulting allegation in the pleadings, but it is equally their duty to embody the case of their clients in the pleadings fearlessly, provided the instructions received from the clients justify the case in the pleadings. While on the one hand a counsel is expected to be careful and not reckless in drafting the pleadings, he cannot, on the other hand assume the role of a Judge and refuse to embody allegations that his clients instruct him to make unless and until he has examined the evidence on the subject. A counsel is in one sense the mouthpiece of his client, but he does not guarantee or pledge himself for his client's veracity. Per *Allsop, J.*—On the one hand counsel must look to the interests of his client and not be deterred by fear or favour from making any allegations which in these interests it is necessary for him to make. On the other hand, he cannot take shelter behind his client and claim to be an entirely irresponsible instrument in his client's hands. There remains in him a duty and an obligation to his fellow citizens and he is certainly not entitled to make scandalous and serious allegations against those fellow citizens unless he has some basis upon which the allegations can be grounded. 155 I.C. 1043=1935 A. 425 (F.B.).

PRIVATE PLEADER.—A District Magistrate has no authority to direct other subordinate Magistrates to exercise their judicial discretion of allowing a person to practise as a private pleader in their Courts. Any person aggrieved by the refusal of any

Magistrate to allow him to appear as a private pleader in any particular case should move the High Court in revision. 16 L. W. 879=1923 M. 183.

Authority to counsel "to act and appear for the party in the *trial Court or any other Court*" includes authority to present an appeal. 33 P.L.R. 34. A mukhtar though appearing in trial Court cannot file an appeal unless his power-of-attorney authorises him to do so. Mere general words in power are not sufficient. (132 I.C. 895, Dist.) 1933 L. 504.

COSTS—LIABILITY OF LEGAL PRACTITIONER FOR — CIRCUMSTANCES JUSTIFYING ORDER AGAINST PLEADER.—There is no justification for the assumption that S. 35, C. P. Code, is not intended to cover any case where the act of a legal practitioner comes within the term 'misconduct' within the meaning of the Legal Practitioners and the Bar Councils Acts. A pleader may therefore be liable for costs of the proceedings taken by him in cases where the costs occasioned to his client are the direct result of the initiation and prosecution of the proceedings by him. Where an application for review purports to be made by a pleader personally on his own behalf and not on behalf of his client the minor or his guardian, on grounds wholly untenable, there is no justification for his action and he can be asked to pay the costs personally. 1942 Oudh 279=1942 O.W.N. 68.

AUTHORITY TO APPEAR.—Counsel who has not filed any vakalat from his client has no authority to appear for him. 12 Mys.L.J. 383.

APPEARANCE OF COUNSEL AGAINST INTEREST OF HIS CLIENT.—IF PERMISSIBLE.—A counsel should not be allowed to appear against the interests of a person who has briefed him at one or other stage of the case. It is absolutely necessary for taking opinion that the party should lay all his cards before the counsel concerned, and it is only after he has thoroughly gone into the facts of the case that a lawyer can be in a position to advise his client. In the circumstances it would be unfair to allow the counsel to appear against the same person later on, and an assurance on the part of that individual would also be of no avail in the matter. 1935 Pesh. 65 (1). It is undesirable for a member of the Bar to plead in a case concerning which he has a personal interest. 39 C.W.N. 274.

TRANSFER OF BRIEF.—PLEADERS APPEARING FOR ANOTHER.—As to duty of pleader to be in attendance at time of hearing of case, see 1940 Rang. 162 (F.B.). Where a pleader appears for another who is unable at the moment to attend Court, he ought to let the Court know that he is so appearing. 33 I.C. 831=20 C.W.N. 283. As to failure of pleader to make careful arrangements for conduct of case, see 183 I.C. 580=1939 Rang. 262. A question relating to the rival claims of different sections of the legal practitioners of the High Court cannot be

settled by a single Judge or a Division Bench of the Court. 25 C. L. J. 401=41 I.C. 313=21 C. W. N. 654. Proceedings under the Act are *quasi* criminal, and are barred by acquittal in previous criminal proceedings. 88 I.C. 279=26 Cr. L. J. 1111=1925 R. 110.

ACCEPTING BRIEF FOR OPPOSITE PARTY AGAINST PREVIOUS CLIENT.—DUTIES.—See 38 M. 650; 8 R. 446; 9 Mys. L. J. 166.

APPEARANCE.—POWER OF COURT TO RESTRAIN.—PLEADER LIKELY TO BE WITNESS IN CASE.—DUTIES OF PLEADER.—That a Judge or Magistrate has authority to restrain a pleader from appearing for either party in a case, when it would be manifestly improper for the pleader to do so, cannot be gainsaid but a very strong case must be made out before an order restraining a pleader from acting in a particular case is passed. The mere fact that the defence asserts that the pleader for the prosecution will be required as a witness for the defence, and that the Magistrate himself thinks that he will be a material witness for the defence, are not sufficient grounds for restraining the pleader from appearing in the case for the prosecution. A pleader who is conducting a case is nevertheless a competent witness therein and there is no harm in his giving evidence in a case in which he is appearing. But it is desirable that a pleader should not appear in a case if he knows or has reason to believe that he will be an important witness in the case. If he accepts the brief not knowing or having reason to believe that he will be such a witness but discovers subsequently that he is a witness on a material question of fact, he should retire from the case. 1939 Rang. L. R. 224=1939 Rang. 342. Accused has a right to choose any advocate he wants. Prosecution cannot fetter that choice by summoning the advocate as a witness. On the other hand the Court is bound to see that the administration of justice is not in any way embarrassed. If an advocate is called as a witness by the other side, it can safely be left to the good sense of the advocate to determine whether he can continue to appear as an advocate, or whether by doing so he will embarrass the Court or the client. If a Court comes to the conclusion that a trial will be embarrassed by the appearance of an advocate who has been called as a witness by the other side, and if, notwithstanding the Court's expression of its opinion, the advocate refuses to withdraw, in such a case the Court has inherent jurisdiction to require the advocate to withdraw. But the prosecution or the party calling the opposite party's advocate as a witness must in such a case establish to the satisfaction of the Court that the trial will be materially embarrassed if the advocate continues to appear as advocate for his client. 41 Bom. L. R. 282=1939 Bom. 150. See also 48 L. W. 276=(1938) 2 M. L. J. 446.

FEES.—When an Advocate enters into a contract with his client, it is appropriate

that in order to avoid any future misunderstanding as to the amount of the fees to be charged for various works, there should be a clear written contract between the parties and the amount charged should be clearly mentioned and agreed to by the client. 1936 A. L. J. 300=1936 All. 359 (F. B.). See also I. L. R. (1944) 1 Cal. 445=1944 Cal. 189 (Solicitor's lien for costs cannot prevail over monies in his hands ear-marked for a specific purpose). Before relationship of advocate and client arises by concluding a contract of service, it is open both to the client and the advocate to bargain for services in such methods as may seem proper. But after the relationship arises, the advocate should not use his privileged and responsible position to obtain anything more than a fair and just remuneration. 1937 Rang. 299. In India as at English Common Law, a solicitor has a *particular lien* which does not depend on actual possession of the property, as distinguished from possessory lien. This lien is not liable to be defeated on the ground that the assignee of a decree or the attaching creditor of the solicitor's client had no express notice of the lien. The fact of there being a fund in Court amounts to notice of the existence of a solicitor's lien. (51 B. 855, Foll.) 60 M. L. J. 133=1931 M. 183. See also 1940 Cal. 179=I. L. R. (1939) 1 Cal. 212=43 C. W. N. 290. (This lien is not defeated by the insolvency of the party). The lien of an attorney or solicitor is really an equity claimed on his behalf and is subject to all the equities between the attorney's client and any other party or parties interested in the property over which the lien is claimed. An attorney has no higher rights than his client. A plaintiff's right to set-off costs payable to him by the defendant against the sum found due from him to the defendant on the taking of accounts in the same suit is not affected by the defendant's solicitor's lien. The Courts in India have complete discretion to allow a set-off, whether in the same action or in different actions, and it extends to the setting off of costs against costs and also in a proper case to the setting off of debt or damages against costs and *vice versa*. The discretion has to be exercised judicially, having regard to the facts and circumstances of each case. The circumstances considered by the Court are matters relating to the attorney whose lien is sought to be affected irrespective of his client because as between the parties themselves there can hardly be a ground for resisting a set-off. After a set-off has already been allowed an attorney's lien is not protected. 41 Bom. L. R. 1091=I. L. R. (1940) Bom. 692=1939 Bom. 518. Costs are in theory such indemnity for the actual expenses of litigation as the Court allows. They are an indemnity to the party in whose favour they are allowed and not to the attorney engaged by that party. An attorney's lien for costs is not a charge. But the Court assists the attorney either by making a charging order as under the English practice or by making a payment order, the

course generally adopted in India. In a case where the judgment-debtor under a decree in favour of the attorney's client is unquestionably liable to pay, the Court will, without much difficulty, make an order for direct payment to the attorney of his wages by the judgment-debtor, if it is satisfied that the attorney has taken reasonable, though not exhaustive, steps to recover his wages from his client. Where the judgment-debtor has a right of set-off as, for example, when he holds a cross-decree, the attorney cannot intercept the right to set-off between the parties unless there is a fraudulent intention on their part to deprive him of his costs. 48 C.W.N. 727. Where a *solicitor is engaged by the next friend* of a minor plaintiff, the client is the next friend and not it is to the next friend, and not to the minor, that the solicitor looks for his costs. Though the solicitor has a *lien enforceable against the next friend, the lien does not exist against the minor*. Where, therefore, there is a change of next friend and a new next friend comes in, the solicitor engaged by the former next friend is bound to hand over to the new next friend the papers and documents, etc., though he may not have received his costs of the suit from the old next friend. He cannot withhold the documents, etc., from the new next friend by pleading his lien. I.L.R. (1938) Bom. 749=40 Bom.L.R. 694=1938 Bom. 418. See also 1942 O.W.N. 68. General and special lien distinguished, see 34 Bom.L.R. 703. The solicitor's lien never precludes a fair and honest arrangement between the parties unless the solicitor is in a position to prove that there was a fraudulent intention on the part of the plaintiff and defendant to cheat him of the costs payable to him by the party. 34 Bom.L.R. 721. Nature of an advocate's lien, see 55 M. 455=62 M.L.J. 185. The question whether an attorney's lien should or should not be allowed to intercept a set-off between the parties to the suit is in India a matter of discretion. The lien has no overriding priority. 34 Bom.L.R. 1429=1932 B. 619. The sum deposited by a party under O. 45, R. 7, C.P. Code, to be available for the payment of the costs of the respondents in case their Lordships of the Privy Council ordered such costs to be paid is not the subject-matter of dispute or the part of the action and therefore after the appeal is allowed a lien cannot be claimed on that amount by a legal practitioner appearing for the appellant before the High Court. *Quære*.—Whether an Advocate is entitled to claim the same lien which an ordinary Solicitor would be entitled to in any land. 1932 A. L.J. 764=1933 A. 3. Pleader's fees are to be allowed to a party on the basis of what is actually paid, or what might reasonably have been paid, whichever is less. 1928 N. 289=111 I.C. 843. A pleader including in his fee certificate the fee promised but not actually paid to him, under a misapprehension of law and not dishonestly cannot be

said to be guilty of misconduct. 58 A. 307=38 Bom.L.R. 731=40 C.W.N. 933=1936 P.C. 176=71 M.L.J. 631 (P.C.). There may be cases in which the fee due to a vakil may be adjusted otherwise than by actual payment of money. Such an adjustment, however, should be something more than a mere agreement to pay. When a promissory note, especially, a negotiable instrument, is given, it may be equivalent to payment. A certificate may not be dishonest even if no fee was received and it may be too strong an expression to describe such a certificate as a false certificate. It is doubtful if Note (ii) to R. 30 of the Legal Practitioners' Rules is strictly correct. 30 L.W. 977=57 M.L.J. 780. *Fees of junior counsel*.—Two-thirds scale adopted for taxation purposes. See 58 C. 505=1931 C. 523. According to the rules, only such sum can be taxed as legal practitioner's fee as has been actually paid and certified by the legal practitioner to whom it has been paid. Where a receiver of an insolvent's estate who happens to be a legal practitioner conducts his own case and does not pay any fees to any legal practitioner, the Court cannot direct any legal fees to be taxed as costs. 163 I.C. 831=1936 A.L.J. 698=1936 All. 489. Where several pleaders are engaged by a party to a litigation, in the absence of any agreement as to the amount of their fees, each pleader is entitled to his fees up to the full fee assessed at the hearing. It is not the rule that all of them should divide among them a single hearing fee of the amount assessed as pleader's fee in the case. 20 Pat.L.T. 352=18 Pat. 213. Where undue influence is not apparent, and a *solicitor has agreed to accept taxed costs in the event of success so as to lighten the burden on his client in the event of failure*, the agreement cannot be looked upon with disfavour, and the Court will respect the terms of such an agreement of employment. Where a solicitor for a respondent to a Privy Council appeal agrees to accept a reduced fee, stipulating that in the event of the client's success in the appeal he should be paid the full taxed costs that agreement cannot be regarded as invalid or unenforceable either in practice or in law. It is competent to the solicitor to recover the amount covered by his bill of costs from the amount of security deposited by the appellant. The High Court has power to pass a summary order directing payment out of such amount to the solicitor to whom costs are due from the respondent. I.L.R. (1939) Bom. 307=41 Bom.L.R. 410=1939 Bom. 250. Where there is an agreement to pay a Counsel a certain sum for his fee, and a certain sum as his *munshi's* remuneration, the Counsel is clearly entitled to sue for his fee and also for the *munshiana*. 40 P.L.R. 12=1938 Lah. 306. See also 1944 Cal. 198=213 I.C. 84. (Determination of agreement between pleader and client is by suit and not summary proceedings). Where a party agrees to pay his Advocate a particular fee for a

2. [*Repeal of enactments*] *Rep. by the Repealing Act* (I of 1938), S. 2 and Sch.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

particular case, the Advocate is entitled to sue for the full fee, though owing to the collapse unexpectedly of the opposite side's case the Advocate had not to do that quantity of work originally expected of him. 1942 N.L.J. 225. Under R. 34 of the Rules relating to the Legal Practitioners' fee, the fee for practitioners appearing in execution petitions in small cause or original suits shall be one-fourth of the fee allowable on the amount or value of the relief granted by the decree as calculated under R. 31, irrespective of the number of such petitions. Where a decree grants two reliefs, *viz.*, possession of immovable property, and costs, the fee allowable on a petition for execution of the portion relating to costs will be only one-fourth of the fee permissible on the amount awarded as costs. 57 L.W. 593=(1944) 2 M.L.J. 337. Attorney—Costs—Bill of costs—Instructions for brief—Looking up the law—Ascertainment of legislative practice in various places—Right to remuneration. See 44 Bom.L.R. 682.

SUIT FOR ACCOUNTS.—Even if there is no "general agency" between a counsel and client, nevertheless a suit for accounts can be maintained by the client against his counsel in respect of the moneys entrusted to the latter in the several suits in which he was engaged. (50 M. 249, Pol.). 140 I.C. 564=33 P.L.R. 1074=1933 L. 60.

TRANSACTIONS BETWEEN ADVOCATE AND CLIENT.—A pleader advanced moneys to his client and obtained a mortgage in favour of his son. In a suit on the mortgage it is incumbent on the plaintiff to prove utmost good faith; and all evidence regarding it should be preserved. Pleadings who deal with their clients must take care not only that the transaction is fair, but also that they are in a position to prove that it was fair. 1936 O.W.N. 1033=164 I.C. 945. Transactions of mortgage between a solicitor and client to secure the repayment of money advanced at the time are not ordinarily subjected by Courts to the same jealous scrutiny as, for instance, a gift from a client to a solicitor, or purchases or sales at under-value between a solicitor and client. If the money was sorely needed and was paid, the mortgagor had its benefit, the rate of interest was reasonable and the terms neither excessive nor onerous there is no reason why the transaction should not stand as a valid mortgage between the parties. 191 I.C. 94=52 L.W. 777=1940 P.C. 204 (P.C.). R. 13 of the rules of Court framed under the Legal Practitioners Act prohibits a practitioner from purchasing any interest in any decree either from their clients or any other person. Such a purchase, and execution of such a decree for a sum known to him to be in excess of that which was

actually due, amount to a grave professional misconduct. I.L.R. (1938) Mad. 399=1938 Mad. 276 (F.B.). Where the relationship between legal practitioner and his client becomes that of debtor and creditor, the pleader being allowed to retain and use the client's money as a loan, failure by the debtor to pay the money on demand does not amount to professional misconduct. Lawyers should not, except in very exceptional cases, accept loans from their clients. Where a lawyer has withdrawn money for a client and has been permitted to retain it, a document evidencing the transaction should in every case be drawn up. It is essential, in cases where the relationship of pleader and client has been changed to one of debtor and creditor, that the clearest evidence of such a change should be obtainable. But once the relationship of pleader and client is changed into one of debtor and creditor, no question of misconduct can arise, because failure by the debtor to pay the money on demand does not amount to professional misconduct. To borrow money from the client who places confidence in the pleader, when the latter is aware that it would be extremely difficult for him to repay it is most reprehensible. No lawyer should ever borrow money from a client unless he is sure that he can repay it when the client demands repayment. 18 Pat. 580=20 P.L.T. 607=1939 Pat. 343 (S.B.). *An attorney of a trustee cannot apply for payment of his costs out of the trust estate unless he gets an order against the trustee under Ch. XXXVIII, R. 48.* He must also show that the estate is indebted to the trustee for the amount claimed by him. Matters of this description cannot be investigated in a chamber application. 49 C.W.N. 263.

OBLIGATION OF COUNSEL NOT TO MAKE STATEMENTS BASED ON SURMISES.—When counsel take on themselves the responsibility of making statements of fact to the Court, the Court is entitled to assume that those statements are true in every particular, so that it may implicitly rely upon them. This is a rule which admits of no qualification and it is an honourable obligation of the Bar and of great value in the administration of justice. It is therefore improper on the part of Counsel to make statements of fact before the Court which are based on mere surmises or guesses. I. L.R. (1940) Kar. (F.C.) 52=(1940) 1 M.L.J. (Supp.) 28.

SEC. 3: LEGAL PRACTITIONER.—The right of a Barrister-at-Law to appear in the High Court or in the Courts subordinate to it arises from his enrolment as an Advocate and not otherwise. The peculiar position of a Barrister-at-Law in England disappears here on his enrolment as an Advocate; his rights, duties and disabilities are the same

as those of any other non-Barrister Advocate. He can see the client, settle his fees, and act for him, with or without the intervention of a solicitor. A Barrister practising as an Advocate in the High Court can accordingly sue his client for recovery of fees due. (25 A. 509, overruled.) 55 A. 570=1933 A. 417=1933 A.L.J. 451 (F.B.).

SOLICITOR—PERSONAL LIABILITY FOR COSTS.—Once a solicitor is on record, the opposing party is entitled to look to him, if successful for his costs, if it turned out that the so-called plaintiff is a non-existent person. (Case-law discussed.) 145 I.C. 641=1933 B. 317=35 Bom.L.R. 554.

CARE IN CHOOSING CLERKS—CHECK ON THEM.—There is a duty cast upon members of a monopolist profession, like the legal profession, to exercise care and due diligence in the persons whom they employ, and if they choose to employ a person known by them to be irresponsible without taking adequate steps to keep a close personal check upon his actions, then they are themselves at fault and will become liable to be called to account. 1938 Nag. 370.

TOUT.—To declare a person a tout it must be proved that he gets the employment in any legal business from any practitioner for moving for such practitioner. Merely looking after people's cases and writing petitions does not make a person a tout. 62 I. C. 829=22 Cr.L.J. 589. A person to be a tout must have been paid or proposed to be paid for bringing a client. 6 P. 567=102 I. C. 340=1927 P. 282. See also 28 I.C. 918. A munsif may refuse to recognize a person as pleader's clerk, if he be not a *bona fide* clerk. 10 C.W.N. 49. If the enquiry is entrusted to a Subordinate Court it is the Subordinate Court which must be satisfied that the person proved to be a tout. Where the Joint Magistrate held on enquiry that the person was not a tout but the District Magistrate without further enquiry and without notice to the party declared him a tout, *held*, that the order was illegal. 1930 A.L.J. 961=1930 A. 641. It is a reasonable and legitimate inference of fact that if a man attends Court every day, works after the cases of clients, even pays to pleaders and realizes costs and engages pleaders and also realizes their fees, he is not rendering gratuitous service such as a casual friend or acquaintance may do. 56 C. 800=115 I.C. 602 (2)=1929 C. 196.

ATTORNEY—CHANGE BY 'LITIGANT—RIGHT OF ATTORNEY IN RESPECT OF COSTS.—A litigant has the right to employ any attorney he likes and to change him for another attorney in the course of the same proceeding if he so wishes, provided that he does not thereby cause delay or injustice to any other party or inconvenience to the Court. If he has not paid costs to the attorney whom he wishes to discharge that would affect his right to obtain papers and documents on which the attorney might claim a lien for his unpaid costs. But it is not open to an attorney to say that his client shall continue to employ him in the suit or proceeding

until all the costs due to him are paid. 35 Bom.L.R. 298=1933 B. 182. It is clear that, in the absence of misconduct on the part of the advocate on record, the client is not entitled to the sanction of the Court for a change of the advocate, without making a satisfactory arrangement to pay the advocate who has had charge of the case till then. If the client proposes to abandon him when the case is ready for hearing and to engage another advocate, it is only proper that the advocate on record should be paid his full fee before the change of vakalat is sanctioned. 58 L.W. 34=(1945) 1 M.L.J. 56. No order for change of attorney should be made unless provision is made for payment of costs to the attorney subject of course to this that no such provision will be made where the attorney has by his own conduct or misconduct discharged himself. 60 C. 1273=37 C.W.N. 998.

ATTORNEY—LIEN—KINDS OF—PASSIVE OR RETAINING LIEN—NATURE OF.—The rights of an attorney in India are the same as the rights of a solicitor in England, except in so far as the latter have been diminished or increased by statute. A solicitor in England is entitled to three kinds of lien to protect his right to recover his costs from his client, namely: (i) a passive or retaining lien; (ii) a common law lien on property recovered or preserved by his efforts; (iii) a statutory lien enforceable by a charging order. Indian statutory law contains no provision for the last mentioned lien but the other two kinds of lien are available in India. The lien on property recovered or preserved by the efforts of the solicitor is a particular lien and not a general lien and it is not available for the general balance of account between the attorney and his client but extends only to the costs of recovering or preserving the property in suit. The passive or retaining lien is not affected or curtailed by S. 171 of the Contract Act. This lien enures in favour of the solicitor in respect of all deeds, papers or other personal chattels which come into his possession in the course of his professional employment. This is a general lien but with reference to moneys recovered by the solicitor for his client, he has no such *general* lien. Whether he obtains possession of the money which is the fruit of his exertions or whether it is still in deposit in Court, in either case, his lien or right to be paid out of those funds is confined to the costs incurred in respect of those funds, subject only to this, that he has the ordinary rights of set off which one creditor has against another. 60 C. 1442=149 I.C. 331=1934 C. 341.

SECS. 3 AND 4.—Where the fee payable is not settled with the client under S. 3, then under S. 4 the pleader is entitled only to such fee as would come to on computation, in accordance with the law for the time being in force in regard to the computation, of the costs to be awarded to a party in respect of the fee of his legal practitioner. 1931 P. 137=9 P. 865.

"Judge" means the presiding judicial officer in every Civil and Criminal Court, by whatever title he is designated:

"Subordinate Court" means all Courts subordinate to the High Court, including Courts of Small Causes established under Act No. IX of 1850¹ or Act No. XI of 1865:²

"Revenue office" includes all Courts (other than Civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents:

"legal practitioner" means an advocate, vakil or attorney of any High Court, a pleader, mukhtar or revenue agent:

³["tout" means a person—

(a) who procures, in consideration of any remuneration moving from any legal practitioner, the employment of the legal practitioner in any legal business; or who proposes to any legal practitioner or to any person interested in any legal business to procure, in consideration of any remuneration moving from either of them, the employment of the legal practitioner in such business; or

(b) who for the purposes of such procurement frequents the precincts of Civil or Criminal Courts or of revenue-officers, or railway stations, landing stages, lodging places or other places of public resort].

CHAPTER II.

OF ADVOCATES, VAKILS AND ATTORNEYS.

4. Every person now or hereafter entered as an advocate or vakil on the roll of any High Court under the letters patent constituting such Court or ⁴[under section 41 of this Act], ⁵[or enrolled as a pleader in the Chief Court of the Punjab under section 8 of this Act], shall be entitled to practise in all the Courts subordinate to the Court on the roll of which he is entered, and in all revenue-offices situate within the local limits of the appellate jurisdiction of such Court, subject, nevertheless, to the rules in force relating to the language in which the Court or office is to be addressed by pleaders or revenue-agents; and any person so entered who ordinarily practises in the Court on the roll of which he is entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court on whose roll he is not entered, or, with the permission of the Court, ⁶[or in the case of a High Court in respect of which the Indian Bar Councils Act, 1926, is in force, subject to rules made under that Act] in any High Court on whose roll he is not entered, and in any revenue-office:

Provided that no such vakil ⁷[or pleader] shall be entitled to practise under this section before a Judge of the High Court, Division Court or High Court exercising original jurisdiction in a Presidency-town.

LEG. REF.

¹ Now Act XV of 1882.

² Now Act IX of 1887.

³ Substituted by Act XV of 1926, S. 2.

⁴ Substituted by Act IX of 1884, S. 2.

⁵ Inserted by Act I of 1908, S. 2 (a).

⁶ Inserted by the Bar Councils Act, XXXVIII of 1926, S. 19 and Sch.

⁷ Inserted by Act I of 1908, S. 2 (b).

"PRACTICE".—Includes right to appear, plead and act. 4 P. 766. Vakils have no right of audience in the Insolvency Court at Presidency-town of Madras. 48 M. 331=1925 M. 385=48 M.L.J. 36 (F.B.). S. 4 was not intended to override the special provisions relating to insolvency in the Presidency-town. 48 M. 331. Insolvency Court is not subordinate to High Court. 48 M. 331. Vakil of Allahabad High Court

admitted as first grade pleader in Oudh, effect of. 89 I.C. 187=1925 O. 412. When there are several gentlemen retained by a client in the same vakalatnama, each of the vakils is entitled to claim from his client the full fee stipulated for by him and not merely a share in the single fee allowed as against the losing party. 9 P. 865=1931 P. 137. In Burma an Advocate is not precluded from suing for his fees. 1930 R. 243. A client engaged a pleader and filed a vakalatnama in his favour but it was not signed by the pleader. *Held*, that, whether the vakalatnama has been signed or not, the pleader is entitled to his remuneration for the work done by him on the principle of *quantum meruit*. 1931 P. 137=9 P. 865.

Sect. 4.—S. 4 does not apply to Advocates enrolled by any High Court under the Bar Councils Act, in view of S. 38 of the Legal

5. Every person now or hereafter entered as an attorney on the roll of

Attorneys of High Court.

any High Court shall be entitled to practise in all the Courts subordinate to such High Court and in all revenue-offices situate within the local limits of the appellate jurisdiction of such High Court, and every person so entered who ordinarily practises in the Court on the roll of which he is so entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court established by Royal Charter on the roll of which he is not entered and in any revenue-office.

The High Court of the province in which an attorney practises under this section may from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of an attorney so practising.

CHAPTER III.

OF PLEADERS AND MUKHTARS.

Power to make rules as to qualifications, etc., of pleaders and mukhtars.

6. The High Court may, from time to time make rules¹ consistent with this Act as to the following matters (namely) :—

(a) the qualifications, admission and certificates of proper persons to be pleaders of the subordinate Courts, and of the revenue-offices situate within the local limits of its appellate jurisdiction, and, in the case of a High Court not established by Royal Charter ²[in respect of which the Indian Bar Councils Act, 1926, is not in force] of such Court;

(b) the qualifications, admission and certificates of proper persons to be mukhtars of the subordinate Courts, and, in the case of a High Court not established by Royal Charter, ²[in respect of which the Indian Bar Councils Act, 1926, is not in force] of such Court;

(c) the fees to be paid for the examination and admission of such persons; and

(d) suspension and dismissal of such pleaders and mukhtars.

LEG. REF.

¹ For rules made under this section, see the various Local Rules and Orders.

² Inserted by the Bar Councils Act, XXXVIII of 1926, S. 19 and Sch.

Practitioners Act as amended by S. 19 of the Bar Councils Act. Therefore an advocate of the Bombay High Court enrolled as such by that Court who is not ordinarily practising in that Court or in any Court subordinate thereto is entitled to practise in the Subordinate Court of the Province of Madras. 58 L.W. 52=(1945) 1 M.L.J. 106 (F.B.).

Sec. 5.—An attorney acting for a firm and having the power to conduct a suit has no power to refer a matter to arbitration unless he is authorised specifically for that purpose. 36 C.W.N. 8=1932 C. 343. The retainer of an attorney ordinarily comes to an end when the suit is ended. After the suit is over the attorneys are *ipso facto* discharged so far as the suit is concerned and would need fresh authority from their clients to act for them in execution proceedings. 138 I.C. 320=34 Bom.L.R. 615=1932 B. 337. If a suit has been compromised by the guardian *ad litem* improperly without the leave of the Court, that may be a ground for appropriate proceedings by the minor on attaining majority or by another guardian during minority. But the attorneys who received their instructions from the guardian cannot go behind them and conti-

nue to represent the minor. 34 Bom. L. R. 614=138 I.C. 312=1932 B. 401 (1). Per C. C. Ghose, J.—Where an attorney has employed a counsel under the authority given to him by the party in the retainer filed in the Court he is bound to pay the fees paid to the counsel on taxation. It is only when the client has instructed the attorney not to brief a particular counsel that the client would be under no obligation to pay fees paid to that particular counsel. 52 C. L.J. 197=1930 C. 651 (F. B.). See also I.L.R. (1939) Kar. 422=1939 Sind 125 (right to sue for fees). As to *taxation of costs*, see also 1932 A.L.J. 272. As to *practice regarding change of attorney*, see 1932 B. 363=34 Bom.L.R. 703; 35 Bom.L.R. 298=1933 B. 182. It is the duty of a solicitor entrusted with the moneys of his client for investment, before investing the amount upon the mortgage of a farm, to have a proper valuation made. If he chooses to rely mainly on his own general knowledge of farms in his vicinity, he does so at his own risk and if his judgment is shown to have been at fault he is liable for the loss traceable to his breach of duty to his client. 1932 P.C. 194=137 I.C. 531 (P.C.). Mere presence in Court of the client, when he does not make his presence known to the Counsel, does not affect the ostensible authority of the Counsel, who can compromise the suit without consulting his client. 59 C. 31=35 C.W.N. 674=1932 C. 231.

All such rules shall be published in the Official Gazette, and shall thereupon have the force of law: provided that, in the case of rules made by a High Court not established by Royal Charter, such rules have been previously approved by the Provincial Government.

7. On the admission, under section 6, of any person as a pleader or mukhtar, the High Court shall cause a certificate, signed by such officer as the Court, from time to time appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in the Courts and, in the case of a pleader, also the revenue-offices specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall, subject to any rules consistent with this Act which may, from time to time, be made by the High Court in this behalf, be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises, or by such officer as the High Court, from time to time, appoints in this behalf.

On every such renewal the certificate then in possession of such pleader or mukhtar shall be cancelled and retained by such Judge or officer.

Every certificate so renewed shall be signed by such Judge or officer, and shall continue in force up to the end of the current year.

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court:

¹[Provided that, on the admission as a pleader of any person who has been previously entered as a Vakil or attorney on the roll of a High Court established by Royal Charter, the High Court may, in its discretion, issue to such person a certificate authorizing him to practise permanently in the Courts, and in the officers specified therein, and a certificate so issued shall not require to be renewed under this section.]

8. Every pleader holding a certificate issued under section 7 may apply to be enrolled in any Court or revenue-office mentioned therein and situate within the local limits of the appellate jurisdiction of the High Court by which he has been admitted; and, subject to such rules² consistent with this Act as the High Court or the Chief Controlling Revenue authority may, from time to time, make in this behalf, the presiding Judge or officer shall enrol him accordingly, and thereupon he may appear, plead and act in such Court or office and in any Court or revenue-office subordinate thereto.

9. Every mukhtar holding a certificate issued under section 7 may apply to be enrolled in any Civil or Criminal Court mentioned therein and situate within the same limits; and, subject to such rules as the High Court may from time to time make in this behalf, the presiding Judge shall enrol him accordingly; and thereupon he may practise as a mukhtar in any such Civil Court and any Court subordinate thereto, and may (subject to the provisions of the Code of Criminal Procedure)³ appear, plead and act in any such Criminal Court and any Court subordinate thereto.

LEG. REF.

¹Inserted by Act I of 1908, S. 3.

²For rules made by the High Court at Madras, see those quoted in the footnote on previous page, which were also made under S. 8. For rules by the Chief Court, Punjab, see Punj. R. and O.

³Now Act V of 1898.

SEC. 7.—Renewal of certificate cannot arbitrarily be refused. See 13 C. W. N. 415=1 I.C. 334. The High Court has not

delegated to District Judges the power to suspend legal practitioners pending the receipt of their renewed certificates. Any order in regard to suspension must proceed from the High Court. So an order of the District Judge suspending a practitioner pending the receipt of his renewed certificate is illegal. 54 M. 574=1931 M. 688=60 M.L.J. 588.

SEC. 8.—Appellate jurisdiction, meaning of. See 24 A. 348 (F.B.).

10. Except as provided by this Act or any other enactment for the time being in force, no person shall practise as a pleader or mukhtar in any Court not established by Royal Charter unless he holds a certificate issued under section 7 and has been enrolled in such Court or in some Court to which it is subordinate:

Provided that persons who have been admitted as Revenue-agents before the first day of January, 1880, and hold certificates, as such, under this Act in the territories administered by the Lieutenant-Governor of Bengal, may be enrolled in manner provided by section 9 in any Munsif's Court in the said territories, and on being so enrolled may appear, plead and act in such Court in suits under Bengal Act VIII of 1869¹ (to amend the procedure in suits between Landlord and Tenant) or under any other Act for the time being in force regulating the procedure in suits between landholders and their tenants and agents.

11. Notwithstanding anything contained in the Code of Civil Procedure² the High Court may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of mukhtars practising in the subordinate Courts, and, in the case of a High Court not established by Royal Charter, in such Court.

12. The High Court may suspend or dismiss any pleader or mukhtar holding a certificate issued under section 7 who is convicted of any criminal offence implying a defect of character which unfits him to be a pleader or a mukhtar, as the case may be.

LEG. REF.

¹ See now Bengal Tenancy Act (VIII of 1885).

² Now Act V of 1908.

SEC. 12: SCOPE OF SECTION.—The High Court has jurisdiction under this section to take action against a pleader who has been convicted of a criminal offence, though the offence was not one committed in his professional capacity. 59 M. 732=1936 Mad. 318=70 M.L.J. 498 (F.B.). The use of word "may" in S. 12 after the words "the High Court" shows that the discretion of the High Court in each particular case is absolute. 33 C.W.N. 829=1929 C. 771. It is not sufficient for the applicability of the section that the pleader has been convicted of a criminal offence. Though the Court cannot in the exercise of its disciplinary jurisdiction question the propriety of the conviction, it has yet to inquire into the nature of the crime in order to decide whether the offence was such as to imply defect of character rendering him unfit to continue in the profession. 12 Pat. L. T. 773=1931 P. 369 (F.B.). See also 1938 Rang. 394; 1938 Rang. 125. Where a legal practitioner has been convicted of a criminal offence and his case is sent to the Bar Council for enquiry to determine if any disciplinary action was called for, the Bar Council should merely record the conviction and should call on the legal practitioner to show

cause why action should not be taken against him. It is not open to it to justify the action of the legal practitioner. 1938 Rang. 394. A legal practitioner was convicted of criminal breach of trust and abetment thereof, in respect of certain monies of a client. It was found that he was to a certain extent the victim of his senior. He paid the amount of defalcation after his conviction. High Court in consideration of the fact that he was victim of circumstances and had expressed his repentance and assured to lead honourable life, suspended the practitioner for one year. 33 C.W.N. 829=1929 C. 771. S. 12 has no application unless the conviction alone shows the convict to be unfit to be a pleader. 27 N.L.R. 29=1931 N. 33 (S.B.). The words "criminal offence" used in S. 12 mean an offence punishable under Penal Code as well as any act or omission made punishable by any law for the time being in force which is indictable and punishable criminally by Courts of justice. 12 Pat.L.T. 773=1931 P. 369 (F.B.) S. 12 contains no implication that disciplinary action against a pleader convicted of an offence cannot be based on his conduct when such conduct includes the commission of any offence for which he has been punished. Disciplinary action is not taken by way of punishment, but on consideration whether the person formerly admitted to practice is a proper person to continue to practise or not. No one can be admitted to

practice until he makes a solemn declaration, and the inference is that one who has contravened this declaration and is likely to do so in future is not such a person. The fact that the motive of the pleader in taking part in a Civil Disobedience movement was to draw attention to the dissatisfaction with the forest policy of Government is no justification nor is the fact he was only a participant and not a leader in the movement material in considering the necessity for disciplinary action. 27 N.L.R. 29=1931 N. 33 (S.B.). Conviction of pleader under Defence of India Rules for uttering anti-war slogans is not ground for disciplinary action. 46 C.W.N. 405=75 C.L.J. 428. In order to see when disciplinary action under S. 12 should be taken against a pleader who has been convicted under R. 38 read with R. 34 (6) (e) of the Defence of India Rules, 1939, the Court must not merely accept the fact that he has been convicted but must consider the material upon which he has been convicted. Where the speech for which he has been convicted incites others to break the law which it is the duty of the Courts to administer, and to do acts tending to subvert order, the Court is entitled to take disciplinary action against him. I.L.R. (1941) Lah. 736=44 P.L.R. 471=A.I.R. 1942 Lah. 85 (F.B.). A pleader who was 60 years old and who had been of unblemished character was convicted under S. 409, I.P. Code for embezzlement of client's money. *Held*, that the pleader was liable to be removed from the rolls notwithstanding his age and previous good character. 1938 Rang. 288. *See also* (1939) 2 M.L.J. 632; 176 I.C. 752. But *see* 165 I.C. 601=1936 Lah. 717. A pleader is not entitled to go behind the conviction in order to show that his conviction was not justified either in law or on facts and that he committed no offence. 27 N.L.R. 29=1931 Nag. 33 (S.B.). Conviction of legal practitioner is sufficient without any further enquiry to justify the High Court in taking proceedings under S. 12. It is not permissible to go behind the conviction and the pleader cannot be allowed to have indirect appeals, against the judgment of conviction. 1929 C. 771; 59 M. 732=1936 M. 318=70 M.L.J. 498 (F.B.). Though it is not incompetent for the High Court to deal under Art. 8, Letters Patent, with charges of a criminal nature against a practitioner unless and until these have been investigated by a Criminal Court, it is eminently fitting that in such cases the criminal prosecution should precede any disciplinary decision. 58 I.A. 152=53 A. 183=61 M.L.J. 130 (P.C.). The charges of professional misconduct must be clearly proved and should not be inferred from mere ground of suspicion however reasonable or from what may be a mere error of judgment or indiscretion. 1939 R.D. 641 (2)=1940 A.W.R. (B.R.) 5 (1). Where the allegations against a legal practitioner amount to a criminal charge, the proper procedure is to prosecute

him criminally in the first instance before bringing proceedings under the Legal Practitioners Act. Otherwise he is likely to be prejudiced inasmuch as these are summary proceedings in the nature of a summons trial. 178 I.C. 456=I.L.R. (1938) 2 Cal. 138=1938 Cal. 783. *See also* 54 M. 857=61 M.L.J. 148 (F.B.).

CONVICTION OF PLEADER—CONVICTION BY A FOREIGN COURT.—The conviction of a legal practitioner for perjury is good ground for striking off his name from the roll of practitioners. Where the conviction is by a foreign Court, but the law is the same as in India and there has been a fair trial, the same principles will apply. An order of disbarment is not conclusive for all time; if circumstances change and the Court is convinced that the delinquent has been brought to a higher sense of honour and duty, the order can be cancelled. Disbarment of a member of the English Bar by the Benchers of his in does not *ipso facto* lead to his being struck off the rolls of an Indian High Court. The matter would have to be decided under the discretion given by the Letters Patent. 45 M.L.J. 639=46 M. 903=1924 M. 265 (F.B.). Legal practitioners are officers of the Court and it is their clear duty to respect law themselves and to get it respected by others. If a legal practitioner disobeys an order promulgated by a public servant lawfully empowered to promulgate such order, his action amounts to defiance of law, and he is, therefore, liable to be dealt with under the disciplinary jurisdiction of the High Court. 42 P.L.R. (J. and K.) 77.

NO DISTINCTION ON PRINCIPLE CAN BE MADE BETWEEN POLITICAL OFFENCES AND OTHER KINDS OF LAW-BREAKING.—Pleader convicted of waging war against the King under S. 121. I.P. Code, has defect of character which unfits him to continue in practice. 59 M. 732=1936 M. 318=70 M.L.J. 498 (F.B.). Where a pleader wilfully breaks the law upon one or two isolated occasions it may not be necessary for the Court to take any action under S. 12 of the Legal Practitioners Act. Where, on the other hand, it is shown that the pleader has wilfully and habitually broken the law, then the Court may quite reasonably come to the conclusion that his acts imply such a defect of character as to render him unfit for practice as a pleader and in such a case the Court may dismiss him from practice. Where the acts of the pleader fall midway between the two extremes, then the Court may take a more lenient view and may think it sufficient to warn the pleader by inflicting upon him a period of suspension or otherwise, that if he persists in breaking or defying the law, such conduct will inevitably lead the Court to the conclusion that he is totally unfit to practise in the Courts which have been established to enforce the law. 38 C.W.N. 276. A pleader was prosecuted three times and convicted twice for semi-political offences. *Held*, that the case fell within the

mediate position and warning with suspension was sufficient. 35 Cr.L.J. 592=148 I. C. 57=1934 C. 242 (2). An order binding over a pleader under S. 118, Cr. P. Code, may not be a conviction for an offence. But a pleader who is convicted under S. 17 (2) of the Criminal Law Amendment Act is guilty of nothing short of an open and defiant violation of law. Seeing that it is the duty of the members of the legal profession to assist the Courts to maintain and enforce obedience to law, such conduct in a pleader is such a defect of character as would unfit him to be a pleader, and make him liable to action under S. 12 of the Act. 152 I.C. 943=1934 C. 808. Where a pleader was convicted under the Defence of India Rules for uttering a slogan to the effect that none should assist the British Government in their war efforts as it was the duty of everybody to resist all wars by non-violence. *Held*, that in the circumstances of the case the exercise of disciplinary jurisdiction under S. 12 was not called for. 46 C.W.N. 405. In order to see whether disciplinary action under S. 12 of the Legal Practitioners Act should be taken against a pleader who has been convicted under R. 38 read with R. 34 (6) (e) of the Defence of India Rules, 1939, the Court must not merely accept the fact that he has been convicted but must consider the material upon which he has been convicted. Where the speech for which he has been convicted incites others to break the law which it is the duty of the Courts to administer, and to do acts tending to subvert order, the Court is entitled to take disciplinary action against him. I.L.R. (1941) Lah. 736 (F.B.) *See also* 44 Cr.L.J. 743=(1943) Cal. 371 (conviction of pleader under R. 38 (5) Defence of India Rules does not imply defect of character and does not call for disciplinary action). 44 Cr.L.J. 707=1943 Cal. 370 (conviction under R. 56 of the Defence of India Rules, for taking out a peaceful and orderly procession in contravention of order implies a defect of character which unfits out to be a pleader). *See also* (1943) 1 M. L.J. 396 (S.B.).

ILLUSTRATIONS.—*Per Mitter, J.*—Where a pleader has been convicted of criminal offences for misconduct committed strictly in his professional character that *prima facie* renders him unfit to be a member of the profession. That however does not mean that wherever a pleader has been so convicted the Court is bound to strike him off the rolls. The use of the word "may" in S. 12 shows that the discretion of the Court is absolute. 33 C.W.N. 829. Contempt of Court by pleader in his capacity as a suitor can be punished professionally. 1933 A.L.J. 251=1933 A. 224; *see contra* 1932 A. 492 (S.B.). Conviction under S. 288, I. P. Code for improper behaviour and using improper words to a Magistrate was held to render pleader liable to suspension for 3 months. 162 I.C. 534=1936 Rang. 175.

Conviction under Burma Village Act for not removing stack of hay from the pleader's compound, does not involve any defect of character which unfits him to practice. 162 I.C. 534=1936 Rang. 175.

TEMPORARY MISAPPROPRIATION.—1925 C. 238. Conviction under the Salt Act for certain activities in pursuance of Civil Disobedience. 12 P.L.T. 61. A pleader convicted under S. 3, Police Incitement to Disaffection Act and under S. 17, Criminal Law (Amendment) Act. 134 I.C. 945=12 Pat. L.T. 773=1931 P. 369 (F.B.). The mere fact of conviction of any criminal offence implying moral turpitude can be a sufficient basis in law for an order of suspension or dismissal of a pleader or mukhtar only but not of a vakil whose cases of misconduct are not provided for by the Legal Practitioners Act, but by paragraph 8 of Letters Patent. 8 O.W.N. 267=1931 O. 161 (F.B.).

CONVICTION FOR KEEPING A COMMON GAMBLING HOUSE.—42 M. 111=35 M.L.J. 650=48 I.C. 341 (S.B.). The conviction of a pleader under the Gambling Act can hardly be looked upon by itself as sufficient reason for disciplinary action. 1929 R. 352. But *see* 42 M. 111=35 M.L.J. 650.

CONVICTION FOR CONDUCTING LOTTERY.—A pleader of good character and about thirty years of age, who was permitted to engage in business barked upon a scheme which the Courts decided was nothing less than a lottery and the pleader was convicted for taking part in the lottery. When the question came before the High Court whether he should be debarred from practising as a pleader. *Held*, that the pleader behaved very foolishly in acting as he did, but taking into consideration his young age, his name should not be struck off the register. 164 I.C. 350=37 Cr.L.J. 1118=1936 Rang. 382.

SECS. 12 AND 13.—The High Court can act upon the report submitted to it by the District and Subordinate Courts or *suo motu* take action for either suspension or dismissal of a pleader. 12 Pat.L.T. 773=1931 P. 369 (F.B.).

SECS. 12 TO 14: DISCIPLINARY JURISDICTION—HIGH COURT'S DISCRETION—IF CAN BE FETTERED BY LOCAL GOVERNMENT.—The Local Government have no *locus standi* in any way to fetter the discretion of the High Court to take or not take any action under Cl. 8, Letters Patent, or under the Legal Practitioners Act against any legal practitioner; the matter is one which is entirely within the discretion of the High Court. As the Local Government is not competent to claim that action should be taken against any particular legal practitioner, it has also no right or power either to abandon any proceedings or to condone the conduct of the legal practitioner so far as it comes within the purview of the disciplinary jurisdiction of the High Court so as to bind it in any way. 15 L. 354=1934 L. 251 (S.B.).

Suspension and dismissal of pleaders and mukhtars guilty of unprofessional conduct.

¹[13. The High Court may also, after such inquiry as it thinks fit, suspend or dismiss any pleader or mukhtar holding a certificate as aforesaid—

LEG. REF.

¹ Substituted by Act XI of 1896, S. 2.

SEC. 13: SCOPE OF SECTION.—See 44 C. 639. The jurisdiction of Court is not vindictive. 45 M.L.J. 718 (F.B.). Notice is necessary before taking action. 19 M.L.J. 504. Enquiry may be made by a Court subordinate to the High Court. 44 C. 639. The Court cannot act on mere suspicion. 1 P.L.T. 372=57 I.C. 460 (F.B.). Charges of professional misconduct must be clearly established and not be inferred from mere ground for suspicion. 1930 L. 947, following. 58 M.L.J. 635=34 C.W.N. 534 (P.C.). Charge of "unprofessional conduct" against a pleader—Precision in statement and strictness in proof—Necessity. 1930 P.C. 60=58 M.L.J. 483 (P.C.). "When evidence has been given in one case upon the issues raised in that case, nothing can be more dangerous than to take that evidence and apply it to another case in which other issues arise." 1929 M.W.N. 384 (F.B.). The proceedings under S. 13 are of a *quasi* criminal nature, it is the duty of the applicant who is more or less in the position of complainant to go into the witness-box and substantiate his allegation before producing any other witnesses and what is more important to submit himself to cross-examination. 1930 L. 947. Provisions of the C. P. Code are applicable to proceedings under S. 13 of this Act. 21 C.W.N. 564; 23 C.W.N. 560. In a case a misappropriation of client's money by the Advocate, and the same has been brought to the notice of the Court, the charge cannot be permitted to be squared up or withdrawn. 1937 Mad. 696= (1937) 2 M.L.J. 160 (F.B.).

DISCIPLINARY ACTION BY HIGH COURT—CONSIDERATIONS.—The point to be considered in all cases of disciplinary action against a member of the Bar is whether his conduct involves unfitness on his part for the exercise of his profession. Moral turpitude which would entitle the Court to take action must be such as is connected with the pleader's profession or consist of any attack upon the system of which the Court forms part or embarrasses in any way the administration of justice by the Courts. A speech of a vakil alleged to injure the feelings of an important sect of the Mohamadans does not fall in any of these categories and is, therefore, not one which would induce the High Court of Jammu and Kashmir to take any action against him. The State imposes suitable penalties for the infringement of its loss and provides proper sanctions for the enforcement of such penalties and there is no reason why the disciplinary jurisdiction vested in the High Court should be employed merely in aid of the Criminal Law. 37 P.L.R.J. & K. 16.

PROFESSIONAL MISCONDUCT.—Per Krishnan,

J. The Legal Practitioners Act, 1879, deals with the Pleader only in his professional capacity and not in his private capacity though misconduct other than professional may fall under cl. (f). 38 M.L.J. 230=55 I.C. 198 (F.B.). Under S. 13 the impropriety must be such as would render the continuance of the pleader in practice undesirable or unfit him for being a member of the profession. 38 M.L.J. 230. See also 88 I.C. 279=26 Cr.L.J. 1111—1935 Rang. 110. Failure to make proper arrangements for conduct of case in his absence though it should not be encouraged by Courts is not misconduct deserving punishment under this section. 1939 Rang. 262. Finding of criminal Court that pleader is not guilty should be accepted in proceedings under Legal Practitioners Act. Mere negligence does not amount to misconduct. 57 L.W. 567=(1944) 2 M.L.J. 317.

MISCONDUCT—TEST—RULES FOR GUIDANCE.—The principles to be applied in considering whether certain conduct amounts to misconduct or not are as follows: (1) that the mere holding of certain views and expression of such views in language however emphatic or strong is no ground for taking disciplinary action against a legal practitioner; (2) that mere conviction for an offence is not sufficient but the Court must look into the nature of the act on which the conviction is based to decide whether the legal practitioner is an unfit person to remain in the profession; (3) that a legal practitioner is a part of the machinery provided for the maintenance of order and the enforcement of the law of the land; it is therefore inconsistent with his duties as legal practitioner to incite others either to boycott the Courts or to break the law which it is the duty of the Courts to administer; those who live by the law cannot preach the breaking of the law; (4) that organized breach of the peace, incitement to acts tending to subvert order is a reasonable cause to suspend or remove a legal practitioner; and (5) that acts involving moral turpitude or which imply general infamy make a legal practitioner unfit to remain on the rolls of the Court. 15 Lah. 354=1934 Lah. 251 (S.B.). A legal practitioner is not merely a lawyer but also a moral agent. As such he is a Judge of right and wrong, and an advocate of what is right. Search for truth is to be his ideal. The practice of law is a personal right or privilege limited to selected persons of good character. It is a franchise which may be revoked for misconduct, the test being whether the misconduct is such as shown him to be unfit or unsafe to discharge the duties of his office, or unworthy of confidence, no legal practitioner can disclaim responsibility for his acts. Just as he is entitled to enjoy the privileges of his profes-

(a) who takes instructions in any case except from the party on whose behalf he is retained, or some person who is the recognised agent of such party within the meaning of the Code of Civil Procedure, or some servant, relative or friend authorised by the party to give such instructions, or

(b) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or

sion, he has also peculiar obligations and responsibilities attached. 12 Mys. L. J. 292=39 Mys. H. C. R. 380. In an enquiry into charges of professional misconduct, it is the duty of the legal practitioner concerned to be absolutely candid with the Court. He may unwisely maintain a stolid silence and take up the position that the case against him must be completely proved. In such case he runs a grave risk. On the other hand, if he elects to state his defence, it ought not to be a perversion of truth. 12 Mys. L. J. 222=39 Mys. H. C. R. 203. Misconduct is not necessarily the same thing as conduct involving moral turpitude. 15 Lah. 354=1934 Lah. 251 (S. B.). The motive of the informer in starting disciplinary action against an advocate is immaterial. 15 Lah. 354 (S. B.).

SEC. 13 (a): ACCEPTING VAKALATNAMAS.—Duty of a pleader. 33 I.C. 831=20 C.W. N. 283. Advocate accepting vakalats for withdrawal of money or for any such serious responsibility should satisfy themselves as to the *bona fides* of the person who offers it; and this is necessary even if there be no apparent circumstances to justify any suspicion. 16 Pat. 488=17 Pat. L.T. 407=1937 Pat. 433 (S. B.); 16 Pat. 123=17 Pat. L.T. 948=1937 Pat. 137 (S. B.). If a pleader acts *bona fide* in accepting *Vakalatnama* but makes a serious mistake, there is no need for the Court to take up the matter again after a long time has elapsed. The rules should be strictly observed by pleaders in accepting *Vakalatnama*. 65 I. C. 417=1922 Cal. 178. See also 19 Cr. L. J. 227=43 I.C. 819 (C.). Where an advocate appeared in certain criminal proceedings without filing a *vakalatnama*, though required by the rules of the Court, held, though the rules requiring the filing of a *vakalatnama* or *mukhtarnama* in criminal proceedings is an arbitrary rule having no moral sanction behind it, it is a rule which an officer of the Court must comply with but a disobedience of that rule did not amount to professional misconduct in the particular case. 12 Pat. 843=14 Pat. L.T. 709=1933 Pat. 571 (S. B.). See also 13 Mys. L.J. 34; 12 Mys. L. J. 383. Advocate's name appearing in the decree—He is entitled to assume that a *vakalat* has been filed—Appearance in execution without *vakalat* is no professional misconduct. 12 Pat. 843=1933 Pat. 571 (S. B.).

RECEIVING INSTRUCTIONS DIRECTLY FROM CLIENTS OR THEIR DULY AUTHORIZED AGENTS.—Gross negligence tantamount to misconduct is attributable to a *mukhtar* who receives and acts on a *mukhtarnama* from an unauthorized person without proper inquiry. 37 I.C. 492=2 Pat. L.J. 36. See also 34

I.C. 645=20 C.W.N. 1016 (F.B.). When a member of the Bar writes a letter purporting to be instructed by a client, there is a presumption, until the contrary is proved, that the letter is written under instructions. 1933 Rang. 147. Criminal trial—Advocate raising plea that prosecution story was concocted—Same put forward without client's instructions—Propriety, See 10 Pat. L. T. 703=9 P. 31=1931 P. 195.

ALTERING A VAKALATNAMA after execution by inserting name of *mukhtar* actually engaged at the request of party's agent, conduct if improper. 17 I.C. 718=17 C. W.N. 328.

PLEADER NOT RENEWING CERTIFICATE.—It is not the law that a pleader who has not renewed his *sanad* for the year in which his conduct is called in question is no longer a "legal practitioner." He does come within S. 13 and can be struck off the rolls for misconduct under S. 13 even if he has not renewed his certificate. 56 L.W. 401 (2)=1943 M.W.N. 516=A.I.R. 1943 Mad. 616=(1943) 2 M.L.J. 126 (F.B.). See also 1944 Mad. 244.

PROFESSIONAL MISCONDUCT of a solicitor or pleader must be judged by the rules and standard of his profession. 115 I.C. 318=30 Cr.L.J. 445=1929 Sind 121 (F.B.). A pleader who obtains adjournment of a case on grounds which, to his knowledge, were false is guilty of improper conduct. 54 M. 520=1931 M. 422=60 M.L.J. 393 (F.B.). Taking a personal interest in the litigation (as) financing the same and bargaining for a share of the profits may amount to misconduct on the part of an advocate. 1932 L. 584. See also I.L.R. (1943) Mad. 30=(1942) 2 M.L.J. 196 (F.B.). A solicitor acting for a client in any transaction, should not have a personal interest in that transaction without making full disclosure of the nature and extent of the interest to the client. 44 L.W. 315=163 I.C. 434=1936 P.C. 224 (P.C.). Where, a solicitor occupying the position of a trustee of an estate, while entering into certain transaction relating to the estate, considers his own interests in preference to and to the detriment of the interest of the beneficiaries of the estate of which he is a trustee, his action is such as would reasonably be regarded as disgraceful and dishonourable by his professional brethren of repute and competency and he is guilty of professional misconduct. 163 I.C. 434=44 L.W. 315=1936 P.C. 224 (P.C.).

SEC. 13 (b): GROSSLY IMPROPER CONDUCT.—APPEARING ON OPPOSITE SIDES.—A professional gentleman should as far as possible stick to the side who first employed him. 28 I.C. 996=16 Cr.L.J. 420 (All.). See also 58 M.L.J. 635 (P.C.). In order to

prevent a counsel appearing for the other party, he must have a definite retainer with a fee paid or he must have such confidential instructions from one of the parties as would make it improper for him to appear for the other party. 1939 R.D. 641 (2)=1940 A.W.R. (B.R.) 5 (1). When he has once been retained and received the confidence of a client he cannot accept a retainer from or enter the service of those whose interests are adverse to his client in same controversy. 37 C.L.J. 48=72 I.C. 22=1923 Cal. 106. A pleader who acts for both the parties in the suit at one stage or other is guilty of professional misconduct. 45 I.C. 614=3 Pat.L.J. 390. Where a pleader accepted a brief against his standing clients at a time when his exclusive retainer by that party was still running the pleader acted not only in violation of the principles which govern the conduct of a legal adviser but also of the ordinary principles of good faith as between man and man and was guilty of grossly improper conduct. 32 Bom. L. R. 556=1930 P.C. 60=58 M.L.J. 483 (P.C.). See also 1932 A.L.J. 755=140 I.C. 62=1932 All. 536. Every practitioner is bound to see before accepting a *vakalatnama* that he has not already been engaged on the other side. To recklessly sign a *vakalatnama* very nearly amounts to misconduct. 14 Cr.L.J. 44=18 I.C. 268 (A.). Legal practitioners receiving instruction from a prospective client, subsequent appearance for the opposite party, whether professional misconduct. 8 R. 446=128 I.C. 354 (2)=1930 Rang. 355. A legal practitioner had acted for the appellant in a prior suit wherein the appellant asked that an award by an arbitrator in a dispute in respect of a conveyance should be set aside. A plea was therein filed that the respondent persuaded the appellant to execute a conveyance wherein the consideration was falsely stated. The later suit related to the same conveyance and the prayer of the appellant therein was that it should be set aside on the ground of fraud and failure of consideration. Held, that though the conduct of the legal practitioner in appearing for the respondent in the latter proceeding was not dishonest, the Court could, considering the possibility of mischief to the other party, direct that he should not take any further part in the proceeding. 125 I.C. 262=8 R. 44=1930 Rang. 185. Pleader appointed on commission in the case cannot act as vakil for one of the parties. 100 I.C. 309=1927 Cal. 203. The mere fact that a lawyer is cited as a witness by the prosecution would not disqualify him from appearing as counsel for the accused in the case. No doubt it is not in accordance with professional etiquette for a lawyer who has given evidence as a witness for the prosecution to accept or to continue to hold a brief from the accused. But the mere citing of an Advocate as a witness by the Police does not operate as a disqualification. 48 L.W. 276=(1938) 2 M.L.J. 446. Pleader entering record-room without permission of Judge-in-charge in

defiance of standing order of District Judge not proper—Duty of pleader and of Judge-in-charge. 17 Pat. 261=1938 Pat. 385 (S. B.).

APPEARING FOR THE OPPOSITE PARTY WHEN NOT MISCONDUCT.—Pleader acting for one party in one proceeding. He is not debarred from appearing against that party in another proceeding unless his services were sought by the party in the latter case and refused by pleader on insufficient grounds. 1928 M. 592. See also 13 A.L.J. 475=30 I.C. 145 (F.B.); 1938 M.W.N. 220=1938 Mad. 276 (S.B.). It cannot be said that there is anything professionally wrong in acting for an opposite party when the proceedings are different. I.L.R. (1938) Mad. 399=1938 Mad. 276. That a pleader was merely consulted by complainant at one stage, does not preclude him from appearing for the accused in proceedings regarding a totally different incident. 8 L. 671=1928 L. 65. See also 128 I.C. 354=1930 Rang. 355. In order to prevent counsel appearing for the other party, he must have a definite retainer, with a fee paid, or he must have such confidential instructions from one of the parties as would make it improper for him to appear for the other party. In the absence of either, it cannot be said to be unprofessional on the part of the counsel to appear for the other party. 11 O.W.N. 23=1934 Oudh 58 (S.B.). A Hindu pleader allowed his father to purchase the very property in respect of which he was working for his client. The transaction took place with the knowledge and consent of his client. But in spite of this knowledge the client allowed the same pleader to continue to work for him. Further, when the pleader appeared for his father against him in a case arising out of the sale transaction, he did not raise any objection against the conduct of the pleader for more than 18 months. Held, that though the pleader did not act up to the standard of propriety which was expected of a member of the legal profession, who must enjoy the complete confidence of the litigant public and the Court and though technically his appearing subsequently against him was improper, yet no disciplinary action was justified. 1938 Pat. 28=1938 P.W.N. 115=172 I.C. 849 (S. B.).

SEPARATE APPEARANCES FOR SAME PARTY IN DIFFERENT CAPACITIES.—PROPRIETY.—A solicitor appearing for a client who is interested in two different capacities can state the case of his client in respect of each capacity, but he cannot appear separately for the same person. Nor is the same party entitled to appear by separate counsel or separate solicitors in different capacities. 37 Bom.L.R. 49=1935 B. 119.

PLEADER ACTING AS ARBITRATOR.—Where a pleader who had been engaged by the plaintiff withdrew on behalf of defendant money, which he knew was payable to the plaintiff, and took a conspicuous part as arbitrator in a matter in which he was seriously and per-

sonally concerned, he was guilty of professional misconduct. 41 I.C. 328=2 P.L.J. 259. Pleader getting himself appointed arbitrator holding out promise to a party is guilty of serious misconduct. 132 I.C. 576=1936 Pesh. 113.

PLEADER BECOMING PROMOTING DIRECTOR OF COMPANY ON MONTHLY REMUNERATION.—A pleader practising in the mofussil is governed by the rules framed by the High Court under the Legal Practitioners Act and the directions given by the High Court from time to time. Where a pleader became a promoting director of a Company with a fixed monthly remuneration without the permission of the High Court, but the Company never in fact carried on business and the pleader never received any remuneration from it.

Held, that the pleader offended against rule 13 of the rules framed by the High Court under the Legal Practitioners Act and the circular order of the High Court of 1916, but the offence being of a technical nature did not call for action. An Advocate should not act as a promoter of a trading Company but he can act as the legal adviser of a Company of which he is a director subject to his remuneration being fixed before hand. 1943 M.W.N. 587=56 L. W. 491=A.I.R. 1943 Mad. 665=(1943) 2 M.L.J. 273 (F.B.).

PLEADER LIKELY TO BE WITNESS IN A CASE.—As to whether such vakil can accept brief, see 8 P.L.T. 510=1927 P. 61; 117 I.C. 66; 48 L.W. 276=(1938) 2 M. L. J. 446. Though it is undesirable that a lawyer should appear in a case in which he knows or has reason to believe that he would be an important witness there is no harm in his giving evidence in a case in which he is appearing. 12 Pat. 359=1933 Pat. 306. Pleader appearing for party—Propriety of giving evidence as witness. See 44 Cr.L.J. 114=(1942) 2 M.L.J. 479 (F.B.).

PLEADER COLLECTING EVIDENCE FOR CLIENT.—A pleader helping his clients by collecting evidence for them to be used on their behalf does not exceed his duties as their counsel. 134 I.C. 515=1931 L. 246.

ABANDONMENT OF CASE.—A pleader acts improperly in abandoning his client's case while in the midst of the client's examination-in-chief. After once taking up his client's case he ought to have seen that it was terminated. 14 Cr.L.J. 379=20 I.C. 139 (C.). See also 35 C.L.J. 403=26 C. W.N. 580.

ABANDONMENT OF ISSUE.—A vakil's general power in the conduct of a suit includes the abandonment of an issue, which in his discretion he thinks it inadvisable to press. 1935 L. 71.

ACCOUNTS.—Duty of pleader of keep proper accounts. See (1943) 1 M.L.J. 487 (S. B.). There can be no professional misconduct when an advocate puts forward a *bona fide* claim to a lien on the papers of his client in respect of his outstanding fees. As an advocate fulfils the role of a solicitor also it may be argued that he is entitled to the advantages of a solicitor. Where the mother

of a minor employs an advocate to act for her in her own suit as well as in a suit by her as next friend of her minor son, there is no obligation on the part of the advocate under R. 27, note 1, of the rules under the Legal Practitioners' Act to keep separate accounts. What the rule requires is that he should keep accounts. 56 L.W. 344=44 Cr.L.J. 735=A.I.R. 1943 Mad. 493=(1943) 1 M.L.J. 437 (S.B.)=I.L.R. (1944) Mad. 71. If money is paid to an attorney by his client not on account of costs but for a special purpose, it is trust money. It is first his duty to enter the account properly in his own books, to put it into a ledger account or a proper account, and distinguish it from other moneys. If he has a general client's account in the bank, he must put it into that. If he has not, he is to open one and put it into that. He has no right to use the money. The fact that he can pay it back, or may be able to pay it back within a reasonable time, or immediately, makes no difference. I.L.R. (1943) 1 Cal. 81.

WILFUL NEGLECT TO APPEAR NOT EXCUSED BY NON-PAYMENT OF FEES.—It is not proper for Counsel either in the High Court or in the Courts below to merely state to the Court that he has no instructions. He should clearly specify what is the reason for his failing to proceed with the case. It may be that he has not received his fees; it may be that his instructions have been withdrawn or it may be some other reason. But whatever the reason is, he should clearly state it to the Court. 1936 A.L.J. 902=1936 All. 670. A pleader is guilty of misconduct if after receipt of full fees he wilfully neglects to appear and conduct a case. 37 M. 238=23 M.L.J. 447. *Per Sankaran Nair, J.*—In the absence of such an agreement or at least notice to the party in time, a vakil, must appear and conduct the case though the fee or a portion thereof remains unpaid. 37 M. 238=23 M.L.J. 447. See also 10 P.L.T. 723=1929 P. 337 (F.B.). When the client is, for some reason or other, putting off the settlement and payment of fee a legal practitioner would be well advised if he served a registered notice upon him in good time intimating to him that if the client did not settle and pay his fee he would repudiate all his responsibility as a pleader. 1930 L. 947. *Per Curiam.*—When a pleader accepts a *vakalatnama* in the ordinary form, he must attend Court on every occasion to protect the interest of the client concerned. Any limitations on his obligation by special agreement must be proved and the onus lies on the pleader. Non-payment is no justification for refusal to attend. 49 C. 732=26 C.W.N. 589=71 I.C. 81 (F. B.). Where a pleader signs a *vakalatnama* on the distinct understanding that a sum paid to him is really in the nature of a part-payment, and that the client will settle the proper fee afterwards and if the client fails to do so, it follows that mere acceptance of *vakalatnama* cannot cast upon the pleader the duty of defending the case. 129 I.C. 301=1930 L. 947. Taking fees as a

pleader in a case where he is in fact a party is grossly improper conduct. 1925 O. 130.

FAILURE TO MAKE CAREFUL ARRANGEMENTS IN A CASE shows a laxity in conduct which deserves no encouragement. 183 I.C. 580 =1939 Rang. 262.

SUPPLEMENTAL FEES.—To agree with a client for a present over and above his fees in the case of success, is disgraceful for an advocate. The failure of a barrister in exacting money as supplemental fee does not absolve him from his original obligation to his client and the Court. 16 I.C. 780 =14 Bom.L.R. 691 (F.B.). In the absence of a special contract to the contrary the fees accepted by an Advocate must be taken to be for the whole case. A writing to evidence the terms of engagement between the advocates and the client is always desirable. 16 Cr.L.J. 707 =30 I.C. 995.

GIVING IMPROPER ADVICE TO CLIENT.—Pleader advising payment of moneys from minor's estate to the sureties as consideration, *held*, there was no cause for proceeding against the pleader under S. 13 (b) or (f). 38 M.L.J. 58 =54 I.C. 163. A vakil of the High Court was suspended from practice for two years by the High Court under Cl. 10 of the Letters Patent (Madras) for professional misconduct arising from the following acts he did, *viz.*, (1) giving improper advice and getting a nominal sale for a low value; (2) pleading a false defence; (3) giving false evidence and suborning perjury. 39 I.C. 289 =40 M. 69.

PUTTING IRRELEVANT QUESTIONS IN CROSS-EXAMINATION.—Protracted examinations of witnesses with questions which are quite irrelevant to the suit, and only tend to swell the size of the record, must be deprecated. It is an abuse which enormously increases the cost of litigation without any corresponding benefit to the parties and it is clearly within the powers of the High Court to direct inquiry with a view to disciplinary action in flagrant cases which come under their notice at the hearing of appeals. 1932 A.L.J. 198 =1932 P.C. 69 =62 M.L.J. 457 (P.C.). As to *defamatory suggestion* against witnesses, *see* 29 N.L.R. 24 =1933 N. 47.

ERROR OF LAW.—Error of law is no professional misconduct. 20 C.W.N. 278 =23 C.L.J. 237 =43 C. 685.

MISAPPROPRIATION BY VAKIL of the client's money amounts to professional misconduct. 42 I.C. 135. *See also* 145 I.C. 278 =34 Cr.L.J. 954 =1933 L. 575 (S.B.); 15 I.C. 785 =13 Cr.L.J. 513 =5 S.L.R. 222. Thus if money is paid for payment of stamp fees it is not open to the legal practitioner to appropriate the same or any part of it towards fees due to him. 1930 M.W.N. 216. It is the duty of every advocate who receives money on behalf of his client to conduct litigation with to keep an account of how that money has been applied. 1930 M.W.N. 216. *See also* I.L.R. (1941) Mad. 286 =1941 Mad. 63 = (1940) 2 M.L.J. 1031 (F.B.). Vakil dishonestly appropriating clients' monies—Repentance and plea of in-

debtedness—Standard of professional conduct. 88 I.C. 360 =1925 M. 797 (F.B.). A legal practitioner received money from the Court on behalf of his client and retained it in his own hands without any authority from the client so to retain it. Subsequently he chose to treat it as loan and gave security which he felt himself at liberty to withdraw at his own will and pleasure. *Held*, that this was a grave offence which amounted to professional misconduct. 32 L.W. 435 =129 I.C. 233 =1930 M. 927 (F.B.). *See also* 1933 L. 575 =145 I.C. 278 (S.B.); 142 I.C. 593 =1933 S. 45. Where a pleader to whom money is given by his client for payment to an arbitrator appropriates that money towards his fees, his conduct is gravely improper and calls for disciplinary action. 1938 Lah. 248 =175 I.C. 29. *See also* I.L.R. (1941) Lah. 731 =1941 Lah. 384 (F.B.). While misappropriation by a legal practitioner of monies belonging to his client is a very grave act of professional misconduct which would not make it possible to allow him to continue practising in the profession, the Court is not precluded from re-instating the practitioner when adequate punishment has been imposed and he has shown that he has rehabilitated himself in such a manner that he is fitted to be admitted into the profession again. 1939 Mad. 906 = (1939) 2 M.L.J. 632 (F.B.). *See also* I.L.R. (1940) Mad. 81; I.L.R. (1940) Mad. 84.

Purchasing Property in Court Auction in execution of his client's decree is guilty of professional misconduct, equally so if he purchases the property for other persons. 13 Cr.L.J. 795 =17 I.C. 539 (A.). *See also* I.L.R. (1938) Mad. 399 =1938 Mad. 276 (F.B.). Purchasing from their clients or others any interests in any decree passed by the Court in which the pleaders practised is misconduct. 1938 M.W.N. 220 =1938 M. 276 (F.B.). *See also* 52 L.W. 777 =1940 P.C. 204 =67 I.A. 431 =43 Bom.L.R. 465 =73 Cal.L.J. 121 (P.C.).

TAKING MORTGAGE IN LIEU OF FEES at exorbitant terms may amount to professional misconduct. 12 P. 843 =14 Pat.L.T. 709 =1933 P. 571 (S.B.).

SECS. 13 AND 14: ADVANCING MONEY TO FINANCE LITIGATION IN WHICH HE IS ENGAGED.—A pleader in India, like an Advocate, combines the functions of the solicitor and the Barrister in England. As he fulfils both roles he is subject to the disabilities of both. It would be manifestly improper for him to advance money to a client for the purpose of a litigation in which he is engaged. The safe rule to lay down is that a pleader or an advocate should not lend money to his client at any time for the purpose of an action in which he is engaged. 1942 M.W.N. 483 =55 L.W. 481 =1942 Mad. 553 = (1942) 2 M.L.J. 196 (F.B.).

MUKHTAR STANDING BAIL FOR ACCUSED IN CRIMINAL CASE AND TAKING INDEMNITY FROM PERSON NOT ACCEPTED AS SURETY.—There is

(c) who tenders, gives or consents to the retention, out of any fee paid or payable to him for his services, of any gratification for procuring or having procured the employment in any legal business of himself or any other pleader or mukhtar, or

(d) who, directly or indirectly, procures or attempts to procure the employment of himself as such pleader or mukhtar through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or

(e) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36, or

(f) for any other reasonable cause.]

nothing against a legal practitioner becoming a surety for an accused in a criminal case. But where a *mukhtar* enters into a contract of indemnity with, and receives money from, a third person, who has been rejected as a surety, becoming a surety, such an agreement constitutes public mischief, being opposed to public policy, and the *mukhtar* is guilty if unprofessional and highly improper conduct; and when the *mukhtar* further attempts to conceal the agreement from the knowledge of the Court, it has to be viewed as a serious aggravation of the original offence rendering him liable to suspension from practice. 155 I.C. 430 = 16 P.L.T. 223 = 1935 P. 195 (F.B.).

NEGLECT OF PLEADER.—Mere negligence does not found a petition for professional misconduct against a pleader. There must be moral delinquency in addition to negligence before a charge of unprofessional conduct can be brought home. Nor is there anything unprofessional in a pleader employing an unregistered clerk. The law allows a pleader to have two registered clerks, but does not insist that any clerk should be registered. (1938) 2 M.L.J. 661 = 1938 M. 965 (F.B.). *Mere negligence is not sufficient in itself to found a charge of professional misconduct.* Where a legal practitioner failed to certify the realisation of certain decree amounts, and it was found that it was due either to stupidity or to negligence or to both but that there was no element of moral delinquency, it was held that it did not amount to professional misconduct. I.L.R. (1940) All. 386 = 1940 A.L.J. 306 = 1940 All. 889 (F.B.). Negligent management of his office and permitting the clerks to cheat the clients and mislead them as to the progress of the case, is misconduct for which he might be suspended from practice. 35 M. 543 = 39 I.A. 191 = 23 M.L.J. 114 (P.C.). [On appeal from 22 M.L.J. 276 = 14 I.C. 965]. See also 114 I.C. 137 = 30 Cr.L.J. 256 (2); 62 C. 158 (S.B.). Counsel failing to appear in murder case but engaging another counsel on smaller fee is guilty of grave impropriety in the discharge of his duty. 108 I.C. 257 = 29 Cr.L.J. 362 = 1928 L. 448. Pleader engaged in two cases throwing away interests of unimportant client in favour of important client is guilty of professional misconduct. 10 Pat. L.T. 664 = 116 I.C. 764 = 1929 Pat. 153 (F.B.). A vakil who put before the Sessions Judge a statement which purported to

be a petition from his clients and drafted on their instructions but which was in fact entirely his own invention and contained statements made recklessly without reasonable grounds is guilty of misconduct. 18 A.L.J. 419 = 56 I.C. 501 = 42 All. 450. An advocate in the exercise of his profession is bound to exercise reasonable skill and prudence but he is not expected to be infallible and unless the Court is satisfied that the act complained of was such that could not reasonably have been done by an advocate exercising reasonable skill and care, a suit for negligence is not maintainable against the advocate. 9 R. 575. A *bona fide* mistake on the part of the pleader may be condoned but gross negligence in his part cannot justifiably be condoned so as to extend time under S. 5 of the Limitation Act. The remedy of the client is only against the defaulting legal adviser. 1931 Rang. 80. Withdrawal of money on behalf of guardian and payment to his relation is negligence and not grossly improper conduct. 1925 Cal. 146. Where it is shown that the judgment-debtor obtained copies of documents and gave them to his pleader and the latter did not produce the same at the proper time the Court may refuse to admit the same in appeal. The remedy of the party, if any, is to file a suit for damages against the pleader. 32 P.L.R. 813. A pleader filed an application for withdrawal of money in Court deposit, and it was found that the money was already withdrawn, but the pleader had checked the account books of his client to ascertain the amount withdrawn from the Court. Held, that though the pleader should have been more careful it did not amount to misconduct or gross negligence. 1936 Cal. 658.

FAILURE TO KEEP ACCOUNTS.—Even if a legal practitioner has not much work, he is bound to keep accounts for whatever work he may have, and failure to keep accounts amounts to professional misconduct. (1940) 2 M.L.J. 1031 = 1941 Mad. 63 = I.L.R. (1941) Mad. 286 (F.B.).

SEC. 13 (f): MISCONDUCT OTHERWISE THAN PROFESSIONAL.—The phrase “for any reasonable cause” in the residuary cl. (f) of S. 13 is not to be understood in an *eiusdem generis* sense but it covers cases other than those of professional misconduct in the ordinary sense, but which unfits a pleader for the practice of his profession, for instance conviction for a crime involv-

ing dishonesty or moral turpitude or gross and habitual contempt of Court. 38 M.L.J. 23=11 L.W. 192=55 I.C. 198 (F.B.). See also 36 C.W.N. 294. The jurisdiction under S. 13, sub-S. (f) is not confined to acts done in a professional capacity. Taking part in an organised resistance to law and assisting a movement involving grave danger to the public peace by a pleader may not have been done in a professional capacity but they are such as to render it necessary to enquire into the expediency of allowing him to continue practice. [49 C. 845 (P.C.), Foll.] Also where a pleader holds the view that it is desirable to disobey the law he is likely to advise his clients to break the law and it is undesirable in the public interests to allow one who sets a bad example to occupy the privileged position of a pleader. 27 N.L.R. 29=1931 Nag. 33 (S.B.). See also 1931 Pat. 369 (F.B.). The mukhtar who advised his clients who had been acquitted in a criminal case to present some gratification to the Magistrate is guilty of misconduct, positively deplorable. Mukhtar suspended for one year. 13 Pat.L.T. 574=1932 Pat. 356 (S.B.). Where a pleader was convicted under Penal Code for intimidating and assaulting a woman in a most reprehensible manner, the conviction was not by itself sufficient to show defect of character which unfits him to be a pleader within the meaning of S. 12. Though the words "any other reasonable cause" in S. 13 seems to be wide enough to include the case, still the conduct was not such as to justify suspending him from practice. 1929 R. 352 (1). S. 13 (f) is not confined to the misconduct of a pleader as such but also covers his misconduct as a party to suit. 18 P.R. 1915=28 I.C. 722. Entering deliberately into a false defence, with intent to defraud others, is a ground of action under Ss. 13 and 14. 9 I.C. 362=12 Cr.L.J. 67 (C.). *Pleader as suitor* committing contempt of Court—Disciplinary action may be taken. 55 A. 148=1933 A.L.J. 251=1933 All. 224. But see also 1932 All. 492 (S.B.). *Imputing dishonesty against officer of Court* would amount to professional misconduct. 143 I.C. 359=56 C.L.J. 595=1933 Cal. 344. Also *imputation of partiality and unfairness to judicial officer*. 142 I.C. 828=1933 Rang. 34.

GENERAL RULE FOR ACCEPTING OR REJECTING CASES.—A lawyer must as a general rule take up a case for any member of the public if (1) a fair and proper fee is tendered to him; (2) adequate instructions are given; and (3) the case is of a class which the lawyer is accustomed to do. He can legitimately decline to take up the case, if he has an out-station engagement, or is engaged in some social function, is incapacitated by ill-health or any reason which a sensible man would recognize adequate. But to refuse to take up a case simply and solely on the ground that the advocate will not appear against a brother practitioner, or put forward untrue excuses is, in each case, pro-

fessional misconduct and should be dealt with as such. 1929 All. 367. See also 27 A.L.J. 1047=117 I.C. 104; 27 A.L.J. 616=30 Cr.L.J. 522.

Filing a false suit is misconduct. A pleader can be dismissed or suspended. The words "and other reasonable cause" in S. 13, cl. (f) are not to be construed *ejusdem generis* with causes enumerated in Cls. (a) to (e). They include personal misconduct distinguished from professional one. 12 I.C. 838=4 Bur.L.T. 275; 39 M. 1045=32 I.C. 326.

FALSE STATEMENTS.—See 121 I.C. 297=1929 Lah. 803; (1940) 1 M.L.J. (Supp.) 28. Where a pleader retained in his service a suspected tout without dismissing him even after notice from the Bar Council and thereafter gave a false statement that he had dispensed with the services of that tout and stuck to that statement deliberately in a subsequent enquiry, he was guilty of professional misconduct under S. 13 (f). 27 I.C. 156 (F.B.). It is a very serious matter for a legal practitioner knowingly to make a false statement in a pleading drafted by him. Where a pleader appearing for a plaintiff in a suit on a promissory note of which he was an endorsee for collection, inserted a false statement in the plaint that the instrument had been indorsed to his client for good consideration, while he knew well that no such consideration had passed. *Held*, that the offence was of such a nature that he should be suspended from practice for three months. I.L.R. (1944) Mad. 550=A.I.R. 1944 Mad. 268=(1944) 1 M.L.J. 233 (F.B.). It is the duty of the Court not only to protect the members of the public against disreputable members of the profession but it is also its duty to protect the profession itself against the loss of reputation brought upon it by the conduct of such members. It is not part of the etiquette of the members of the profession to tell lies in Court or to give perjured evidence on behalf of their clients. Where the mukhtar informed the Court that accused could not appear in Court as he was unwell that day, whereas in fact the accused had come to Court that day and had been talking to the mukhtar, *held*, that the conduct of the mukhtar was highly unworthy of a member of his profession and that he should be removed from the rolls. 15 P.L.T. 63=1934 P. 142 (S.B.). See also 16 P.L.T. 231 (S.B.). Members of the legal profession are expected to maintain not only a high standard of professional morality and ethics but they are also expected as men of education and culture and as members of an honourable profession to act in an honest straightforward and upright manner. The conduct of a pleader who makes palpably false statements to wriggle out of an inconvenient situation cannot but be regarded as reprehensible and he is guilty of improper conduct involving moral turpitude. 1944 O.W.N. 122=A.I.R. 1944 Oudh 236. Duty to be scrupulously honest

in giving evidence—Giving evasive and shuffling answers—Misconduct. 11 P. L. T. 665=1930 P. 493 (F.B.). A legal practitioner who makes one statement before the police in the course of an investigation of an offence and a diametrically opposite statement in the witness-box in the trial is guilty of the grossest misconduct. 121 I.C. 297=1929 L. 803 (2). An Advocate having regard to his education and training and in particular the profession in which he is engaged is expected to exercise greater degree of caution and rectitude than ordinary persons in making statements on oath in a Court of law. Where therefore an Advocate was convicted of perjury and disciplinary proceedings were started against him, the High Court marked their sense of disapprobation of the Advocate's conduct, by ordering him to be suspended from practice for six months. 8 O.W.N. 267=1931 O. 161. A pleader in defending himself against charges of professional misconduct made certain statements. He was dealt with for making them under the disciplinary jurisdiction. It was contended in his behalf that the statements made by him in defence must be regarded as having been made by an accused and were therefore protected, *held*, that the pleader was writing to the Court as a pleader and was responsible as such for the statements made by him. 14 Bom.L.R. 700=16 I.C. 788=36 B. 606. Where a pleader in order to recover fees due to him from his client for work done, made certain statements which, if true, would expose him to criminal prosecution. *Held*, that the conduct of the pleader though improper was not such as to call for action being taken under this Act. 14 I. C. 208=15 C.L.J. 224. The fact that a man is going to be injured professionally if he does not speak the truth is no valid excuse for telling a lie; but it is an attitude which is not uncommon and which is not of the most serious character. It is very different from the case of a professional man telling a lie fraudulently in the sense of wishing to assist his client, in deceiving the Court or even wishing to assist his client in a claim that he is making against another. In this case, the conduct of the pleader was disapproved but no action taken. 17 L.W. 358=73 I.C. 329=1923 M. 485. *Mukhtar* having no practice as such but acting as professional identifier — Unprofessional conduct—False identification—Liability to be struck off the roll. 16 Pat. 121=17 Pat.L.T. 951=1937 Pat. 138 (S.B.).

GIVING FALSE INFORMATION TO CLIENT.—A pleader who gives his client false information that a certain order has been passed by a Court when no such order has been passed at all, is guilty of "fraudulent and grossly improper conduct in the discharge of his professional duty" within the meaning of S. 13 (b) of the Act. 39 C.W.N. 283. Where a charge against a pleader is that he was engaged by a certain client to file a criminal revision petition but he did not do so, and that in reply to a post-card sent to him by the client, his clerk falsely informed him,

under the pleader's instructions, that the said revision had been filed, but there is no material on record beyond the bare word of the pleader's clerk that the false information in the post-card was given under the instructions of the pleader, the pleader cannot be held guilty of improper conduct. 163 I.C. 975=1936 Lah. 1013.

TAKING SIGNATURE OF CLIENT ON BLANK SHEETS OF PAPER FOR PREPARATION OF PLAINT.—It is most objectionable for legal practitioners to take their clients' signatures on blank sheets of paper. A practitioner who permits this to be done and induces his client to sign blank sheets of paper in order that they can be used for the preparation of a plaint, which would then be regarded as having been duly signed and verified by the client, is guilty of unprofessional conduct. In order, however, to substantiate the charge of misconduct there must be evidence in support of it; suspicion is not sufficient, even if it is strong. 58 L.W. 56 (F.B.).

FALSE IDENTIFICATION.—A legal practitioner is guilty of professional misconduct if he identifies a person not known to him. 21 Cr.L.J. 635=57 I.C. 818 (F.B.). *See also* 1941 P.W.N. 417=22 Pat.L.T. 679=1941 Pat. 179 (S.B.). It is not enough for a legal practitioner who comes forward as an identifier to rely merely upon the fact that he has been told by his clerk that he identifies the person. That does not entitle the mukhtar to pose as an identifier. The identification must be a genuine identification. Cases of *careless identification by legal practitioners* must be dealt with great severity as they involve not only an offence on the part of the legal practitioner against the duties of his profession but also an offence against the state and public funds. 10 Pat. L. T. 641=1929 P. 339 (F.B.). *See also* 1930 P. 495 (1).

FALSE ATTESTATION.—*See* 13 I.C. 397=14 C.L.J. 606.

PLEADER EXPRESSING HIMSELF CARELESSLY IN DEPOSITION AS WITNESS.—Where a pleader expressed himself carelessly in his deposition before the Judge, it cannot be said that he was guilty of unprofessional conduct, though he was guilty of some degree of carelessness in expressing himself. 24 Pat. L. T. 81=1943 P.W.N. 50=1943 Pat. 62 (S. B.).

FILING FALSE FEES CERTIFICATE.—It is very serious matter for a pleader or an advocate to file a false fees certificate with regard to fees which he has not received and the Court will take strong disciplinary action in any such case coming to its notice. 1941 Mad. 905=(1941) 2 M.L.J. 663 (S.B.). *See also* I.L.R. (1944) Mad. 550=1944 Mad. 268=(1944) 1 M.L.J. 233.

GRANT OF CERTIFICATE UNDER R. 8 OF JUDICIAL COMMITTEE RULES ON IMPROPER GROUNDS.—A legal practitioner who grants a certificate under R. 8, Judicial Committee Rules, 1925, in connection with application by condemned prisoner for leave to appeal to the Privy Council in *forma pauperis* that the case is a fit one to be heard before the Privy

Council without any foundation and in utter disregard of the principles governing appeals to the Privy Council in criminal matters and merely for the purpose of obtaining a temporary respite for his client is guilty of quite a serious dereliction of duty and of an abuse of the process of the Court especially when the legal practitioner was not in any way concerned with the case before he was asked to give the certificate. 213 I.C. 201=A. I.R. 1944 Lah. 159 (S.B.). The giving of certificates under R. 8, Judicial Committee Rules, 1925, by a counsel in support of petitions by condemned prisoners for special leave to appeal in *forma pauperis* in circumstances which do not warrant the granting of such certificates, shows an utter disregard of the solemn and serious responsibilities of counsel who is called upon to certify and the counsel so certifying is guilty of the charge of gross professional misconduct. I.L.R. 1943 Lah. 409=A.I.R. 1943 Lah. 210 (F.B.).

PERJURY.—*Perjury by members of the legal profession*, apart from the question that it is criminal offence, is a very serious matter from the point of view of the profession. Apart from the fact that it harms the profession, it sets a very bad example to the general public and is a great block in the administration of justice. Therefore, if and when cases of perjury by members of the legal profession are discovered the member concerned deserves the most severe punishment which the High Court can give in the exercise of its disciplinary jurisdiction on the legal profession. Where the perjury was committed by a young inexperienced pleader which showed that it was not intended to deceive the Court or to practise any fraud upon it. *Held*, that suspension from practice for six months was sufficient. 1935 Pat. 249=16 P.L.T. 231 (S.B.).

CRIMINAL CONVICTION (see Notes under S. 12, *supra*).—Where the person committing the offence does not bring the fact to the notice of the High Court at the time of his admission, as a pleader, when required to give all necessary information at the time of his enrolment, he commits another serious offence of deceiving the authorities and the High Court is entitled to take him to task for it. Persons applying for being admitted to be pleaders should fully and frankly disclose all the circumstances of their past career with the knowledge that the High Court would take into consideration every matter which ought properly to be dealt with by it. 175 I.C. 124=1938 Rang. 159. Even if a person is convicted of a criminal offence it is necessary for the Court, before taking disciplinary action, to know whether his conduct necessitates such action. Where the judgment in the criminal case does not disclose what exactly the conduct of the practitioner was, the Court may give the accused the benefit of doubt. 15 N. L. J. 90. When criminal proceedings are taken against a pleader or an advocate and finally concluded, they must be

taken to have been rightly decided, and the question to be determined in a subsequent enquiry as to whether the advocate or pleader ought to have disciplinary action taken against him is whether upon a perusal of the facts and circumstances disclosed in the evidence in the criminal proceedings his offence has been one implying a defect of character which unfits him to be a pleader or advocate. Such a defect of character normally involves moral turpitude. 1938 Rang. L.R. 125 (S.B.). In a case where an advocate was convicted of the offence of defamation, the High Court, while holding that no disciplinary action was called for on their part, observed that responsible citizens, when afforded the opportunity of making charges against persons (whether known to them or not) of which they had not ascertained the truth, should be careful not to aggravate the defamatory nature of the matter by lending their support to an implied acceptance of it without careful investigation into its nature. 1938 Rang. L. R. 125 (S.B.). A person who is convicted of so serious an offence as of receiving stolen goods, even though the property may not be of very great value, is not fit to be a pleader. 175 I.C. 126=1938 Rang. 160. An offence of the character of one under S. 377, I.P. Code, committed by a pleader or advocate cannot be ordinarily condoned. Where, however, the offence was committed very early in life, it ought not to debar the person committing it, who is making an honest attempt to reform, from ever seeking respectable society or from being a member of an honourable profession. 175 I.C. 124=1938 Rang. 159. A pleader convicted of criminal breach of trust may come under this section. 1940 Rang. 242. A pleader who was suspended for six months after a conviction for breach of Salt Act did not apply for restoration of certificate but was again convicted under S. 17, Criminal Law Amendment Act. He made no appearance to notice under S. 14. *Held*, that his name should be removed from rolls. 140 I.C. 295 (1)=1932 Pat. 300 (S.B.).

ALTERING DOCUMENT AFTER EXECUTION.—Where with a view to avoid paying a penalty as required by the stamp law a solicitor altered a deed materially after its execution, he was struck off the rolls. 31 M. L.T. 107 (P.C.). Fabrication of documents by mukhtar. 13 Pat.L.T. 552=1932 Pat. 289 (S.B.). Altering survey number in petition is misconduct. 87 I.C. 843.

TAMPERING WITH COURT'S RECORDS.—To tamper with the Court's records is a serious matter and a pleader would be acting without due care and caution and without sense of responsibility in allowing it to be done by his clerk. 36 I.C. 874=20 C.W.N. 1069. Conduct of the pleader in tampering with Court records cannot be easily excused. Such misconduct deserves suspension from practice, though the pleader concerned

happens to be young and inexperienced. 15 Pat. 652=17 Pat.L.T. 266=1936 Pat. 418 (S.B.). The removal from the Court by a mukhtar of a complaint amounts to gross misconduct. 43 I.C. 93. A pleader by virtue of his position is an officer of the Court and it is his duty to protect all minor officials of the Court from any temptation; consequently a pleader should not induce a peshkar of the Court to take a document which has been filed in the Court to the pleader's house for the inspection of his clients. 10 Pat.L.T. 715=1929 Pat. 338 (S.B.).

TAMPERING WITH EVIDENCE.—Advocates and pleaders retained in a case ought to be extremely careful in approaching and questioning persons who to their knowledge have been approached are cited with the other side for the purpose of giving evidence so as to give no room for any suspicion that they are attempting to tamper with the evidence or with the witnesses. 1929 M. W.N. 384 (F.B.). See also 46 I.C. 819; 171 I.C. 503=1937 Rang. 345. Where a pleader bribes certain witnesses who are likely to be summoned by the opposite side in connexion with an election petition, into swearing affidavit to the effect that they do not know anything about the matter and also tries, during hearing of the petition, to tamper with other witnesses by offering them bribes his conduct is such as disentitles him to remain on the roll of pleaders. 1938 Rang. 294. Visiting handwriting expert and talking about criminal case under investigation on behalf of person involved in case—Propriety—Liability to suspension. 17 Pat.L.T. 348=1936 Pat. 433 (S.B.).

RETENTION OF CLIENT'S MONEYS.—See 1933 Sind 65. See also 1933 Lah. 575; 1933 Sind 45; 39 Mys.H.C.R. 553.

BRIBERY.—The High Court dismissed a mukhtar for having received a sum of money from one of the persons against whom a case is pending for the purpose of bribing the police acting as a go-between. 39 I.C. 305=21 C.W.N. 516. For a legal practitioner to suggest that an official or any one should be bribed amounts to professional misconduct, and professional misconduct of a grave nature. The fact that bribes of this nature have been given by others is no excuse. See 47 L.W. 156=(1938) 1 M.L.J. 410 (F.B.). The fact that proceedings in respect of such offence are instituted against a pleader as the result of a grudge makes no difference to the gravity of the offence and cannot be pleaded in excuse. 1938 Mad. 264=(1938) 1 M.L.J. 410 (F.B.); 17 Pat.L.T. 263=1936 Pat. 337 (S.B.); *Bribery or attempted bribery by advocate* is grossest professional misconduct and an advocate found guilty of an offence like bribery or attempted bribery cannot in any circumstances suffer so slight a penalty as suspension for four years. It is an offence which can necessarily only be purged after strenuous efforts and after a long period during which he has tried his best

to reinstate himself in society. No doubt the door is not inevitably and permanently shut to persons who are disbarred: they may after the lapse of a suitable period of time, provided their conduct has been uniformly satisfactory, ultimately reach reinstatement. But reinstatement is not a matter of course and it is not something which can be hoped for within a brief period of time. 1939 Rang.L.R. 213=1939 Rang. 142 (S.B.) Where a pleader bribes certain witness who are likely to be summoned by the opposite side in connexion with an election petition, into swearing affidavits to the effect that they do not know anything about the matter and also tries, during hearing of the petition, to tamper with other witnesses by offering them bribes, his conduct is such as disentitles him to remain on the roll of pleaders. 177 I.C. 731=1938 Rang. 294.

FORGERY.—If a pleader is found guilty of endeavouring to appear on behalf of a person by whom he had never been instructed and seeks to justify his conduct by the production of a forged document, it would not be a matter for suspension for a month or a year: he would be totally unfitted to exercise the responsible duties of a pleader and would have to be struck off the rolls of pleaders forthwith. 183 I.C. 756=1939 Rang. 312.

TAKING PART IN POLITICS.—The jurisdiction of the High Court to take action against legal practitioners is not confined to acts in professional capacity but may extend to other activities, e.g., organized resistance to payment of tax which entails grave danger to the public peace. 49 C. 845=49 I. A. 319=44 M.L.J. 32. As to criticism of administration, see 38 M.L.J. 230=35 I.C. 198=1920 M.W.N. 105 (F.B.). As to conviction for sedition, see 15 Lah. 354=35 Cr.L.J. 1010=1934 Lah. 251 (F.B.). See also 1943 Cal. 371; 1943 Cal. 370). It is the duty of a legal practitioner to assist the Court. If he appears in Court and makes a demonstration which has the effect of interfering with the work of the Court and the administration of justice, he does something which a member of the legal profession certainly ought not to do and is guilty of grossly improper conduct. Such conduct amounts to "reasonable cause" for which the Court has power to take action against him. 1 I.L.R. (1943) Mad. 459=56 L.W. 14=1943 Mad. 130=(1943) 1 M.L.J. 8 (S.B.). A pleader wrote to the District Magistrate enclosing a pamphlet which called upon that official to "quit India here and now." In the covering letter also the pleader requested the Magistrate "to quit India here and now." He also sent a letter to the special officer appointed to carry out the duties of a superseded District Board enclosing a copy of the pamphlet and requesting the special officer to resign his post immediately. On these the pleader was prosecuted and convicted under R. 34 (6) (c) of the Defence of India Rules (1939). The pamphlets were sent at a time

when many parts of India were in a very agitated state and there was threat of an invasion of India by Japan. *Held*: that the pleader did something which he should not have done as a member of the legal profession and his action constituted misconduct and misconduct of such a nature that the High Court was justified in taking disciplinary action under S. 13 (f). 56 L.W. 220 = A.I.R. 1943 Mad. 475 = (1943) 1 M.L.J. 396 (S.B.).

CIVIL DISOBEDIENCE.—Where certain practising barristers and pleaders joined the movement called the Satyagraha Sabha and signed a pledge whereby they undertook to refuse civilly to obey such laws as a committee to be hereafter appointed may think fit. *Held*, that the barristers and pleaders had, by signing the pledge, rendered themselves amenable to the disciplinary jurisdiction of the High Court, but that under the circumstances a warning was enough. 22 Bom.L.R. 13 = 54 I.C. 679 = 44 B. 418. *See also* 145 I.C. 316 (expression 'defect of character' in S. 12 includes acts other than those of moral turpitude): 1933 C. 731; 27 N.L.R. 29 = 1931 N. 33). Certain pleaders had collectively agreed upon abstention from Court to assist the boycott movement. *Held*, that the pleaders were guilty of unprofessional conduct within the meaning of S. 13 (b) and (f). Order for suspension for three months passed. (49 C. 732, Ref. to.) 132 I.C. 900 = 35 C.W.N. 223 = 1931 C. 706. Practising pleaders wishing to remain on the rolls must remember that those who live by the law should keep the law and not encourage others in its breach by publicly extolling and glorifying persons sentenced and by showing hearty sympathy towards seditious and disloyal movement. 1931 S. 33. A pleader who gives formal and public expression of his approval of the breach of the laws of the land is not a proper person to hold office of the pleader. 1931 S. 33 = 140 I.C. 233.

SPEECH INCITING BREAKING LAWS AND DEFYING DISPERSAL ORDERS.—The speech inciting the audience to break those laws which the All-India Congress Committee might declare should be broken and the speech in which the speaker exhorts the audience to resist orders for dispersal attract the disciplinary jurisdiction of the High Court. 15 L. 354 = 1934 L. 251 (S.B.).

TAKING PART IN UNLAWFUL ASSOCIATION.—It is not necessary for the exercise of this jurisdiction that the act of the Vakil should have subjected him to anything like general infamy or imputation of bad character. 12 Pat.L.T. 725 = 1923 P. 185.

INTIMIDATING A WITNESS.—To prevent from giving evidence is professional misconduct. 19 Cr.L.J. 803 = 46 I.C. 819 (F.B.). *See also* 1929 M.W.N. 384. As to display of temper by counsel, *see* 12 Mys. L.J. 292 = 39 Mys.H.C.R. 380.

TUTORING WITNESS UNDER CROSS-EXAMINATION.—It is very improper for a legal practi-

tioner to tutor a witness inside or outside court, and when the tutoring takes place in court and in spite of warnings, the professional misconduct is all the greater. 55 L.W. 799 (1) = A.I.R. 1942 Mad. 701 = (1942) 2 M.L.J. 621 (S.B.) = I.L.R. (1943) Mad. 81.

COUNSEL ISSUING ELECTION MANIFESTO.—It is a well-recognised rule of etiquette in the legal profession that no attempt should be made to advertise oneself directly or indirectly. The issuing of circular letters or election manifestoes by a lawyer with his name, profession and address printed thereon, appearing to the members of his profession practising in the lower Court, who are of course in a position to recommend clients to counsel practising in the High Court, is obviously an indirect way of advertisement. It does not however amount to any professional misconduct, but only to a breach of a professional etiquette. 1934 A. 1067 = 153 I.C. 667 (S.B.).

ATTEMPT TO BRING INFLUENCE ON JUDGE.—A pleader attempting to bring influence on a Judge, before whom he is arguing an appeal through a relative of the Judge, is guilty of gross misconduct. His act is highly reprehensible and it is in the interest of the legal profession that serious notice should be taken of such acts and severe punishment is called for in such a case. 164 I.C. 384 = 1936 Lah. 732. Where however the pleader concerned is inexperienced, and expresses his penitence at once and makes no denial of what he had done, and the offence is not viewed by the public with that disfavour it should, he need not be censured and warned and ordered to pay the costs of the proceedings. 1936 Lah. 732.

RECKLESS ALLEGATIONS IN TRANSFER APPLICATION.—No doubt an advocate cannot pledge himself for the truth of his client's allegations, but he is an officer of the Court and as such it is his bounden duty to take some steps to verify the truth of the allegations he is instructed to make. An advocate is to assist the Court in the administration of justice and is not a mere mouthpiece of his client. If an advocate makes reckless and false allegations against a Magistrate in the application for transfer on the instructions of his client without taking any steps to verify the truth of those allegations, he is unfit to enjoy the privileges conferred upon him by law and must be visited with punishment. I.L.R. (1944) Kar. 135 = A.I.R. 1944 Sind 155.

LETTERS ADDRESSED BY PLEADER TO GOVERNOR RELATING TO ORDERS PASSED BY A DISTRICT, MUNSIFF AND MAKING FALSE ACCUSATIONS.—A first grade pleader practising at Markapur wrote a letter as "the leader of the Bar at Markapur" to the Governor of Madras in which he accused the local District Munsiff of being a sympathiser with the satyagraha movement and that on a particular day he granted an application of an advocate for adjournment of a case made on the ground that he desired to go to another town to see

a friend offering *satyagraha*. It was found on inquiry that the statements were false and that the action of the pleader in making the communication was the result of animosity towards the District Munsiff. *Held*, as the letter related to orders passed by the District Munsiff and the accusations were made by the pleader as the "leader of the local Bar" it was idle for him to suggest that his misconduct should be regarded as being entirely dissociated from his status as a legal practitioner. In the circumstances, there was "reasonable cause" for taking disciplinary action against him. 55 L.W. 502=1942 Mad. 630=(1942) 2 M.L.L.J. 234 (F.B.).

CONTEMPT OF COURT BY LEGAL PRACTITIONER.—No power to punish for contempt of an inferior Court now exists independently of the I.P. Code, and the contempt of Courts' Act and no disciplinary power over legal practitioner or power to punish for contempt outside the provisions of I.P. Code is vested in the subordinate Courts. 125 I.C. 477=54 A. 619=1930 A. 225 (F.B.). A mukhtar who addressed certain letters to a magistrate in connection with a copy for which he had applied, and the contents of the letters were grossly insulting the mukhtar could be proceeded against under S. 13 (f). 52 I.C. 798=42 A. 86=17 A.L.J. 1050. *See also* 38 I.C. 980=44 C. 639=20 C.W.N. 1284. As to procedure in case of contempt by legal practitioner, *see* 27 C.W.N. 88=71 I.C. 673=1922 C. 550. A legal practitioner who writes a letter to a judicial officer abusing him in a particular manner is guilty of grossly improper conduct. 44 I. C. 123=161 P. L. R. 1917. Letter by a pleader which contains vulgar abuse of Magistrate and a demand for an apology apparently followed by the threat of further proceedings is highly improper. 25 Bom.L.R. 264=73 I.C. 353=1923 B. 234. Imputing racial antipathy to a Judge and charging him with having allowed such feelings to influence him in passing unfavourable orders. A belated apology in the High Court was held to be insufficient. 67 I.C. 504; 23 Cr. L.J. 408 (L.). A pleader addressing a letter to a Commissioner appointed to investigate a case to report in his client's favour is guilty of professional misconduct. 18 P.R. 1915=28 I.C. 722. Where a pleader addressed to the Commissioner of the District a most disrespectful letter and circulated it free among his subordinates, he was guilty of misconduct though the matter is one of a private nature between the pleader and that officer. 28 I.C. 722. *See also* 147 I.C. 330=35 Cr.L.J. 433=1934 A. 317; 12 Mys.L.J. 292=39 Mys. H. C.R. 380; 61 C. 522=152 I.C. 58=1934 C. 723. A letter published by a pleader alleging that a certain Judge is indolent and takes credit for cases not tried but compromised even if written in good faith and even if it does not constitute the offence of libel, amounts to misbehaviour. 44 I.C. 338=41

S.L.R. 81 (F.B.). *See also* 35 C.L.J. 403=26 C.W.N. 580=1923 C. 252; 1933 R. 34. An advocate deliberately making false allegations involving imputations upon the fairness and impartiality of judicial officers in proceedings connected with an execution case to which he was himself a party cannot be punished under the disciplinary side under Bar Councils Act. 1932 A.L.J. 773=1932 A. 492 (S. B.). *See also* 1934 P. 598 (S.B.). Instructions from a client are no excuse whatever for a pleader exceeding his duty towards the Courts. A conditional apology is valueless. 25 Bom. L.R. 264=73 I.C. 353=1923 B. 234. *See also* 33 P.L.R. 785. Although it is perfectly true in one sense that a legal adviser must accept statements of fact from his client, yet in applications for transfer statements imputing prejudice or unfairness or corruption to Magistrate should not be made unless the statements of the client as tested by the adviser are found sustainable. 8 P. 575=10 Pat.L.T. 711=1929 P. 151 (F.B.). A statement made by a counsel before the Judges of a Full Bench to the effect that his instructions are that his client does not wish the matter to be argued before the Bench as constituted, amounts to a contempt of Court. 33 P. L. R. 872. As to making reckless allegations in pleadings, *see* 152 I. C. 313=13 P.L.T. 560 (S.B.). Pleader as suitor committing contempt of Court is liable for disciplinary action. *See* 55 A. 148=1933 A.L.J. 251=1933 A. 244; 1932 A. 492 (S.B.).

CONDUCT OF CASE—INTIMIDATION BY JUDGE—DUTY OF COUNSEL TO PROTEST.—It is the duty of the members of the Bar if their clients are prematurely threatened from the Bench, not to adopt an attitude which may appear pusillanimous but to protest then and there that they resent such observations, and if necessary, after consultation with their attorney instructing them to apply for a transfer of the case to the list of another Judge. 60 C.L.J. 179=39 C. W.N. 61.

TRYING TO KNOW THE EFFECT OF A JUDGMENT BEFORE ITS DELIVERY AMOUNTS TO PROFESSIONAL MISCONDUCT.—*See* 75 I.C. 728=5 Pat.L.T. 350=1924 Pat. 131.

ACTS NOT AMOUNTING TO MISCONDUCT.—Where a pleader allowed another person to sign in the name of his client an application filed in Court, as his client had a swollen hand and could not himself sign it, he committed a breach of his professional duty, but in the circumstances it is not necessary that the Court should take disciplinary action against him. 14 Rang. 152=1936 Rang. 177. Pleader employing unregistered clerk, against R. 978 (2) (iii) of the Calcutta High Court is not guilty of misconduct under S. 13 (f) so long as this clerk is not employed in doing the work of the registered clerk and is not allowed to have access to the Court staff. 41 C.W.N. 929=170 I.C. 251=1937 C. 408. Where a solicitor acting for a plaintiff who had been

refused a warrant for the detention of the defendant by a Court started a criminal process on the same subject-matter obtained his warrant from a different Court, almost as a matter of course, his conduct does not necessarily involve any punishable contempt of the Civil Court. The law does not restrict a litigant to a single form of remedy and he may pursue all the legal remedies appropriate to his grievance. 14 Bom.L.R. 471=23 M.L.J. 194=15 I.C. 72 (P.C.). Where a solicitor substituted the name of two witnesses in a summons on the ground that the persons originally summoned were totally ignorant of the facts of the case. *Held*, no misconduct. 15 I. C. 72 (P.C.). Adjournment asked for in good faith to apply for transfer—Subsequent finding that sufficient grounds for transfer did not exist—Pleader responsible for the transfer application is not necessarily guilty of misconduct. 1928 A. 396 (1924 A. 253, Dist.). Where a pleader who is one of the trustees of an institution fails to give information to the police when he finds that a co-trustee of his has misappropriated the trust money but rather prefers to deal with his co-trustee mercifully and makes himself morally responsible for the defalcation and undertakes responsibility for the defalcation which had arisen, he cannot be held to be guilty of any kind of misconduct justifying disciplinary action, even though he may have been negligent in his duties as trustee. 175 I.C. 156=1938 Rang. 158.

DEMAND OF EXORBITANT FEES cannot by itself amount to professional misconduct. 58 M.L.J. 635=34 C.W.N. 534=1930 P. C. 144 (P.C.). See also 1937 Rang. 299. Where a legal practitioner deliberately ignores the language of the fee certificate prescribed by the High Courts by R. 1, Ch. 21, and adopts fee certificate form of his own which materially and substantially differs from the form prescribed by the High Court and which entirely nullifies the object of the High Court in prescribing the form of the certificate, he is guilty of serious professional misconduct. 1934 A.L.J. 333=1934 A. 109 (2) (S.B.). Where an advocate retains the judgment of the trial Court with the intention of getting himself engaged in appeal without any valid excuse for retaining the judgments, the advocate is guilty of professional misconduct. 12 P. 843=14 P.L.T. 709=1933 P. 571 (S.B.). The filing of a memorandum of appeal on the last day of limitation without sufficient Court-fee, knowing full well that it is under-stamped and hoping that the Court would be persuaded to accept the deficiency later is certainly not in consonance with the high traditions of the profession to which the advocate belongs. An advocate who is approached by a client to so file an appeal should refuse to file it unless the full amount of the Court-fee was first paid. The High Court will not tolerate practice of this nature. Per *Mockett, J.*—It is undesirable for practitioners to lend themselves to the

practice of deliberately filing appeals under-stamped. 1938 M.W.N. 1169=48 L. W. 702 (F.B.).

PRIVILEGE—EXTENT OF.—See 35 Bom.L.R. 910=1932 B. 490; 34 Bom.L.R. 443=1932 B. 199. A civil suit for damages for a defamatory statement made on oath or otherwise by counsel, party or witness in a judicial proceeding is governed not by S. 499 of the Penal Code but by the principles of justice, equity and good conscience, which are identical with the corresponding rules of English Common Law. The protection under the law extends to all statements made by a party, pleader or witness in the suit, no matter whom it may relate to, whether it is the opposite party or his witness, so long as it is not irrelevant to the matter in hand. (40 A. 341; 48 C. 388, Ref.). 141 I.C. 362=1933 N. 47.

PLEADING PRIVILEGE FOR PROFESSIONAL COMMUNICATION.—A pleader cannot be charged for misconduct for refusing to disclose to the Court a professional communication made to him by his client. 14 Cr. L. J. 438=20 I.C. 598.

BOYCOTT OF COURTS.—49 C. 732=35 C.L.J. 356=26 C.W.N. 589 (F.B.); 25 C. W. N. 580=69 I.C. 209=1923 C. 212; 35 C.W. N. 344.

BURDEN OF PROOF.—In proceedings against a legal practitioner the burden of proving the charges against the practitioner is on the complainant. The complainant's evidence in such cases needs corroboration. 54 M. 857=61 M.L.J. 148 (F.B.).

DEFIANCE TO LAWS—VAKIL TAKING LAW INTO HIS OWN HANDS.—72 I.C. 875=1923 P. 185 (F.B.). Persistence in conduct and advising non-payment of taxes or boycott of Courts and breaking law and order would justify proceedings under this section. 45 M.L.J. 684=75 I.C. 997=1924 M. 129. See also 42 P.L.R. (J. & K.) 77.

LAWYER BLINDLY FOLLOWING CLIENT'S INSTRUCTIONS.—When their clients ask them to write in a pleading or petition accusations of dishonesty, criminality, etc., against anybody, or instruct them to ask questions of that nature the lawyers are not to blindly follow the instructions. They must satisfy themselves that apart from the relevancy of those accusations or questions, there are materials on which those accusations can be made or questions asked, and that the accusations and suggestions are not recklessly made. If they do not do so, they are guilty of professional misconduct. 1934 P. 398 (S.B.). See also 1935 A.L.J. 29=1935 A. 117. If however the pleader acts in good faith and with due care and caution, he will be protected. See 152 I.C. 313=15 P.L.T. 160 (S.B.). The pleader was addicted to drinking. In defending an accused, he came to Court in so drunken a condition that he was unable to conduct the case on behalf of his client. On another occasion, he came to Court "hopelessly drunk" and not properly dressed and insulted the Court; again on another occasion, he assaulted the

14. If any such pleader or mukhtar practising in any subordinate Court

Procedure when charge of unprofessional conduct is brought in subordinate Court or revenue-office.

or in any revenue-office is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid, the presiding officer shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such

charge will be taken into consideration.

Such copy and notice shall be served upon the pleader or mukhtar at least fifteen days before the day so appointed.

On such day, or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the pleader or mukhtar, and shall proceed to adjudicate on the charge.

If such officer finds the charge established and considers that the pleader or mukhtar should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court; and the High Court may acquit, suspend or dismiss the pleader or mukhtar.

Any District Judge, or with his sanction any Judge subordinate to him,

Suspension pending investigation, ¹[any Judge of a Court of Small Causes of a presidency-town], any District Magistrate, or with his sanction any Magistrate subordinate to him, and any Revenue-authority not inferior to a Collector, or with the Collector's sanction any Revenue-Officer subordinate to him, may, pending the investigation and the orders of the High Court, suspend from practice any pleader or mukhtar charged before him or it under this section.

Every report made to the High Court under this section shall—

(a) when made by any Civil Judge subordinate to the District Judge, be made through such Judge;

(b) when made by a Magistrate subordinate to the Magistrate of the District,² be made through the Magistrate of the District² and the Sessions Judge;

(c) when made by the Magistrate of the District,² be made through the Sessions Judge;

(d) when made by any Revenue-Officer subordinate to the Chief Controlling Revenue-Authority, be made through such Revenue-Authorities as the Chief Controlling Revenue-Authority may, from time to time, direct.

Every such report shall be accompanied by the opinion of each Judge, Magistrate or Revenue-authority through whom or which it is made.

LEG. REF.

¹ Inserted by Act IX of 1884, S. 4.

² To be read as "District Magistrate." See the Code of Criminal Procedure, 1898 (Act V of 1898), S. 3 (2).

bench clerk. *Held*, that he was not fit to be entrusted with the responsible duties of the legal profession and that his name should be struck off the list of the pleaders. 12 Rang. 180=150 I.C. 236=1934 Rang. 156. Practice and Procedure where a Court has reason to believe that a practitioner is guilty of professional misconduct; it cannot allow proceedings to be dropped as a result of an agreement between the practitioner and the complainant. I.L.R. (1940) Mad. 433=51 L.W. 197=1940 Mad. 370= (1940) 1 M.L.J. 259 (F.B.).

SEC. 14: SCOPE OF SECTION.—NATURE OF PROCEEDINGS UNDER THE SECTION.—The procedure under the Act is neither criminal nor civil but purely designed for the purpose of discipline. Such disciplinary proceedings

under S. 14 are not proceedings of a Court of civil jurisdiction and S. 141, C. P. Code, cannot apply to them. 1 P.L.J. 576=37 I. C. 484. *Woodroffe, J.*—Proceedings under this section are *quasi* criminal proceedings and pleader may be examined on oath. 49 C. 732=26 C.W.N. 589=1922 C. 515 (F. B.). *Mookerjee J.*—The proceedings are neither civil nor criminal in their nature. They are special proceedings resulting from the inherent power of the Court over its officers and are regulated by S. 14. 1922 Cal. 515=49 Cal. 732. See also 2 R. 491. pleader whether can be put on oath during inquiry against him. False statements during enquiry—Effect—Procedure. 115 I.C. 318=1929 S. 121 (F.B.). In a case in which a legal practitioner is charged with professional misconduct the enquiry should proceed on formulated charges. 34 C. W. N. 534=1930 P.C. 144=58 M.L.J. 635 (P.C.). Applicability of S. 107 of the Government of India Act, 1915, to proceedings under S. 14 of the Legal Practitioners

Act discussed. 1 P.L.J. 576=37 I.C. 434. It is only where, in the course of proceedings before it, a Subordinate Court has reason to suppose that a pleader has been guilty of misconduct, that the Subordinate Court can inquire as to the misconduct without reference to the High Court. He cannot do so if the alleged misconduct has taken place before proceedings have been started in the Court. 171 I.C. 503=1937 Rang. 345.

PLEADER GUILTY OF CRIMINAL OFFENCE.—Proceedings under the Act being summary proceedings a pleader should not be proceeded thereunder for what are in reality grave criminal charges. 1 P.L.T. 571=58 I.C. 150=5 P.L.J. 601. *See also* 57 I.C. 931=24 C.W.N. 755; 31 C.W.N. 584=54 C. 721=1927 C. 536; 115 I.C. 318=1929 S. 121.

STANDARD OF PROOF.—The standard of proof of guilt under Legal Practitioners Act is not different from other legal proceedings and should be such as to leave no reasonable doubt in the mind of the Court that the offence has been committed. 1 P.L.T. 372=57 I.C. 460 (F.B.). *See also* 1939 Pat. 343 (S.B.). Necessity for strict proof—Mere suspicion not sufficient. *See also* 18 Pat. 580=20 Pat.L.T. 607=1939 Pat. 343 (S.B.). Where the point for enquiry was whether a pleader signed and filed a satisfaction, of a mortgage execution case without instruction, and the Court finds that the charge is not established beyond reasonable doubt no action could be taken against the pleader under the Legal Practitioners Act. 152 I.C. 43=59 C.L.J. 419=1934 C. 794. Charges of professional misconduct must be clearly proved and should not be inferred from mere ground for suspicion, however reasonable, or what may be mere error of judgment or indiscretion. 58 M. L.J. 635=34 C.W.N. 534=1930 P.C. 144 (P.C.), followed in 1930 L. 947. Where the allegation against a legal practitioner amounts to a charge of criminal prosecution the correct procedure to be followed is to launch a criminal prosecution and not to proceed under the Legal Practitioners Act. 38 C.W.N. 87=1934 Cal. 272; I.L.R. (1938) 2 Cal. 138. A pleader intentionally concealing his conviction in his application for admission is liable to be dismissed. 25 I.C. 339=11 Bur.L.T. 304. Under the Legal Practitioners Act, the High Court will not go into the merits of conviction but will ordinarily accept the findings of Criminal Courts as final. 17 I.C. 811=5 Bur.L.T. 191. It is not, however necessary for the High Court to exercise its jurisdiction that any offence should have been committed, nor is it necessary that what the pleaders have done should have subjected them to anything like general infamy or imputation of character. 22 Bom. L.R. 13=54 I.C. 679=44 B. 418. *See also* 72 I.C. 875 (F.B.).

RE-INSTATEMENT.—The High Court has power to re-instate a legal practitioner who had been dismissed for misconduct of any

description. Before doing so it should be clearly convicted by actual facts that the delinquent has reformed his character. 1 P. 684=71 I.C. 122; 14 C.L.J. 113=11 I.C. 997=16 C.W.N. 337; considerations justifying re-instatement of debarred pleader. I.L.R. (1937) Bom. 99=38 Bom.L.R. 1161=1937 Bom. 48; I.L.R. (1937) All. 411=1936 A.L.J. 1396=1937 All. 50 (F. B.). *See also* 1939 Rang.L.R. 213=1939 Rang. 142 (S.B.); 45 M.L.J. 639=1924 Mad. 265 (F.B.); I.L.R. (1940) Mad. 81; I.L.R. (1940) Mad. 84. Where persons are struck-off the roll, the door is not irrevocably shut behind them, but after years of industry straightforwardness of life, and conduct which shows repentance and determination to amend, they may ultimately find their way back to the honourable profession which they once disgraced. That leniency of outlook results from the consideration that it is impossible to shut out from a man of education, who has once borne a good character, the hope that he may rise again. But it does not mean that persons who have been properly removed from the rolls should come again and again with repeated applications within months, or even within a few short years, after the event. *See also* 1939 Rang.L.R. 213=1939 Rang. 142; 41 Cr.L.J. 272=1940 Rang. 32. Before the Court could re-admit an Advocate who has been struck off the rolls for misappropriation of monies belonging to his client, the Court must be fully satisfied that the Advocate has fully regained his character and is fitted for re-admission into the ranks of an honourable profession. The Court would require solid facts and cogent reasons. Mere opinion is not sufficient. An Advocate can only be re-admitted if he can show that he has become worthy to act as an Advocate. His re-admission does not depend on the fact that he has been suspended or struck off the rolls for several years. In deciding such matters the Court has a duty to the public, and where the Advocate has been guilty of misappropriation it must be shown that there is no likelihood of such an offence being committed again. I.L.R. (1940) Mad. 81=1939 M. 906=(1939) 2 M.L.J. 632 (S.B.); I.L.R. (1940) Mad. 84=1939 Mad. 917=(1939) 2 M.L.J. 630 (F.B.). There is inherent power in the High Court to restore a pleader whose name has been struck off the rolls, although there is no express provision for a review of an order made under the Legal Practitioners' Act. 1935 All. 331 (F. B.). *See also* notes under S. 41, *infra*.

INQUIRY INTO MISCONDUCT OF PLEADER—JURISDICTION, PRACTICE AND PROCEDURE.—Where the charge brought against a legal practitioner amounts to an allegation of the commission of a serious crime, the proper procedure to follow is to launch a prosecution for that crime, and if a conviction is obtained to institute proceedings under the Legal Practitioners Act. 1943 P.W.N. 53=44 P.L.T. 79=A.I.R. 1943 Pat. 52 (S.B.). Under S. 14 the enquiry should

be conducted only by the presiding officer of the Court who tried the case in which the alleged misconduct occurred. But under S. 13 the High Court has power to transfer the enquiry to another Court. 1944 N.L.J. 244=A.I.R. 1944 Nag. 273 (2). If a pleader or mukhtar practising in a Court commits an offence of professional misconduct in connection with any instructions which he has received from his client generally or in connection with any particular case, then it is within the jurisdiction of any Court before whom such pleader or mukhtar is practising, if brought to its notice that the practitioner has committed any unprofessional conduct, to take action against him, and those proceedings would be entirely within jurisdiction. The presiding officer of the Court in which the pleader or mukhtar practises has ample jurisdiction to initiate proceedings, though the particular matter in reference to which he commits the act complained of might not be before that Court. 18 Pat.L.T. 961=1938 Pat. 17=17 Pat. 96 (S.B.). Where a Subordinate Court after drawing up a charge against a pleader and holding an inquiry is of opinion that no report should be sent to the High Court and that the proceedings should be dropped, the District Judge has no jurisdiction to forward those proceedings to the High Court recommending suspension. He has no jurisdiction to forward the proceedings which were never initiated by him or to act on the evidence which was never recorded by him. A reference to the High Court by the District Judge in such a case is *ultra vires*. 17 Pat. 261=1938 Pat. 385 (S.B.). If the District Judge disagrees with the findings of the Subordinate Court, he is at liberty to draw up fresh proceedings and after giving notice to the pleader record himself all evidence in support of the charge or to refute the charge, and then after adjudicating thereon he can report to the High Court if in his view the conduct of the pleader deserves a punishment to be meted out by the High Court. It is also open to the High Court to draw up fresh proceedings and then to dispose of the matter after giving notice to the pleader and after hearing his defence, if any. 17 P. 261. If a Court thinks there has been any breach of professional etiquette, or any matter calling for the exercise of disciplinary powers, in the conduct of the pleader or advocate in the case it should decide on the merits of the case and reserve such question for further consideration after the disposal of the suit. 40 A. 147=44 I.C. 28=16 A.L.J. 64. If in the course of a proceeding a subordinate court has reason to think that a pleader has committed misconduct in the course of his professional duty, the presiding officer of that Court can under S. 14 institute proceedings against him and inquire into the alleged misconduct. In such a case even though no charge is made by a person concerned, the framing of the charge need not be directed by the High Court. 55 L.W. 845=A.I.R. 1942 Mad. 691=(1942)

2 M.L.J. 479 (F.B.). Inquiry should ordinarily be made by the presiding officer of the Court where the misconduct is alleged to be committed. 1928 A. 396 (S.B.). See also I.L.R. (1940) Mad. 433=(1940) 1 M.L.J. 259 (F.B.).

PROCEDURE OF S. 14 MUST BE STRICTLY FOLLOWED.—The proceedings must be separate and distinct and cannot be made part of criminal proceedings. The report of the High Court must be accompanied by the opinion of the officer making the report. 9 I.C. 247=15 C.W.N. 764. S. 14 includes a charge under Cl. (f) of S. 13 (as amended by Act XI of 1896), and Subordinate Courts have jurisdiction to take proceedings. 152 P.L.R. 1919=54 I.C. 982. See also 1939 Pat. 343=18 Pat. 580=20 Pat. L. T. 607. Where the District Judge finds that the charge of professional misconduct has not been established the case should not go to the High Court. 190 I.C. 320=1940 Rang. 190. Failure to formulate precise charges not fatal to proceedings in absence of prejudice. A charge of professional misconduct of a pleader can be enquired into only by the presiding officer of the Court in which the pleader practices. 32 M.L.J. 402=41 I.C. 305. The enquiry under S. 14 cannot be delegated to another officer. 1 Pat.L.J. 576=37 I. C. 484. Under S. 14 the proceedings could be instituted only by the Magistrate in whose Court the alleged misconduct or offence took place. 1 Pat.L.T. 379=57 I.C. 277. Inquiry by superior Court is invalid. The enquiry contemplated by S. 14 must be made by the presiding officer of the Court in which the misconduct was alleged and not by the presiding officer of a superior Court. 4 Pat. L.T. 97=71 I.C. 703. See also 32 M.L.J. 402=41 I.C. 305. The High Court, when the matter was referred to it, refused to take action upon that account. 4 Pat.L.T. 97=71 I.C. 703. An additional District Magistrate should follow the procedure laid down in S. 14 (c) with reference to a report by a District Magistrate and forward the report through the Sessions Judge. 27 C.W.N. 88=1922 C. 550. The District Magistrate acted improperly in replying upon his own recollections of facts when they differed from those of other witnesses and it was undesirable for him to sit as a Judge to determine the matters in respect of which he might have been called upon to report or examined as a witness. 1 Pat.L.T. 379=57 I.C. 277. S. 14 is material even when any pleader is acting in his professional capacity on behalf of his client in a proceeding in a Revenue Officer. If he is guilty of professional misconduct he would bring himself within the disciplinary jurisdiction. 56 C.L.J. 595=1933 C. 344.

JURISDICTION.—District Judge to institute the proceedings under S. 14. See 49 C. 850=35 C.L.J. 520=67 I.C. 985 (S.B.). The expression "such Court" in the first clause of S. 14 cannot be construed to mean the Court in which the misconduct is alleged to have been committed.

The section only means that any Court in which a pleader practises is competent to inquire into a charge of misconduct if the charge is brought in that Court. 72 I. C. 521=24 Cr.L.J. 409 (R.). Infliction of punishment on the legal practitioner is within the exclusive jurisdiction of the High Court. (15 C.W.N. 764, Dist.). 59 C. 709=36 C.W.N. 294=1932 C. 370. A District Judge, on being informed by a person, who is admittedly at enmity with a legal practitioner, that the legal practitioner is using his private motor as a public conveyance for passengers has no jurisdiction to hold any inquiry himself into the matter under S. 14 without having referred the matter previously to the High Court. The proper course is to report the matter to the High Court in order that it may take such steps as it deems fit under S. 13 or otherwise. 162 I.C. 485=1936 Rang. 189. S. 13 contemplates the High Court directing an inquiry before action is taken. Unless the tribunal is constituted, beforehand, the inquiry cannot be lawful. Approval of a tribunal *ex post facto* is repugnant to the spirit of the Act and the wording of S. 13. If the tribunal conducting the inquiry has not been validly constituted, acquiescence in the proceedings would not turn it into a lawful tribunal. A District Judge who is directed to hold an inquiry under S. 12 must hold it himself and has no power to delegate to an Additional District Judge without reference to the High Court and without obtaining the sanction of the High Court beforehand. Nor has the District Judge authority under S. 3-A of the Madras Civil Courts Act to transfer his duty to the Additional District Judge. I. L. R. (1940) Mad. 433=1940 Mad. 370=(1940) 1 M. L. J. 259 (F.B.).

IRREGULAR REFERENCE—EFFECT.—For a proper reference to the High Court the formalities required by S. 14 ought to be fulfilled and in the absence of those formalities being strictly complied with the reference is no valid reference. 27 A.L.J. 1042=118 I. C. 712=1929 A. 655 (F.B.). The High Court would exercise its disciplinary jurisdiction even though the reference under S. 14 with regard to alleged misconduct of a pleader is not made by the trial Court in whose Court the occurrence has taken place but by the appellate Court which has no power to refer it. It would be necessary however that the High Court should make an enquiry. What the nature of that enquiry ought to be is clearly a matter for the discretion of the Court. 1 P. 689=4 Pat. L.T. 235=71 I.C. 209. Subordinate Court can institute proceedings against a legal practitioner in respect of an act coming under Cl. (f) to S. 13. Where proceedings are commenced under Cl. (b) to S. 13, but if it is found that the act comes under Cl. (f) to S. 13, the High Court may avail itself even if the subordinate Court in such cases would have no jurisdiction to make the inquiry it did. 39 I.C. 305=21 C.W. N. 516. The fact that the pleader concerned had become a vakil of the new High

Court at Lahore since the action was taken under S. 14 by a lower Court could not affect the jurisdiction of that Court. 152 P.L.R. 1919=54 I.C. 982.

POWER OF SUSPENSION.—Investigation in para. 5 of S. 14 means investigation in the High Court. It is only after a report to the High Court under para. 4 that power is given to suspend under para. 5. 13 C.L.J. 457=9 I.C. 225=15 C.W.N. 269. The District Judge cannot suspend any pleader from practice until he has recorded his finding that he ought to be suspended or dismissed. Suspension pending investigation is not proper. 1937 M.W.N. 460=1937 Mad. 672. See also 163 I.C. 586=1936 Rang. 249.

CRIMINAL PROCEEDINGS PENDING—RENEWAL OF PLEADER'S CERTIFICATE.—Where a prosecution is ordered against a legal practitioner instead of proceeding according to S. 14, the Judge ought not to wait until the result of the criminal proceedings are known before renewing the pleader's certificate. 38 A. 182=14 A.L.J. 82=33 I.C. 632. The fact that criminal proceedings in connection with an offence under S. 193, I. P. Code, are pending against a mukhtar is not a sufficient reason within the meaning of R. 452 of the Rules of the Court of 4th April, 1898, for refusing to renew his certificate, unless the District Judge also takes action under S. 14. 1901 A.W.N. 60. See also I.L.R. (1944) Mad. 17=(1943) 2 M. L. J. 126 (Pleader not renewing certificate also. 1944 Mad. 244=(1944) 1 M.L.J. 123). A report to High Court under S. 14 recommending the dismissal of a mukhtar having no licence to practise in a Revenue Office for gross misconduct, does not lie where the misconduct was committed in the capacity, not of a mukhtar, but as a private individual and came to light in a proceeding wherein he was not a party but only a witness. 23 I. C. 746=19 C.L.J. 100. A proceeding under this Act which is not properly initiated is not a judicial proceeding in the course of which a prosecution may be directed by the Court under S. 476, Cr.P. Code. 15 C. W. N. 269=13 C.L.J. 457=9 I.C. 225. Proceedings against several pleaders are to be separate and distinct. 15 C.W.N. 764=9 I.C. 247. An inquiry into the professional misconduct of a pleader being of a quasi judicial nature the Court must have strict proof of the pleader's misbehaviour. 11 Bom.L.R. 1150=4 I.C. 266. The section does not limit the consideration of a charge to the Court in which the misconduct is alleged to have been committed. 188 P. L.R. 1901. R. 37 of the Chapter XXI of the General Rules Civil (1911) applies even to a pleader of the High Court when he is practising in the Subordinate Courts. 17 I.C. 539=13 Cr.L.J. 794. Competency of District Judge to enquire into a charge, of misconduct—Chief Court's power of revision. 4 I.C. 1022=11 Cr.L.J. 148. Misconduct of mukhtar as witness—Notice to Commissioner on Land Revenue appeal—Mukhtar not entitled to practise in revenue office—Jurisdiction of Commissioner to re-

15. The High Court, in any case in which a pleader or mukhtar has been acquitted under section 14 otherwise than by an order of the High Court, may call for the record and pass such order thereon as it thinks fit.

16. Notwithstanding anything contained in any letters patent or in the Code of Civil Procedure, section 37, clause (a), any High Court established by Royal Charter may, from time to time, make rules consistent with this Act as to the following matters (namely) :—

(a) the qualifications and admission of proper persons to be mukhtars practising on the appellate side of such Court;

(b) the fees to be paid for the examination and admission of such persons;

(c) the security which they may be required to give for their honesty and good conduct;

(d) the suspension and dismissal of such mukhtars; and

(e) declaring what shall be deemed to be their functions, powers and duties;

and may prescribe and impose fines for the infringement of such rules, not exceeding in any case five hundred rupees; and such fines when imposed, may be recovered as if they had been imposed in the exercise of the High Court's ordinary original criminal jurisdiction.

CHAPTER IV.

OF REVENUE-AGENTS.

Power to make rules as to qualifications, etc., of revenue-agents.

17. The Chief Controlling Revenue-authority may, from time to time, make rules¹ consistent with this Act as to the following matters (namely) :—

(a) the qualifications, admission and certificates of proper persons to be Revenue-agents;

(b) the fees to be paid for the examination and admission of such persons;

(c) the suspension and dismissal of such revenue-agents; and

(d) declaring what shall be deemed to be their functions, powers and duties.

Publication of rules.

All such rules shall be published in the Official Gazette, and shall thereupon have the force of law.

18. On the admission of any person as a revenue-agent under section 17, the Chief Controlling Revenue-authority shall cause a certificate, signed by such officer as such Authority from time to time appoint in this behalf, to be issued

LEG. REF.

¹ For rules made under this section, see the different Local Rules and Orders.

fer misconduct to High Court. 19 C.L.J. 110=22 I.C. 746. A Court subordinate to the High Court is competent to try offences falling under Cls. (c) and (f) of S. 13. 3 A.L.J. 811=29 A. 61.

MISCONDUCT—APPEARANCE FOR OPPOSITE SIDE.—Proper professional conduct is not a mere matter of compliance with technical rules. It is one of which every one who aspires to be called a gentleman should have an instinctive appreciation. The conduct of a pleader who had already taken instructions from defendant and received his confidence in the matter of the genuineness of a Small Cause Court suit but who notwithstanding that confidence accepts the instructions of the other side in a title suit referring to same subject-matter, deserves the severest

censure. 15 P.L.T. 305=150 I.C. 16=1934 P. 352 (S.B.). See also 1938 Pat. 28 (S.B.); 1928 Mad. 592; 13 A.L.J. 475; 1938 Mad. 276; 1928 Lah. 65; 1930 Rang. 355; 1934 Oudh 58; 1938 Pat. 28=1938 P. W.N. 115. Reinstatement after disbarment.—Practice as to. See 1939 Rang. 78.

Sec. 15.—As to applicability of section see 46 L.W. 599=1937 Mad. 672. Where a subordinate Court dismisses a petition against a pleader charging him with professional misconduct, it has no power to award costs. But when the matter is taken up by the High Court under S. 15 of the Legal Practitioners Act, the High Court can, if it deems just—as for instance where the complaint is found to be vexatious—itsself pass an order for payment of costs. See now Mad. Legal Practitioners' Act III of 1943, S. 2. I.L.R. (1943) Mad. 385=56 L.W. 57=A.I.R. 1943 Mad. 250=(1943) 1 M.L.J. 121 (S. B.).

to such person, authorizing him to practise up to the end of the current year in such revenue-offices as may be specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Secretary of the Chief Controlling Revenue-authority, or by any other officer authorized by such Authority in that behalf.

On every such renewal, the certificate then in the possession of such revenue-agent shall be cancelled and retained by such Secretary or other officer.

Every certificate so renewed shall be signed by such Secretary or other officer and shall continue in force to the end of the current year.

Every officer so renewing a certificate shall notify the renewal to the Chief Controlling Revenue-authority.

19. Every revenue-agent holding a certificate issued under section 18 may

Enrolment of revenue agent.

apply to be enrolled in any revenue-office mentioned therein and situate within the limits of the territory under the Chief Controlling Revenue-authority; and subject to such rules as the Chief Controlling Revenue-authority may, from time to time, make in this behalf, the officer presiding in such office shall enrol him accordingly, and thereupon he may practise as a revenue-agent in such office and in any revenue-office subordinate thereto.

20. Except as provided by this Act or any other enactment for the time

No person to act as agent in revenue-offices unless qualified.

being in force, no person, other than a pleader duly qualified under the provisions hereinbefore contained, shall practise as a revenue-agent in any revenue office, unless he holds a certificate issued under section 18 and has been enrolled in such office or some other office to which it is subordinate:

Provided that any person duly authorized in this behalf may, with the sanction of the Chief Controlling Revenue-authority, or of an officer empowered by the Provincial Government in this behalf, transact all or any business in which his principal may be concerned in any revenue-office.

The sanction mentioned in this section may be general or special, and may at any time be revoked or suspended by the Authority or officer granting the same.

21. The Chief Controlling Revenue-authority may suspend or dismiss any

Dismissal of revenue-agent convicted of criminal offence.

revenue-agent holding a certificate issued under this Act who is convicted of any criminal offence implying a defect of character which unfits him to be a revenue-agent.

Suspension and dismissal of revenue-agents guilty of unprofessional conduct.

22. ¹[The Chief Controlling Revenue-authority may also, after such inquiry as it thinks fit, suspend or dismiss any revenue-agent holding a certificate as aforesaid—

(a) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or

(b) who tenders, gives or consents to the retention, out of any fee paid or payable to him for his services, of any gratification for procuring or having procured the employment in any legal business of himself or any other revenue-agent, or

(c) who, directly or indirectly, procures or attempts to procure the employment of himself, as such revenue-agent through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or

(d) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36, or

LEG. REF.

¹Substituted by Act XI of 1896, S. 3.

(e) for any other reasonable cause.]

23. If any revenue-agent holding a certificate issued under this Act is charged with any such conduct in any office subordinate to the Chief Controlling Revenue-authority, or

Procedure when revenue-agent is so charged in subordinate office.

in the Court of any Munsif, the officer at the head of such office, or such Munsif, as the case may be, shall send him a copy of the charge, and also a notice that, on a day to be therein appointed, such a charge will be taken into consideration.

Such copy and notice shall be served upon the person charged at least fifteen days before the day so appointed. On such day or on any other day to which the enquiry may be adjourned, the officer or Munsif shall receive all evidence properly produced in support of the charge, or by the person charged, and shall proceed to adjudicate on the charge.

If the officer or Munsif finds the charge established, and considers that the person charged should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and report the same to the Chief Controlling Revenue-authority; and such Authority shall proceed to acquit, suspend or dismiss him.

Any Revenue-officer not inferior to a Collector, and, with the Collector's sanction, any Revenue-officer subordinate to him, or any Munsif in his district, may, pending the investigation and the orders of the Chief Controlling Revenue-authority, suspend from practice any revenue-agent charged before him under this section.

Where any officer acting under this section is subordinate to the Commissioner of a Division, he shall transmit the report through such Commissioner, who shall forward with the same an expression of his own opinion on the case.

24. The Chief Controlling Revenue-authority, in any case in which a revenue-agent has been acquitted under section 23

Power to Chief Controlling Revenue-authority to call for record.

otherwise than by an order of the Chief Controlling Revenue-authority, may call for the record and pass such order thereon as seems fit.

CHAPTER V. OF CERTIFICATES.

25. Every certificate, whether original or renewed, issued under this Act shall be written upon stamped paper of the value

Fee for certificates.

prescribed therefor in the second schedule hereto annexed ¹[and of such description as the Provincial Government may, from time to time, prescribe.²]

Provided that a certificate issued on or after the first day of July in any year may be written on stamped paper of half the value so prescribed:

³[Provided also that no stamped paper shall be required in the case of a certificate, whether original or renewed, authorizing, under section 7, a vakil or attorney on the roll of a High Court established by Royal Charter to practise as a pleader.]

26. When any pleader, mukhtar or revenue-agent is suspended or dismissed under this Act, he shall forthwith deliver up

Dismissed practitioners to surrender certificates.

his certificate to the Court or officer at the head of the office before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue-authority (as the case may be) orders him to deliver the same.

LEG. REF.

¹ Inserted by Act IX of 1884, S. 5.

² For instance of rule prescribing the

stamp paper to be used for certificates, *see* different Local Rules and Orders.

³ Inserted by Act I of 1908, S. 4.

CHAPTER VI.

OF THE REMUNERATION OF PLEADERS, MUKHTARS AND REVENUE-AGENTS.

27. The High Court shall, from time to time, fix and regulate the fees payable by any party in respect of the fees of his adversary's advocate, pleader, vakil, mukhtar or attorney upon all proceedings (a) on the appellate side of such Court (b) in the case of a High Court not established by Royal Charter, on its original side, and (c) in subordinate Courts ¹[and in respect of the fees of his adversary's revenue-agent appearing, pleading or acting under section 10].

High Court and Chief Controlling Revenue-authority to fix fees on civil and revenue proceedings.

The Chief Controlling Revenue-authority shall, from time to time, fix and regulate² the fees payable upon all proceedings in the revenue-offices by any party in respect of the fees of his adversary's advocate, pleader, vakil, attorney, mukhtar or revenue-agent.

Tables of the fees so fixed shall be published in the Official Gazette.

Exception as to agents mentioned in section 20.

Nothing in this section applies to the agents mentioned in the proviso to section 20.

28 to 31. [*Agreements with clients. Power to modify or cancel agreements. Agreements to exclude further claims. Reservation of responsibility for negligence.*] *Rep. by the Legal Practitioners (Fees) Act (XXI of 1926).*

CHAPTER VII.

PENALTIES.

32. Any person who practises in any Court or revenue-office in contravention of the provisions of section 10 or section 20 shall

On persons illegally practising as pleaders, mukhtars or revenue-agents.

be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding ten times the amount of the stamp required by this Act for a

certificate authorizing him so to practise in such Court or office, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

LEG. REF.

¹ Inserted by Act IX of 1884, sec. 6.

² For rules as to fees in revenue proceedings, see the different Local Rules and Orders.

SEC. 27.—This Act does not impose any limitation upon the fees which are recoverable by practitioners from their own clients as regulated by agreement between them. 29 I.C. 763; 17 C.W.N. 45=15 C.L.J. 660; 13 I.C. 43. Where several pleaders are employed the fees allowable under the rules framed by the High Court under this section should be equally divided amongst all of them. 7 C.W.N. 300. Engagement of more than one vakil—Rights to fees. See 38 I.C. 210. See also 4 M.L.J. 181=26 M. 654 (F.B.). Where a pleader who has been engaged in the suit is re-engaged by the assignee decree-holder, no pleader's fee can be allowed in execution afresh—C.P. Rules. 144 I.C. 379=1933 N. 360.

SEC. 28: ORAL AGREEMENT INVALID.—A suit by a pleader for fees based upon an alleged oral agreement cannot succeed because it is not a valid agreement as it is a special agreement and any special agreement is to be in writing under the provisions of sec. 28. 26 C.W.N. 709=67 I.C. 874=1922 C. 567. See also 20 I.C. 47=20 C.L.J. 424.

FAILURE TO FILE AGREEMENT.—Even an

illegal agreement if not actually filed under sec. 28 cannot be acted on and if the pleader acted *bona fide* and in good faith no action ought to be taken on it. 12 Gr.L.J. 12=9 I.C. 130=8 A.L.J. 151.

Repeal of sec. 28, Legal Practitioners Act, is not retrospective. 6 P. 614=101 I.C. 559=1927 P. 178. The repeal of the section does not affect rights created before it came into force. 1927 P. 178. As to a recent ruling under the repealed section, see 26 A.L.J. 258=1928 A. 274. See also 1930 P. 61; 30 L.W. 876=57 M.L.J. 756; 113 I.C. 93; 123 I.C. 408.

SEC. 32.—The term "practising" in sec. 32 does not connote the doing of acts habitually or often, but signifies the performance of an act by a person as a professional man which as a private individual, he could not do. 26 A. 380=1904 A.W.N. 57. Where a pleader does not apply for renewal of his sanad within the time prescribed, he fails to comply with R. 11 of the rules under the Legal Practitioners Act. He has therefore no right to appear in a case until his sanad is actually renewed, though if he applies within time complying with R. 6, he would as a matter of practice be permitted to appear in cases pending renewal of his sanad. If a pleader who has not complied with R. 11, appears in a case before renewal of his sanad he renders himself liable to punishment under sec. 32. I.L.

He shall also be incapable of maintaining any suit for, or enforcing any lien with respect to, any fee or reward for, or with respect to, anything done or any disbursement made by him as pleader, mukhtar or revenue-agent, whilst he has been contravening the provisions of either of such sections.

33. Any pleader, mukhtar or revenue-agent failing to deliver up his certificate as required by section 26 shall be liable, by order of the Court, authority or officer to which or to whom, or according to whose orders, the delivery should be made, to a fine not exceeding two hundred rupees, and in default of payment to imprisonment in the civil jail for a term which may extend to three months.

34. Any pleader, mukhtar or revenue-agent who, under the provisions of this Act, has been suspended or dismissed, and who, during such suspension or after such dismissal, practises as a pleader, mukhtar or revenue-agent in any Court or revenue-office, shall be liable, by order of such Court or the officer at the head of such office to a fine not exceeding five hundred rupees, and in default of payment to imprisonment in the civil jail for a term which may extend to six months.

35. Every order under section 32, 33 or 34 shall be subject to revision by the High Court where the order has been passed by a subordinate Court, and by the Chief Controlling Revenue-authority where the order has been passed by an officer subordinate to such Authority.

¹[36. (1) Every High Court, District Judge, Sessions Judge, District Magistrate and Presidency Magistrate, every Revenue-officer, not being below the rank of a Collector of a District, and the Chief Judge of every Presidency Small Cause Court (each as regards their or his own Court, and the Courts, if any, subordinate thereto), may frame and publish lists of persons proved to their or his satisfaction, ²[or to the satisfaction of any subordinate Court as provided in sub-section (2-A)] by evidence of general repute or otherwise, habitually to act as touts, and may, from time to time, alter and amend such lists.

LEG. REF.

¹ Substituted by Act XI of 1896, sec. 4.

² Inserted by Act XV of 1926, sec. 3.

R. (1944) Mad. 633=57 L.W. 87 (1)=A.L.J. 22. R. 1944 Mad. 244=(1944) 1 M.L.J. 123. See also I.L.R. (1944) Mad. 17=(1943) 2 M.L.J. 126.

MUKHTAR PRACTISING WITHOUT A CERTIFICATE.—See 1897 A.W.N. 8; 1901 A.W.N. 60.

SEC. 36: SCOPE OF SECTION.—See 6 A.L.J. 22. Sec. 36 creates a special jurisdiction but does not define the details of the mode in which that jurisdiction is to be exercised. The course to be adopted should be such as would do substantial justice to the parties brought before the Court. An enquiry under sec. 36 cannot be conducted in the manner prescribed in Cr. P. Code, regarding enquiries altogether of a different nature. 44 M.L.J. 437=69 I.C. 433=1923 M. 188 (2). As to the effect of a resolution of a Bar Association that a person is a tout, see 26 A.L.J. 790=1928 A. 334. To determine the regularity or otherwise of a Bar Association declaring certain persons

to be touts any rules framed by the Association are relevant. 1928 All. 334.

JURISDICTION AND PROCEDURE.—Proceedings to declare a man a tout are not judicial ones but are only of a departmental nature. 166 I.C. 643=38 Cr.L.J. 316=1937 Sind 4. Under sec. 36 of the Act it is not necessary that there should be a petition at all; it does not contemplate the case of a party making definite allegations against an alleged tout. 44 M.L.J. 437=69 I.C. 433=1923 M. 188 (2). The proceedings, under sec. 36 are of a quasi criminal nature and it is doubtful whether consent of the persons claimed against can validate any irregularity in the procedure. 1931 Cr.C. 137=1931 L. 57. See also 62 I.C. 829=22 Cr.L.J. 589. The exhibition of the copy of the list referred to in sec. 36, Cl. (3) of the Act is necessary to constitute a man a proclaimed tout. The principles applicable in cases under sec. 110 of the Cr. P. Code apply to cases under sec. 36. 40 A. 153=44 I.C. 125. An order under sec. 86 declaring a person to be tout is not valid if made by a District Magistrate on evidence recorded by a Subordinate Magistrate. 60 I.C. 321=24

C. W.N. 1074. An inquiry under sec. 36 must be made by the District Magistrate himself and cannot be delegated to any subordinate officer. 13 Cr.L.J. 510=15 I.C. 654 (C.). *See also* 84 I.C. 462=1925 L. 225; 1931 Nag. 187. The insertion of names of persons in the list of touts should be made after conducting a proper enquiry under sec. 36. 132 I.C. 41=1930 A. 796. Before directing inclusion of a person's name in the list of touts it is necessary under sec. 36 to give the person an opportunity of showing cause against the inclusion. The duties cannot be delegated by any of the officers mentioned therein to their subordinates. 22 Cr.L.J. 66=59 I.C. 322 (S.B.). Notice to show cause why a person should not be declared a tout must be given to him and evidence should be taken in his presence to show that he is a tout. 42 I.C. 996 (F.B.). The District Judge is bound to examine witnesses named by the person sought to be declared as a tout. The District Judge ought not to impart his own personal knowledge in a case unless he informs the person of the nature and source of information and allows himself to be cross-examined thereupon. 120 P.L.R. 1909. Where the District Judge sends to the Senior Subordinate Judge the names of persons suspected to be touts for the purpose of enquiry and report, the District Judge should on receipt of such report pass final orders as to the inclusion of the persons in the list of touts. 32 Punj.L.R. 9.

PROOF.—Proof by general repute or otherwise is necessary before a person can be declared a tout under the section. 11 P. L.R. 1912=15 I.C. 307; 44 I.C. 125=40 All. 153; 3 I.C. 982. If a resolution is based on general repute the Court may attach less weight to it, but it cannot be said that such a resolution is invalid or legally inadmissible in evidence and cannot be taken into consideration by the Court. 1931 A. 711. If a number of respectable pleaders in a particular district are found to be of opinion that a person is a tout, the fact is sufficient to justify the District Judge in holding that the person charged is by general repute a tout. 3 I.C. 982. In a proceeding under sec. 36 certain legal practitioners who had been produced as defence witnesses by some of the persons proceeded against gave evidence in favour of those who had cited them and at the same time deposed that the rest were known to them by reputation or otherwise as touts. *Held*, that such evidence could not be relied on as evidence against those persons on whose behalf the witnesses had not been cited. 12 Lah. 385=1931 L. 57. Where it appeared to the High Court, on evidence, that certain persons habitually acted as touts, they were asked to show cause why an order should not be made under sec. 36 and, on their failing to give evidence that they were living by honest and legitimate means, they were included in the list of touts and a copy thereof ordered to be hung up in

every Court. 1896 A.W.N. 107. The decision of a Court determining that a person is a tout must be based on substantial legal evidence. 13 Cr.L.J. 510=15 I.C. 654 (C.). The person against whom the evidence is directed must have an opportunity of cross-examining the witnesses. 15 I.C. 654 (C.). *See also* 3 I.C. 982.

ILLEGAL GRATIFICATION FOR FURNISHING CASES.—A letter written by a High Court Vakil to another practising in the mofussil asking the latter to send up cases to him and agreeing to share the fees, renders him culpable under sec. 36 and the High Court has jurisdiction to take up the case and suspend the pleader, as his conduct amounts to a "reasonable cause" within sec. 8 of the Letters Patent of March 17, 1866. 17 A. 498=22 I.A. 193 (P.C.).

DIVISIONAL JUDGE IN THE PUNJAB—POWER of, to declare a person as tout. 108 P.L.R. 1904.

CHIEF COURT'S POWER OF INTERFERENCE (PUNJAB).—*See*, 3 P.R. 1900 (Cr.) *cited* 23 P.R. 1904 (Cr.) 7; 3 I.C. 982.

POWER OF JUDICIAL COMMISSIONER'S COURT TO INTERFERE IN REVISION.—In cases under sec. 36, the Judicial Commissioner's Court has power to interfere in revision in the exercise of its general power of superintendence and control over Subordinate Courts. 28 N.L.R. 4=137 I.C. 66=1932 N. 50. *See also* 1941 Lah. 1=I.L.R. (1941) Lah. 133; (1938) 2 M.L.J. 100.

REVISIONAL JURISDICTION OF HIGH COURT, CONFLICT OF AUTHORITIES.—Proceedings under sec. 36 are not governed by the Civil or the Criminal Procedure Codes and cannot be revised under the civil or criminal jurisdiction. But the High Courts have held that they have jurisdiction to interfere under sec. 15 of the High Courts Act. 18 P.R. (Cr.) 1914=25 I.C. 513; 45 A. 676=1924 A. 69. *See also* 1941 Lah. 1=I.L.R. (1941) Lah. 133; I.L.R. 1938 M. 488=(1938) 2 M.L.J. 100. The only provision under which the High Court would interfere with the order of a subordinate Court under sec. 36 of the Legal Practitioners Act is 15 of the High Courts Act. The High Court ought not to interfere with the order of the Sessions Judge under sec. 36 of the Legal Practitioners Act on the ground that the finding of the latter was against the weight of evidence. 21 A. 181. The jurisdiction to revise is of an exceptional character and cannot be invoked except in furtherance of justice. If the Judge in passing the order had no clear conception of the law on the subject or if he has failed to apply the law to the facts of the case and bases his finding on mere suspicion or conjecture, the High Court would interfere with the order. I.L.R. 1938 Mad. 988=1938 M. 634=(1938) 2 M.L.J. 100. Sec. 36 confers a special jurisdiction on Subordinate Courts; and an order passed by a District Judge under sec. 36 declaring a person a tout is an order which the High

¹[*Explanation*.—The passing of a resolution, declaring any person to be or not to be a tout, by a majority of the members present at a meeting, specially convened for the purpose, of an association of persons entitled to practise as legal practitioners in any Court or revenue-office, shall be evidence of the general repute of such person for the purposes of this sub-section.]

LEG. REF.

¹ Explanation to sub-sec. (1) was inserted by Act XV of 1926, sec. 3. (b).

Court has power to revise under sec. 115. C. P. Code, being a case decided by a Court subordinate to the High Court. Sec. 439 of the Cr. P. Code does not apply to such a case. Nor can it be revised under the Government of India Act, 1935. I.L.R. 1938 M. 988=(1938) 2 M.L.J. 100. See also 1932 Nag. 50. The High Court cannot in its revisional jurisdiction interfere under sec. 115; C. P. Code, with an order under sec. 36. 56 I.C. 433= 13 S.L.R. 212. An order under sec. 36 does amount to a judgment contemplated by sec. 224 (2), Government of India Act and is not open to revision under sec. 115, C. P. Code, any more than under the Cr. P. Code. Sec. 224 (2), Government of India Act, 1935, bars the interference by the High Court on the administrative side and hence the High Court has no power to question a decision under sec. 36. I.L.R. (1941) Lah. 133=192 I.C. 363=1941 Lah. 1. (Case law discussed.) The intention of the Legislature was not to allow anything of the nature of an appeal against the decision of a competent Court under sec. 36. 45 A. 676=21 A.L.J. 671=1924 A. 69. The High Court has power to revise orders passed under sec. 36 of the Legal Practitioners Act by reason of power of superintendence vested in the Court by sec. 107 of the Government of India Act, but this power is of a very exceptional nature and cannot be invoked except in furtherance of justice. 129 I.C. 487=1930 L. 889. See also 56 B. 577=34 Bom.L.R. 1281=1932 B. 596. See also 3 I. C. 982; 3 I.C. 977; 1937 Sind 4=30 S.L.R. 346.

SEC. 36 (1), EXPL.—Under sec. 36 (1) Explanation, the resolution is valuable evidence even though the facts on which the resolution is based are not disclosed. 28 N.L.R. 159=139 I.C. 900=1932 N. 141. A resolution or report of a Sub-Committee of only seven members out of an Association of about 22 members declaring certain persons to be touts is not a resolution by a majority of the members, and hence it cannot be used as evidence of general repute under the Explanation, 6 P. 567=1927 P. 282. Held, that revision lies to High Court from an order of the District Magistrate including the name of a person in the list of touts under sec. 36 of the Legal Practitioners Act. 1930 A.L.J. 961=1930 A. 641. The law does not require that all the members should be present at the meeting but requires that a meeting of the association should be convened for the purpose of considering whether a certain person is a tout; and if by a

majority of the members present at such a meeting a resolution is passed, it is sufficient. 56 C. 800=115 I.C. 602 (2)=1929 C. 196. See also 28 N.L.R. 159=1932 N. 141. Nor does it matter that some of the members who voted had lost their voting capacity for non-payment of subscriptions, according to the rules of the Association. 105 I.C. 963=1936 Lah. 382. Nor does the fact that opportunity was not given to the persons to be declared touts to appear before the association to show cause why the resolution should not be passed. 1936 L. 382. To determine regularity or otherwise of a Bar Association declaring certain persons to be touts any rules framed by the Association are irrelevant. See 118 I.C. 524. In order to enable a Court to admit in evidence the resolution of the Bar Association declaring certain persons to be touts, it is necessary to establish that it was meeting specially convened for the purpose of passing the resolution in question. Where it is not proved that all the members of the Association who were able to attend had been notified nor is it shown that those who were not notified were otherwise not capable of attending the meeting, the special meeting convened to declare certain persons touts cannot be said to have been properly convened and consequently the resolution passed thereat is not a valid resolution, as is contemplated by explanation to sec. 36 (1). 12 L. 385=1931 L. 57. For a meeting being specially convened within sec. 36, it is not necessary to state in the notice of the meeting, the particular nature of the charges made against the tout. 44 Cr.L.J. 582=A. I.R. 1943 Pesh. 54. After the amendment of the Act in 1926, while it is open to proceed under sec. 36 in the old way and call evidence, it can also avoid the calling of witnesses once a resolution is presented to it which satisfies the requirements of Act XV of 1926. 130 I.C. 629=1931 A. 315. The expression "majority of members present" in the Explanation to sec. 36 of the Legal Practitioners Act is not the same thing as majority of members voting. Where the only evidence on which a person was declared a tout was a resolution of the Bar Association and it appeared that at the meeting of the Association 64 were present but only 26 voted in favour of the resolution, 14 votes being against it and the rest being neutral, held, that there was no legal evidence on which the person could be declared a tout. 1930 A.L.J. 977=1930 A. 752. On this Explanation, see also 26 A.L.J. 790=1928 A. 334. The words 'any person', mean any named or specified person. So, the name of the person to be declared or not to be a tout should be before the meeting, 166 I.C. 643=1937 Sind 4. It is not proper for the

(2) No person's name shall be included in any such list until he shall have had an opportunity of showing cause against such inclusion.

¹[(2-A) Any authority empowered under sub-section (1) to frame and publish a list of touts may send to any Court subordinate to such authority the names of any persons alleged or suspected to be touts, and order that Court to hold an inquiry in regard to such persons; and the subordinate Court shall thereupon hold an inquiry into the conduct of such persons and, after giving each such person an opportunity of showing cause as provided in sub-section (2), shall report to the authority which has ordered the inquiry the name of each such person who has been proved to the satisfaction of the subordinate Court to be a tout; and that authority may include the name of any such person in the list of touts framed and published by that authority:

Provided that such authority shall hear any such person who, before his name has been so included, appears before it and desires to be heard.]

(3) A copy of every such list shall be kept hung up in every Court to which the same relates.

(4) The Court or Judge may, by general or special order, exclude from the precincts of the Court any person whose name is included in any such list.

(5) Every person whose name is included in any such list shall be deemed to be proclaimed as a tout within the meaning of section 13, clause (e), and section 22, clause (d).]

¹[(6) Any person who acts as a tout whilst his name is included in any such list shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both].

CHAPTER VIII.

MISCELLANEOUS.

37. To facilitate the ascertainment of the qualifications mentioned in sec-

LEG. REF.

¹ Sub-sec. (2a) and (6) were inserted by Act XV of 1926, sec. 3.

District Judge to award costs of his inquiry against the Bar Association when he had invited it to assist him in the inquiry. 165 I. C. 963=1936 Lah. 382.

SEC. 36 (2).—Under sec. 36 (2) the District Judge has the power to differ from or accept the report of Subordinate Court; where District Judge refuses to accept the report the High Court will not interfere in revision unless the order is manifestly wrong. 134 I.C. 98=1931 L. 98 (2). That the order under sec. 36 (2) was passed by the District Magistrate without giving the applicant an opportunity of appearing before him and being heard is sufficient ground for revision. (45 A. 676, Foll.) 27 N.L.R. 398=1931 N. 187.

SEC. 36 (2-A).—Order declaring person to be tout when he is not proved to be so, is illegal. 31 P.L.R. 212=1930 L. 405. The Senior Subordinate Judge was asked by the District Judge to hold an enquiry with regard to certain persons named in the list framed by a Bar Association. The name of the petitioner was included in the list and the matter was so reported. *Held*, that under sec. 36 (2-A) it was the duty of the petitioner who knew that he was included in the list to enter appearance before the District Judge and apply to be heard and it was

not the duty of the District Judge to issue notice to him. 132 I.C. 846=1931 L. 543 (2). Proceedings under sec. 36 (2-A) are of a quasi-criminal nature. An order declaring a person to be a tout is one which very seriously affects his character and living. It is therefore incumbent upon the District Judge to satisfy himself that the conditions laid down by the Explanation to sub-sec. (1) for the admissibility of a resolution, are duly fulfilled and satisfied. 34 Bom.L.R. 1281=1932 B. 596=56 Bom. 577.

SEC. 36 (2-A) PROVISOR.—The District Magistrate delegating an inquiry to a subordinate cannot act on the report submitted by the latter recommending that a person should be declared a tout, if the person appears and desires to be heard. The District Magistrate cannot delegate the matter of hearing a person against whom a report has been made. 27 N.L.R. 398=1931 N. 187.

SEC. 36: REVISION—INTERFERENCE.—It is not for the Judicial Commissioner to interfere with the finding of the District Judge that a particular person acts as a tout unless it is shown that there has been some irregularity which amounts to a denial of justice. 44 Cr.L.J. 582=A.I.R. 1943 Pesh. 54.

SEC. 37.—For Regulations made under this section by the Government of Burma, see *Burma Gazette*, 1911, Part. 1, p. 13. For Regulations in other Provinces, see *Local Rules and Orders*.

Provincial Government to appoint Examiners.

time to time, make regulations for conducting such examinations.

38. Except as provided by sections 4, 5, ¹[7], 16, ¹[25], 27, 32 and 36, nothing in this Act applies to advocates, vakils and attorneys admitted and enrolled by any High Court under the letters patent by which such Court is constituted, or to mukhtars practising in such Court or to advocates enrolled ²[under section 41 of this Act]; ³[and, except as provided by section 36, nothing in this Act applies to persons enrolled as advocates of any High Court, under the Indian Bar Councils Act, 1926].

Exemption of High Court practitioners from certain parts of Act.

39. When any person who holds a certificate as a mukhtar under section 7 and a certificate as a revenue-agent under section 18 is suspended or dismissed in one of such capacities, he shall be deemed to be suspended or dismissed, as the case may be, also in the other.

40. Notwithstanding

Pleaders, etc., not to be suspended or dismissed without being heard.

anything hereinbefore contained, no pleader, mukhtar or revenue-agent shall be suspended or dismissed under this Act unless he has been allowed an opportunity of defending himself before the Authority suspending or dismissing him.

*41. A High Court

Power for certain High Courts to enrol advocates.

not established by Royal Charter ⁵[in respect of which the Indian Bar Councils Act, 1926, is not in force] may, from time to time, with the previous sanction of the Provincial Government, make rules as to the qualifications and admission of proper persons to be advocates of the Court, and, subject to such rules, may enrol such and so many advocates as it thinks fit.

(2) Every advocate so enrolled shall be entitled to appear for the suitors of the Court, and to plead or to act, or to plead and act, for those suitors according as the Court may by its rules determine, and subject to those rules.

LEG. REF.

¹ Inserted by Act I of 1908, sec. 5.

² Substituted by Act IX of 1884, sec. 7.

³ The last clause was added by Schedule to Act XXXVIII of 1926 (Indian Bar Councils Act).

⁴ Substituted by Act X of 1884, sec. 8, for the original section.

⁵ The words within brackets after 'Royal Charter' were inserted by Act XXXVIII of 1926.

SEC. 40: SCOPE OF THE SECTION.—The provisions of sec. 40 apply to interim orders of suspension passed under sec. 14, para. 5; before an interim order of suspension is passed under sec. 14 (5) he must be asked to show cause under sec. 40 and a report must be sent to the High Court under sec. 14 (4). 15 C.W.N. 269=9 I.C. 225. See also 163 I.C. 586=1936 Rang. 249.

SEC. 41: SUSPENSION OF PRACTICE OF ENTERING GOVERNMENT SERVICE.—APPLICATION FOR RENEWAL OF SANAD.—Where a practitioner is suspended from practice owing to his accepting a Government service, and he applies for renewal of the permission after his discharge from such service, he should

make a full and true disclosure of the facts which led to his removal from service. 62 I.O. 831 (C.)=22 Cr.L.J. 591. In the enquiry under Legal Practitioners Act of an advocate, the conviction of the advocate by a competent Magistrate must be accepted as proper, and cannot be reopened. 44 A. 352=65 I.C. 560=1922 A. 140 (F.B.). The power to rescind order under sec. 41 possessed by the Court of the Judicial Commissioner of Oudh vests in the Chief Court. But as the order passed by the Bench of the Judicial Commissioner's Court was confirmed by the Local Government, it should not be rescinded without its confirmation. 148 I.C. 299=1934 O. 140 (S.B.). Where a legal practitioner has been sufficiently punished by having remained debarred from practice for about fifteen years and he has tendered an unconditional apology the order under sec. 41 should be rescinded. 148 I.C. 299=1934 O. 140 (S.B.). There is inherent power in the High Court to restore a pleader whose name has been struck off the rolls although there is no express provision for a review of an order made under the Legal Practitioners Act. 1935 A. 321 (F.B.).

(3) The High Court may dismiss any advocate so enrolled or suspend him from practice.

(4) Provided that an advocate shall not be dismissed or suspended under this section unless he has been allowed an opportunity of defending himself before the High Court which enrolled him, and ¹[except in the case of the Chief Court of Oudh] unless the order of the High Court dismissing or suspending him has been confirmed by the Provincial Government.

42. *Repealed by the Repealing Act, 1938 (I of 1938), Section 2 and Schedule.*

FIRST SCHEDULE.

ENACTMENTS REPEALED.

[*Repealed by Act I of 1938.*]

SECOND SCHEDULE.

VALUE OF STAMPS FOR CERTIFICATES.

(See section 25.)

I.

For a certificate authorising the holder to practise as a pleader—

- (a) in the High Court and any Subordinate Court—rupees fifty;
- (b) in any Court of Small Causes in a Presidency-town—rupees twenty-five;
- (c) in all other Subordinate Courts—rupees twenty-five;
- (d) in the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsildars, in Courts of Small Causes outside the Presidency-towns and in all Criminal Courts subordinate to the High Court—rupees fifteen;
- (e) in the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

II.

For a certificate authorising the holder to practise as a mukhtar—

- (f) in the High Court and any Subordinate Court—rupees twenty-five;
- (g) in any Court of Small Causes in a Presidency-town—rupees fifteen;
- (h) in all other Subordinate Courts—rupees fifteen;
- (i) in the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsildars, in Courts of Small Causes outside the Presidency-towns and in all Criminal Courts subordinate to the High Court—rupees ten;
- (j) in the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

III.

For a certificate authorising the holder to practise as a revenue agent—

- (k) in the office of the Chief Controlling Revenue authority and in any revenue-office subordinate to such authority—rupees fifteen;
- (l) in the office of a Commissioner and in any revenue-office subordinate to a Commissioner—rupees ten;
- (m) in the office of a Collector and in any revenue-office subordinate to a Collector—rupees five.

THE LEGAL PRACTITIONERS (MADRAS AMENDMENT) ACT (III OF 1943).

[23rd February, 1943.]

An Act further to amend the Legal Practitioners Act, 1879, in its application to the Province of Madras.

WHEREAS it is expedient further to amend the Legal Practitioners Act, 1879, in its application to the Province of Madras, for the purposes hereinafter appearing;

AND WHEREAS, the Governor of Madras has, by a Proclamation under section 93 of the Government of India Act, 1935, assumed to himself all powers vested by or under the said Act in the Provincial Legislature;

Now, THEREFORE, in exercise of the powers so assumed to himself, the Governor is pleased to enact as follows:—

Short title.

1. This Act may be called THE LEGAL PRACTITIONERS (MADRAS AMENDMENT) ACT, 1943.

Insertion of new section 15-A in Act XVIII of 1879.

2. After section 15 of the Legal Practitioners Act, 1879 (hereinafter referred to as the said Act), the following section shall be inserted, namely:—

“15-A. When passing an order under section 13, section 14 or section 15, the High Court may pass such order as it thinks fit as regards the payment of the costs of the inquiry under section 13, or of the inquiry under section 14 and the hearing in the High Court, as the case may be.”

High Court's power to pass order as to costs.

Amendment of section 36, Act XVIII of 1879.

3. In section 36 of the said Act—

(a) in sub-section (1), after the words “Sessions Judge,” the words “Subordinate Judge, District Munsif,” shall be inserted, after the words “District Magistrate,” the words, “Sub-divisional Magistrate” shall be inserted, and after the words “Collector of a district,” the words “the Madras City Civil Court” shall be inserted;

(b) in sub-section (2-A), for the words “may send to any Court”, the words, brackets, figure and letter “may, of its own motion or on a report from the Committee referred to in sub-section (2-B), send to any Court” shall be substituted;

(c) after sub-section (2-A), the following sub-section shall be inserted, namely:—

“(2-B) (i) There shall be constituted at the Presidency-town of Madras a Committee consisting of seven legal practitioners in active practice appointed by the Chief Judge of the Court of Small Causes, Madras, after consulting the Principal Judge of the Madras City Civil Court, the Chief Presidency Magistrate and the representatives of the Advocates' Association and the Bar Association, Madras.

(ii) There shall be constituted at the headquarters of each District Judge and at the headquarters of each taluk comprised within the jurisdiction of a District Judge not being his own headquarters, a Committee consisting of not less than three and not more than five legal practitioners in active practice, appointed by the District Judge after consulting the salaried gazetted Judicial Officers, Civil and Criminal, at such headquarters or having jurisdiction over the taluk in which such headquarters are situated or any part of such taluk.

(iii) Every member of a Committee constituted under clause (i) or clause (ii) shall hold office for a renewable term of three years but may resign his office earlier or may be removed therefrom by the Chief Judge of the Court of Small Causes, Madras, or the District Judge, as the case may be, for sufficient cause recorded in writing. The Chief Judge or District Judge shall, subject to the provisions of clause (i) or clause (ii), as the case may be, have power to fill any vacancy in the Committee arising by resignation, death or removal.

(iv) The Committee constituted at the Presidency-town of Madras may be consulted in connexion with any action proposed to be taken under sub-section (1) or (2-A) by any Court which, or any Judge, Magistrate or Officer whose Court or Office, is situated at the Presidency-town of Madras.

(v) The Committee constituted at the headquarters of any District Judge may be consulted in connexion with any action proposed to be taken under sub-section (1) or (2-A) by any Court which, or any Judge, Magistrate or Officer whose Court or Office, is situated at such headquarters and also by any Court, Judge, Magistrate or Officer having jurisdiction over the taluk in which such headquarters are situated or any part of such taluk.

(vi) The Committee constituted at the headquarters of any taluk may be consulted in connexion with any action proposed to be taken under sub-section (1) or (2-A) by any Court, Judge, Magistrate or Officer having jurisdiction over the taluk or any part thereof.

(vii) Any Committee may report the name of any person alleged or suspected to be a tout to any Court, Judge, Magistrate or Officer entitled to consult it under clause (iv) or clause (v) or clause (vi), as the case may be, for such action as such Court, Judge, Magistrate or Officer may deem fit to take under this section.

(viii) Every Committee shall function solely in an advisory capacity and its opinion or report shall not be binding in any way on any Court, Judge, Magistrate or Officer"; and

(d) after sub-section (6), the following sub-section shall be added, namely:—

"(7) (a) If the offence referred to in sub-section (6) is alleged to have been committed by any person, the authority by which his name was included in the list of touts shall also be competent, notwithstanding anything contained in the Code of Criminal Procedure, 1898, to take cognizance of and try such offence and sentence such person if found guilty.

(b) Any person sentenced under clause (a) by any authority other than the High Court may, notwithstanding anything contained in the Code of Criminal Procedure, 1898, appeal—

(i) in case he is sentenced by a District Munsif or Sub-divisional Magistrate to the authority to which appeals ordinarily lie from decrees, sentences or orders passed by such District Munsif or Sub-divisional Magistrate; and

(ii) in other cases to the High Court.

(c) The provisions of Chapter XXXI of the Code aforesaid shall, so far as they are applicable, apply to appeals under clause (b) and the appellate authority may alter or reverse the finding or reduce or reverse the sentence appealed against."

THE LEGAL PRACTITIONERS (WOMEN) ACT (XXIII OF 1923).

[2nd April, 1923.]

An Act for the removal of doubts regarding the right of women to be enrolled and to practise as legal practitioners.

WHEREAS it is expedient to remove certain doubts which have arisen as to the right of women to be enrolled and to practise as legal practitioners; It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called THE LEGAL PRACTITIONERS (WOMEN) ACT, 1923.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

Definition.

2. In this Act, "Legal practitioner" means a legal practitioner as defined in section 3 of the Legal Practitioners Act, 1879.

3. Notwithstanding

Women not to be disqualified by reason only of sex.

anything contained in any enactment in force in British India or in the Letters Patent of any High Court or in any rule or order made under or in pursuance of any such enactment or Letters Patent, no woman shall, by reason only of her sex, be disqualified from being admitted or enrolled as a legal practitioner or from practising as such; and any such rule or order which is repugnant to the provisions of this Act shall, to the extent of such repugnancy, be void.

THE LEGAL PRACTITIONERS (FEES) ACT (XXI OF 1926).¹

Year.	No.	Short title.	Amendment.
1926	XXI	The Legal Practitioners (Fees) Act, 1926.	Repealed in part, XII of 1927.

[25th March, 1926.

An Act to define in certain cases the rights of legal practitioners to sue for their fees and their liabilities to be sued in respect of negligence in the discharge of their professional duties.

WHEREAS it is expedient to define in certain cases the rights of legal practitioners to sue for their fees and their liabilities to be sued in respect of negligence in the discharge of their professional duties; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called THE LEGAL PRACTITIONERS (FEES) ACT, 1926.

(2) It extends to the whole of British India.

(3) It shall come into force on such date² as the Central Government may, by notification in the Official Gazette, appoint.

Interpretation.

2. For the purposes of this Act unless there is anything repugnant in the subject or context,—

(a) “legal practitioner” means a legal practitioner as defined in section 3 of the Legal Practitioners Act, 1879; and

(b) a legal practitioner shall not be deemed to “act” if he only pleads, or to agree to “act” if he agrees only to plead.

3. Any legal practitioner who acts or agrees to act for any person may by private agreement settle with such person the terms

Agreement for engagement of legal practitioner.

of his engagement and the fee to be paid for his professional services.

4. Any such legal practitioner shall be entitled to institute and maintain

LEG. REF.

¹ For Statement of Objects and Reasons, see *Gazette of India*, 1926, Part V, p. 19.

² This Act was brought into force on 1st June, 1926. See *Gazette of India*, 1926, Part I, p. 514.

SECS. 3 AND 4.—A legal practitioner can not only by private agreement settle with a client the terms and fee but also sue for his fee due under that agreement and the former cannot be said to stand in any confidential relation towards the latter in view of the plain language of secs. 3 and 4. Such a private agreement can be impugned like any other contract and in case the agreement is avoided then the fee would have to be computed according to the rules for the time being in force as provided in sec. 4. 132 I.C. 719=1931 R. 104. Where the fee payable is not settled with the client under sec. 3 then under sec. 4 the pleader is entitled only to such fee as would come to on computation, in accordance with the law for

the time being in force in regard to the computation of the costs to be awarded to a party in respect of the fee of his legal practitioner. 1931 P. 137=131 I.C. 542. Where client engaged a pleader and filed a vakalatnama in his favour but it was not signed by the pleader, the pleader is entitled to his remuneration for the work done by him on the principle of *quantum meruit*. 1931 P. 137=131 I.C. 542. When there are several gentlemen retained by a client in the same vakalatnama, each of the vakils is entitled to claim his client the full fee stipulated for by him and not merely a share in the single fee allowed as against the losing party. (88 I.C. 210. Foll.; 7 C.W.N. 300. Not foll.) 1931 P. 137=131 I.C. 542; 18 Pat. 213=20 Pat.L.T. 352.

SEC. 4.—The right of a Barrister-at-Law to appear in the High Court in the Courts subordinate to it arises from his enrolment as an Advocate and not otherwise. The peculiar position of a Barrister-at-Law in England disappears here on his enrolment

Right of legal practitioner to sue for fees.

legal proceedings for the recovery of any fee due to him under the agreement, or, if no such fee has been settled, a fee computed in accordance with the law for the time being in force in regard to the computation of the costs to be awarded to a party in respect of the fee of his legal practitioner.

5. No legal practitioner who has acted or agreed to act, shall, by reason only of being a legal practitioner, be exempt from liability to be sued in respect of any loss or injury due to any negligence in the conduct of his professional duties.

Repeals.

6. [Repealed by the Repealing Act, XII of 1927.]

THE LEGISLATIVE MEMBERS EXEMPTION ACT (XXII OF 1925.)

[The whole of this Act was repealed by Act I of 1938.]

THE LEPERS ACT (III OF 1898).¹

Year.	No.	Short Title.	Amendments.
1898	III	The Lepers Act, 1898.	Rep. in part Act I of 1903. Amended Acts XIII of 1903; Act XXII of 1920.

[4th February, 1898.

An Act to provide for the segregation and medical treatment of pauper lepers and the control of lepers following certain callings.

WHEREAS it is expedient to provide for the segregation and medical treatment of pauper lepers and the control of lepers following certain callings; It is hereby enacted as follows:—

Title, extent and commencement. 1. (1) This Act may be called THE LEPERS ACT, 1898.

LEG. REF.

¹For Statement of Objects and Reasons, see Gazette of India, 1896, Pt. V, p. 231; for Report of the Select Committee, see *ibid.*, 1898, Pt. V, p. 7; and for Proceedings in Council, see *ibid.*, 1896, Pt. VI, p. 227; *ibid.*, 1897, Pt. VI, p. 248 and *ibid.*, 1898, Pt. VI, pp. 10 and 18.

The Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), see sec. 4 (1) and First Schedule.

The Act has been declared in force in Arakan Hill District, by Regulation I of 1916, S. 2, see Burma Code, Vol. I; in the Pargana of Manpur with modifications under

as an Advocate, his rights, duties and disabilities are the same as those of any other non-Barrister Advocate. He can see the client, settle his fees, and act for him, with or without the intervention of a solicitor. A Barrister practising as an Advocate in the High Court can accordingly sue his client for recovery of fees due. (25 A. 509, over.) 55 A. 570=1933 A.L.J. 451=1935

A. 417 (F.B.). There is no provision in the C.P. Legal Practitioners' Fees Rules for the case in which a pleader who has been engaged in the suit itself is re-engaged by the assignee decree-holder and no pleader's fee can be allowed in execution afresh. 144 I.C. 379=1933 N. 360. Where several pleaders are engaged by a party, in the absence of any special agreement, each pleader is entitled to his fees up to the full fee assessed at the hearing. It is not the rule that all of them should decide among them a single hearing fee. 18 Pat. 218=20 Pat.L.T. 352; 1931 Pat. 137. Where no fee had been settled by agreement, the legal practitioner would be entitled to his legal fees and not merely to a reasonable remuneration. 167 I.C. 505 (1)=1937 N. 32. Where a party agrees to pay his Advocate a particular fee for a particular case, the Advocate is entitled to sue for the full fee, though owing to the collapse unexpectedly of the opposite side's case, the Advocate had not to do that quantity of work originally expected of him. 1942 N. L.J. 225.

(2) It extends to the whole of British India, inclusive of * * *^{1,2} British Baluchistan, the Sonthal Parganas and the Pargana of Spiti; but

(3) It shall not come into force in any part thereof until the Provincial Government, as hereinafter provided, has declared it applicable thereto.

(4) The Provincial Government may, by notification³ in the Official Gazette, apply this Act or any part thereof to the whole or any portion of the territories for the time being under its administration* * *.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,

(1) "leper" means any person suffering from any variety of leprosy

(2) "pauper leper" means a leper—

(a) who publicly solicits alms or exposes or exhibits any sores, wounds, bodily ailment or deformity with the object of exciting charity or of obtaining alms, or

(b) who is at large without any ostensible means of subsistence;

(3) "leper asylum" means a leper asylum appointed under section 3;

(4) "Board" means a Board constituted under section 5; and

(5) "District Magistrate" includes a Chief Presidency Magistrate.

⁴[3. The Provincial Government may, by notification⁵ in the Official Gazette, appoint any place to be a leper asylum if it is satisfied that adequate arrangements have been made or will be made for the accommodation and medical treatment of lepers therein, and may, by a

Appointment of leper
asylums by Provincial Gov-
ernment.

like notification, specify the local areas from which lepers may be sent to such asylum.]

4. Subject to any rules which may be made under section 16, the Provincial Government may appoint any Medical Officer

Appointment of Inspec-
tors of lepers and Super-
intendents of Asylums.

of the Government or other qualified medical man to be an Inspector⁶ of Lepers and any person to be a Superintendent⁶ of a Leper Asylum, with such estab-

lishment as may, in its opinion, be necessary, and every Inspector or Super-

tendent so appointed shall be deemed to be a public servant.

5. The Provincial Government shall constitute for every leper asylum appointed under section 3 a Board⁷ consisting of not

Constitution of Board.

less than three members, one of whom at least shall be a Medical Officer of the Government.

6. (1) Within any local area which has been specified under section 3 any police-officer¹⁰ [or any other person specially empowered by the Provincial Government by order in writing in this behalf] may arrest without a warrant any person who appears to him to be a pauper leper.

(2) Such police-officer¹⁰ [or other person] shall forthwith take or send the person so arrested to the nearest convenient police-station.

LEG. REF.

sec. 2 of the Manpur Laws Regulation, 1926 (II of 1926).

It has been declared in force in the Sonthal Parganas, *see* Regulation III of 1872, sec. 3, as amended by Regulation III of 1896, sec. 3. This Act has not yet been brought into force in the Madras Presidency.

^{1,2} The words "Upper Burma" were repealed by the Burma Laws Act, 1898 (XIII of 1898), *see* the Fifth Schedule.

³ For notifications under this sub-section, *see* different Local Rules and Orders.

⁴ Omitted by s. 2 of the Lepers (Amendment) Act, 1920 (XXII of 1920).

⁵ Omitted by sec. 3, *ibid*.

⁶ This section was substituted by sec. 4 of the Lepers (Amendment) Act, 1920 (XXII of 1920).

⁷ For notifications under this section, *see* different Local Rules and Orders.

⁸ For appointment of such Inspectors and Superintendents, *see* different Local Rules and Orders.

⁹ For notification constituting such Boards, *see* different Local Rules and Orders.

¹⁰ These words were inserted by sec. 5 of the Lepers (Amendment) Act, 1920 (XXII of 1920).

7. Every person brought to a police-station under the last foregoing section shall, without unnecessary delay, be taken before an Inspector of Lepers, who,—

(a) if he finds that such person is not a leper within the meaning of section 2, shall give him a certificate in Form A set forth in the schedule, whereupon such person shall be forthwith released from arrest;

(b) if he finds that such person is a leper within the meaning of section 2, shall give to the police-officer, in whose custody the leper is, a certificate in Form B set forth in the schedule, whereupon the leper shall, without unnecessary delay, be taken before a Magistrate having jurisdiction under this Act.

8. (1) If it appears to any Presidency Magistrate or Magistrate of the first class or to any other Magistrate authorised in this behalf by the Provincial Government, upon the certificate in Form B set forth in the schedule, that any person is a leper, and if it further appears to the Magistrate that the person is a pauper leper, he may, after recording the evidence on the abovementioned points, and his order thereon, send the pauper leper in charge of a police-officer, together with an order in Form C set forth in the schedule, to a leper asylum, where such leper shall be detained until discharged by order of the Board or the District Magistrate:

Provided that, if the person denies the allegation of leprosy, the Magistrate shall call and examine the Inspector of Lepers, and shall take such further evidence as may be necessary to support or to rebut the allegation that the person is a leper, and may for this purpose adjourn the enquiry from time to time, remanding the person for observation or for other reason to such place as may be convenient, or admitting him to bail:

Provided also that if any friend or relative of any person found to be a pauper leper shall undertake in writing to the satisfaction of the Magistrate that such pauper leper shall be properly taken care of and shall be prevented from publicly beginning in any area specified under section 3, the Magistrate, instead of sending the leper to an asylum, may make the leper over to the care of such friend or relative, requiring him, if he thinks fit, to enter into a bond with one or more sureties, to which the provisions of section 514 of the Code of Criminal Procedure¹ shall be applicable.

(2) If the Magistrate finds that such person is not a leper, or that, if a leper, he is not a pauper leper, he shall forthwith discharge him.

9. (1) The Provincial Government may, by notification² in the Official Gazette, order that no leper shall, within any area specified under section 3,—

(a) personally prepare for sale or sell any article of food or drink or any drugs or clothing intended for human use; or

(b) bathe, wash clothes or take water from any public well or tank debarred by any municipal or local by-law from use by lepers; or

(c) drive, conduct or ride in any public carriage plying for hire other than a railway carriage; or

(d) exercise any trade or calling which may by such notification be prohibited to lepers.

(2) Any such notification may comprise all or any of the above prohibitions.

(3) Whoever disobeys any order made pursuant to the powers conferred by this section shall be punishable with fine which may extend to twenty rupees:

LEG. REF.

¹ See now Act V of 1898.

² For notifications issued in exercise of

the powers conferred by this section, see different Local Rules and Orders.

Provided that, when any person is accused of an offence under this section, the Magistrate before whom he is accused shall cause him to be examined by an Inspector of Lepers, and shall not proceed with the case unless such Inspector furnishes a certificate, in Form B set forth in the schedule, in respect of such person.

10. (1) Whenever any leper who has been convicted of an offence punishable under the last foregoing section is again convicted of any offence punishable under that section, the Magistrate may, in addition to, or in lieu of, any punishment to which such leper may be liable, require him to enter into a bond, with one or more sureties, binding him to depart forthwith from the local area specified under section 3 in which he is, and not to enter that or any other local area so specified until an Inspector of Lepers shall have given him a certificate in Form A set forth in the schedule.

(2) If any such leper fails to furnish any security required under subsection (1), the Magistrate may send him in charge of a police-officer, with an order in Form D set forth in the schedule, to a leper asylum, where such leper shall be detained until discharged by order of the Board or the District Magistrate.

(3) The powers conferred by this section shall only be exercised by a Presidency Magistrate or Magistrate of the first class.

11. Any person who, within any area specified under section 3, knowingly employs a leper in any trade or calling prohibited by order under section 9 shall be punishable with fine which may extend to fifty rupees:

Provided that the alleged leper shall be produced before the Magistrate and the Magistrate shall cause him to be examined by an Inspector of Lepers, and shall not proceed with the case unless such Inspector furnishes a certificate in Form B set forth in the schedule in respect of such alleged leper.

12. Whoever, having been sent to a leper asylum under an order of a Magistrate in Form C or Form D set forth in the schedule, escapes from, or leaves, the asylum without the permission in writing of the Superintendent thereof, may be arrested¹ [without a warrant by any police-officer or by any other person especially empowered by the Provincial Government by order in writing in this behalf,] and upon arrest shall be forthwith taken back to the leper asylum.

13. Two or more members of the Board, one of whom shall be the Medical Officer shall, once at least in every three months, together inspect the leper asylum for which they are constituted, and see and examine (a) every leper therein admitted since the last inspection, together with the order for his admission, and (b), as far as circumstances will permit, every other leper therein, and shall enter in a book to be kept for the purpose any remarks which they may deem proper in regard to the management and condition of the asylum and the lepers therein.

14. Any two members of the Board, one of whom shall be the Medical Officer, may at any time, by an order in writing in Form E set forth in the schedule and signed by them, direct the discharge from the leper asylum of any leper detained therein under the provisions of this Act.

15. Any person, other than a pauper leper, in respect of whom an Inspector of Lepers has issued a certificate, in Form B set forth in the schedule, declaring him to be a leper, or has refused to issue a certificate in Form A set forth in the schedule, may ap-

LEG. REF.

¹ These words were substituted by sec. 6

of the Lepers (Amendment) Act, 1920 (XXII of 1920).

peal against the issue or refusal of any such certificate to such officer¹ as may be appointed by the Provincial Government in this behalf, and the decision of such officer shall be final.

Power of the Provincial Government to make rules. 16. The Provincial Government may, by notification in the Official Gazette, make rules² generally for carrying out the purposes of this Act, and in particular—

(a) for the guidance of all or any of the officers discharging any duty under this Act; and

(b) for the management of, and the maintenance of discipline in, a leper asylum.

Power to local authorities to expend funds and appropriate property to asylums. 17. Notwithstanding anything in any enactment with respect to the purposes to which the funds or other property of a local authority may be applied, any local authority may—

(a) establish or maintain, or establish and maintain, or contribute towards the cost of the establishment or maintenance or the establishment and maintenance of, a leper asylum either within or without the local limits of such local authority;

(b) with the previous sanction of the Provincial Government and subject to such conditions as that Government may prescribe, appropriate any immovable property vested in, or under the control of, such body, as a site for, or for use as, a leper asylum.

Protection to persons acting bona fide under Act. 18. No suit, prosecution or other legal proceeding shall lie against any officer or person in respect of anything in good faith³ done or intended to be done under, or in pursuance of, the provisions of this Act.

Lepers from Indian States. 19. The ⁵[Provincial Government] may, by notification⁶ in the Official Gazette, direct that any leper or class of lepers, with respect to whom an order for segregation and medical treatment has been made by a Magistrate having jurisdiction within ⁷[any Indian State] may be sent to any leper asylum ⁸[in the Province] specified in such order; and thereupon the provisions of this Act and of any rules made thereunder shall, with such modifications not affecting the substance as may be reasonable and necessary to adapt them to the subject-matter, apply to any leper sent to a leper asylum in pursuance of such notification as though he had been sent by the order of a Magistrate having jurisdiction under this Act.

SCHEDULE.

A.—CERTIFICATE.

(Section 7.)

I, the undersigned (*here enter name and official designation*), hereby certify that I on the _____ day of _____ at _____ personally examined (*here enter name of person examined*), and that the said _____ is not a leper as defined by the Lepers Act, 1898.

Given under my hand this _____ day of _____

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(*Signature.*)
Inspector of Lepers.

LEG. REF.

¹ The Principal of the Medical College, Calcutta, is the officer appointed for Bengal, *see* Ben. R. and O.; and the Commissioner of Thirhut for the asylum at Muzaffarpur, *see* Calcutta Gazette, 1909, Pt. I, p. 959.

² For rules made in exercise of the powers conferred by this section, *see* different Local Rules and Orders.

³ As to definition of good faith, *see* sec. 3 (20) of the General Clauses Act, 1897 (X of 1897).

⁴ Added by the Lepers (Amendment) Act, 1903 (XIII of 1903), sec. 2. The original sec. 19 was repealed by the Repealing and Amending Act, 1903 (I of 1903).

⁵ Substituted for Governor-General in Council by A.O., 1937.

⁶ For a notification under this section, *see* Gazette of India, 1919, Pt. I, p. 1931, and Gen. R. and O., Vol. III, p. 240.

⁷ Substituted for the territories of any Native Prince, etc. by A.O., 1937.

⁸ Inserted by *Ibid.*

B.—CERTIFICATE.

(Section 7.)

I, the undersigned (*here enter name and official designation*), hereby certify that I on the _____ day of _____ at _____ personally examined (*here enter name of leper*), and that the said _____ is a leper as defined by the Lepers Act, 1898, and that I have formed this opinion on the following grounds, namely,—

(*Here state the grounds.*)

Given under my hand this _____

day of _____

189 .

(*Signature.*)*Inspector of Lepers.*

C.—WARRANT OF DETENTION.

(Section 8.)

To

THE SUPERINTENDENT OF THE LEPER ASYLUM AT

WHEREAS it has been made to appear to me that (*name and description*) is a pauper leper as defined in the Lepers Act, 1898.

This is to authorise you, the said Superintendent, to receive the said

him

into your custody together with this order and—safely to keep in the said asylum until

her

he

—shall be discharged by order of the Board or the District Magistrate.

she

Given under my hand and the seal of the Court this _____

189 .

day of _____

(*Signature.*)*Magistrate.*

D.—WARRANT OF DETENTION.

(Section 10.)

To

THE SUPERINTENDENT OF THE LEPER ASYLUM AT

WHEREAS (*name and description*) has this day been convicted by me of an offence punishable under section 9 of the Lepers Act, 1898, and whereas it has been proved before me that the said (*name and description*) was previously convicted of an offence punishable under the same section:

This is to authorise you, the said Superintendent, to receive the said

him

into your custody together with this order and—safely to keep in the said asylum until

her

he

—shall be discharged by order of the Board or the District Magistrate.

she

Given under my hand and the seal of the Court this _____

189 .

day of _____

(*Signature.*)*Magistrate.*E.—ORDER OF DISCHARGE BY BOARD.¹

(Section 14.)

To

THE SUPERINTENDENT OF THE LEPER ASYLUM AT

WHEREAS (*name and description*) was committed to your custody under an order dated the _____ day of _____ 189 and there have appeared to us

he

sufficient grounds for the opinion that—can be released without hazard or inconvenience to the community:

she

This is to authorise and require you forthwith to discharge the said (*name*) from your custody.

Given under our hands this _____

day of _____

189 .

(*Signatures*)*Members of the Asylum Board.*

THE LETTERS PATENT (ALLAHABAD).

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21. Hearing of referred cases, and revision of criminal trials.
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23. Indian Penal Code.
24. Judges may be authorized to sit in any places by way of circuit, or special commission.
- * * * *
- Criminal Procedure.*
29. Regulation of proceedings.
- * * * *
- Appeals to Privy Council.*
32. Appeal in criminal cases, etc.

* * * * *

Criminal Jurisdiction.

15. And We do further ordain that the said High Court of Judicature, for the North-Western Provinces, shall have ordinary original criminal jurisdiction in respect of all such persons within the said Provinces as the High Court of Judicature at Fort William in Bengal, shall have criminal jurisdiction over at the date of the publication of these presents; and the criminal jurisdiction of the said last mentioned High Court over such persons shall cease at such date: Provided, nevertheless, that criminal proceedings which shall at such date have been commenced in the said last mentioned High Court shall continue as if these presents had not been issued.

16. And We do further ordain that the said High Court of Judicature, for the North-Western Provinces, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law.

17. And We do further ordain that the said High Court of Judicature, for the North-Western Provinces, shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court now subject to the superintendence of the Sudder Nizamut Adawlut, and shall have authority to try at its discretion any such persons brought before it on charges preferred by any Magistrate or other officer specially empowered by the Government in that behalf.

18. And We do further ordain that there shall be no appeal to the said High Court, from any sentence or order passed or made in any criminal trial before the Courts of original criminal jurisdiction, which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

19. And We do further ordain that, on such point or points of law being

CL. 15.—See 12 A.W.N. 236. Jurisdiction of High Court—Hindu joint family—Application for appointment of guardian of pro-

perty—Maintainability. 112 I.C. 873. See also 26 A.L.J. 595.

High Court to review cases on points of law reserved by one or more Judges of the said High Court.

as to the said High Court shall seem right.

20. And We do further ordain that the said High Court of Judicature, for the North-Western Provinces, shall be a Court of Appeal from the Criminal Courts in the Provinces, and from all other Courts from which there is now an appeal to the Court of Sudder Nizamut Adawlut for the said Provinces, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said Court of Sudder Adawlut by virtue of any law now in force.

21. And We do further ordain that the said High Court shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions Judges or by any other officers now authorized to refer cases to the Court of Sudder Nizamut Adawlut of the North-Western Provinces, and to revise all such cases tried by any officer or Court possessing criminal jurisdiction, as are now subject to reference or to revision by the said Court of Sudder Nizamut Adawlut.

22. And We do further ordain that the said High Court shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court.

Act under which punishments to be inflicted.

23. And We do further ordain that all persons brought for trial before the said High Court of Judicature for the North-Western Provinces, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of appeal, reference or revision, charged with any offence for which provision is made by Act No. XLV of 1860, called the "Indian Penal Code", or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

24. And We do further ordain that whenever it shall appear to the Lieutenant-Governor of the North-Western Provinces, subject to the control of the Governor-General in Council, convenient that the jurisdiction and power by these Our Letters Patent, or by the recited Act, vested in the said High Court, should be exercised in any place within the jurisdiction of any Court, now subject to the superintendence of any Sudder Dewanny Adawlut or the Sudder Nizamut Adawlut of the North-Western Provinces, other than the usual places of sitting of the said High Court, or at several such places by way of circuit, the proceedings in cases before the said High Court, at such place or places, shall be regulated by any law relating thereto which has been or may be made by competent legislative authority for India.

CL. 22.—A village panchayat Court is a Court for purposes of Cl. 22 and the High Court has got the power to transfer proce-

dings pending in one such Court to another. 21 A.L.J. 925=46 A. 167=83 I.C. 350= A.I.R. 1924 All. 265.

* * * * *

Criminal Procedure.

29. And We do further ordain that the proceedings in all criminal cases which shall be brought before the said High Court, Regulation of proceedings. in the exercise of its ordinary original criminal jurisdiction, shall be regulated by the procedure and practice which was in use in the High Court of Judicature for Fort William in Bengal, immediately before the publication of these presents, subject to any law which has been or may be made in relation thereto by competent legislative authority for India; and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure, prescribed by an Act passed by the Governor-General in Council, and being Act No. XXV of 1861, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid.

* * * * *

Appeals to Privy Council.

32. And We do further ordain that, from any judgment, order or sentence of the said High Court of Judicature for the North-Western Provinces, made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order or sentence to appeal to Us, Our heirs or successors in Council: Provided the said High Court shall declare that the case is a fit one for such appeal and under such conditions as the said High Court may establish or require subject always to such rules and orders as We may, with the advice of Our Privy Council, hereinafter make in that behalf.

THE LETTERS PATENT (MADRAS, BOMBAY AND CALCUTTA).

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28. Hearing of referred cases and revision of criminal trials.

29. High Court may direct the transfer of a case from one Court to another.

Criminal Law.

30. Offenders to be punished under Indian Penal Code.

* * * * *

Criminal Procedure.

38. Regulation of proceedings.

[N.B.—As the Letters Patent for Madras, Bombay and Calcutta are all in very similar terms the Letters Patent, Madras, is given as the main one, and the differences in the wording of the other two Letters Patents indicated within square brackets.]

* * * * *

Criminal Jurisdiction.

22. And We do further ordain that the said High Court of Judicature at Madras, [Bombay] shall have ordinary original criminal jurisdiction, within the local limits of its ordinary original civil jurisdiction, and also in respect of all such persons, beyond such limits, over whom the said High Court of

CL. 22: CALCUTTA CASES.—Sec. 106 of the Government of India Act leaves the definition of the High Court's original criminal jurisdiction to be made by the Letters Patent and the High Court derives a particular original criminal jurisdiction from cl. 22, Letters Patent. It is within the power of the Indian Legislature to alter and

Judicature at Madras, [Bombay] shall have criminal jurisdiction at the date of the publication of these presents.

23. And We do further ordain that the said High Court of Judicature at Madras, [Bombay], [Fort William in Bengal] in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law.

24. And We do further ordain that the said High Court of Judicature at Madras, [Bombay], [Fort William in Bengal] shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court now subject to the superintendence of the said High Court, and shall have authority to try at its discretion any such persons brought before it on charges preferred by the Advocate-General, or by any Magistrate or other officer specially empowered by the Government in that behalf.

25. And We do further ordain that there shall be no appeal to the said High Court of Judicature at Madras, [Bombay], [Fort William in Bengal] from any sentence or order passed or made in any criminal trial before the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

26. And We do further ordain that, on such point or points of law being

amend the Letters Patent and consequently within the Ordinance making power of the Governor-General under the Government of India Act. 37 C.W.N. 481=A.I.R. 1933 C. 364=60 Cal. 814=142 I.C. 310.

CLS. 24 AND 29: CALCUTTA CASES.—Extraordinary criminal jurisdiction is conferred on the High Court under cl. 24. Under that section however the High Court has no power to take proceedings against persons, one of whom is not in India at all and the others are either Indian subjects or else residing within the original jurisdiction. 35 C. W. N. 1088. See also 35 C.W.N. 782; 35 C.W.N. 1086. Where certain British Indian subjects resident within the original jurisdiction were accused of offences committed outside British India, the complaint cannot be entertained by the High Court on its appellate side, cls. 24 and 29 not being applicable to such a case. 35 C. W. N. 1082. Where the Advocate-General appears on behalf of the accused and does not commence proceeding under cl. 24 it cannot be said that he ceased to be Advocate-General and an application by counsel for a private party to be clothed with the powers of the Advocate-General cannot be maintained. 35 C. W.N. 1082.

CLS. 25 AND 26: MADRAS CASES.—REVIEW.—The judgment of a special Criminal Bench of the High Court constituted under sec. 6 (b) of the Criminal Law Amendment Act, 1908, is open to review on a certificate granted by the Advocate-General under cl. 26. 14 I.C. 896=53 Mad. 379 (F.B.). The expression "*point of law*" in cl. 26 means the same thing as matter of law in sec. 418 of the Cr. P. Code. It includes such misdirection or non-direction as would permit an appeal against the verdict of a jury. And misdirection includes not only an error in laying down the law by which the jury are to be guided but also a defect in summing up the evidence or in not summing it up or in summing it up erroneously. 1930 M.W.N. 249. As to whether presiding Judge can reserve question when point was raised after reading out charge and accused called upon to plead, see 1936 M.W.N. 281=1936 M. 353=70 M.L.J. 635 (F.B.).

CALCUTTA CASES.—Under cls. 25 and 26 the Full Bench is not competent to order a retrial but should finally decide the matter on review. 47 Cal. 671=31 C.L.J. 402=24 C.W.N. 501 (F.B.). (44 Cal. 177; 2 Bom. 61; 17 Cal. 642, Ref.) As to right of appeal or revision in the case of trials on the Sessions side of a High Court, see 44 Cal. 723=21 C.W.N. 167.

CL. 26: BOMBAY CASES.—The failure of the Judge to comply with S. 297, Cr.P. Code, is an error of law which brings the case within cl. 26 of the Letters Patent. But that clause does not entail that wherever any misdirection is found to exist, the Court has no option but to set aside the verdict. 60 B. 599=38 Bom. L. R. 19=1936 B. 52 (F. B.). Although the wording of S. 537, Cr. P. Code, does not apply to a case dealt with under cl. 26 of the Letters Patent, the Court ought to apply to such a case the principle which underlies that section, that is, that where there has been no illegality in the mode of trial, but some irregularity in the process of trial, the High Court is not entitled to set aside the verdict or judgment unless it is satisfied that that irregularity has led to a miscarriage of justice, or has preju-

High Court to review on certificate of the Advocate-General.

so reserved as aforesaid, or on its being certified by the said Advocate-General that, in his judgment, there is an error in the decision of a point or points of law decided by the Court of original criminal jurisdiction, or that a point or points of law which has or have been decided by the said Court should be further considered, the said High Court shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court shall seem right.

diced the accused. 60 Bom. 599. It is clearly open to the Court to consider, not so much what effect the misdirection has upon its mind sitting in place of a jury, but what the effect of the misdirection was or may have been upon the minds of the jury which tried the case; and in so doing, it must assume that the jury was a reasonably competent jury, though it must remember that a jury consists of lay-men and that a misdirection may have more effect upon the minds of laymen than upon the mind of a trained Judge. 60 Bom. 599. According to the language of Cl. 26, the High Court must be satisfied that there has been an error in the decision of a point or points of law or that there is a point or points of law requiring further consideration before any question can arise of interference with the verdict of the jury. To justify such interference, the point of law in question must clearly be a substantial and important one and it must appear that there has been some error by which the accused has been prejudiced and the fair trial of the case affected. 44 Cr.L.J. 534=45 Bom.L.R. 281=A.I.R. 1943 Bom. 150. See also 46 Bom. L. R. 566=1944 Bom. 274 (F.B.). (Question not covered by certificate of the Advocate-General—High Court has no jurisdiction to consider). See also 44 Bom.L.R. 27=1942 Bom. 71 (F.B.).

CALCUTTA CASES.—The powers of the High Court are limited under cl. 26. 28 C. W. N. 170=38 C. L. J. 411=A.I.R. 1924 Cal. 257 (F.B.). Where a Judge in his discretion under sec. 239, Cr. P. Code, desires to try a number of accused jointly it is not a matter for interference on a certificate of the Advocate-General under cl. 26. 38 C. L. J. 309 (F.B.). A defective summing up to the jury, unless it causes a failure of justice is not ground for reversing a conviction. (*Ibid.*) Where there was a misdirection to the jury and it appeared that the accused was prejudiced thereby and the Advocate-General granted a certificate under cl. 26 of the Letters Patent, *held*, that the conviction must be set aside. Per *C. C. Ghose, J.*—Under cl. 26 the Court can review the entire case and determine the point of law reserved or certified; the word 'thereupon' means that the point is in favour of the prisoner. The Court cannot order a re-trial if the point is held in favour of the accused. Where improper evidence has been admitted the Court must consider whether such evidence could possibly have con-

siderably influenced the minds of the jury and whether it was reasonably certain that the jury *would*, not *might*, have acted on the unobjectionable evidence if the wrongly admitted evidence or matter had not also been presented to them. A.I.R. 1929 Cal. 617 (F.B.). Per *Rankin, C.J.*—The phrase "to review the case" as used in cl. 26 of the Letters Patent applies as much where a point of law is reserved by the trial Judge as where the Advocate-General has given a certificate. I am far from saying that inordinate delay may not be a matter for consideration by the Advocate-General at the time when he is called upon to consider whether a certificate should be granted. Per *Jack, J.*, dissenting.—In a proceeding under cl. 26, the Court can examine the evidence for itself and determine without reference to the probable verdict of a jury whether excluding the inadmissible evidence the residue is sufficient to justify the conviction. The fact that a retrial cannot be ordered ought to make the Court careful to avoid setting aside a conviction on immaterial grounds. 33 C.W.N. 1121=119 I.C. 193=A.I.R. 1929 Cal. 617 (F.B.). Where the accused was prosecuted for offences under Ss. 406 and 477, I. P. Code, but it appeared that the judge had misdirected the jury on the question of law namely, as to the ingredients forming the offence. *Held*, that it was fit case for interference under cl. 26. Accused acquitted. 58 Cal. 1051=35 C.W.N. 425=A.I.R. 1931 Cal. 184 (S.B.). A certificate under cl. 26—What should it contain. 21 C.L.J. 377=30 I.C. 113=16 Cr.L.J. 561 (F.B.). Once the Advocate-General grants a certificate the Court has to deal with the case. The statement of the trial Judge as to what took place before him is conclusive. (*Ibid.*)

When the Advocate-General, after considering the matter and exercising his judgment, refuses a certificate it is not within the province of the High Court to issue a Rule to call upon him to show cause why he should not issue a certificate. 63 C. 838. The refusal by the Advocate-General to give a certificate is not a matter which can be called in question by any proceeding in the High Court. The revisional jurisdiction of the High Court in criminal matters is limited to matters arising in the Criminal Courts subject to the appellate jurisdiction of the High Court. 63 Cal. 838.

MADRAS CASES.—"DECISION ON A POINT OF LAW—WHAT CONSTITUTES."—*Held* by the

27. And We do further ordain that the said High Court of Judicature at Madras, [Bombay], [Fort William in Bengal] shall be a Court of appeal from the Criminal Courts in the Provinces. Presidency of Madras, [Bombay], [Bengal division of the Presidency of Fort William] and from all other Courts, subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any law now in force.

28. And We do further ordain that the said High Court of Judicature at Madras, [Bombay], [Fort William in Bengal] shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions Judges, or by any other officers now authorized to refer cases to the said High Court, and to revise all such cases tried by any officer or Court possessing criminal jurisdiction, as are now subject to reference or to revision by the said High Court.

29. And We do further ordain that the said High Court shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs, in ordinary course, to the jurisdiction of some other officer or Court.

Criminal Law.

30. And We do further ordain that all persons brought for trial before the said High Court of Judicature at Madras, [Bombay], [Fort William in Bengal] either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of appeal, reference or revision, charged with any offence for which provision is made by Act No. XLV of 1860, called the "Indian Penal Code," or by any Act amending or excluding the said Act which have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

majority (*Madhavun Naik and Curgenven, JJ.*, dissenting) :—A point of law referred to in cl. 26 of the Letters Patent means a point of law submitted to and decided by the trial Judge or any direction as to the law given by him in the course of his summing up to the jury. The word "decision" cannot be read so as to cover cases where the Judge has never applied his mind to the matter and has not pronounced an opinion on it.—All questions which have to be necessarily decided in a trial and which in effect have been decided by the Judge, though not expressly, would fall within the meaning of the word "decision". 68 M.L.J. (Supp.) 1 (F.B.). In an enquiry following the grant of a certificate by the Advocate-General the High Court has jurisdiction to say that the Advocate-General's certificate should not have been granted on the ground that there was no decision on a point of law involved in the case and if it came to that conclusion, the petition could straightaway be dismissed without any further consideration of the merits of the case. 68 M.L.J. (Supp.) 1 (F.B.).

CLS. 27 AND 28: BOMBAY CASES.—Order of Chief Presidency Magistrate under Main-
CR.C. M.-1—102

tenance Orders Enforcement Act, 1921—Power of High Court to interfere in revision. 30 Bom.L.R. 350.

CL. 29: BOMBAY CASES.—Bombay High Court has no power to quash proceedings before Village Patil under the Cr. P. Code, but it has such power under the Letters Patent. 50 L.C. 491=20 Cr.L.J. 315=21 Bom.L.R. 274 (10 Bom.L.R. 630, Rel.).

CALCUTTA CASES.—The second-half of cl. 29 is addressed to the same subject-matter as the first-half. The section merely confers a power of transfer. If the High Court transfers the case to its file it assumes original criminal jurisdiction. The High Court has no power under this clause to take proceedings against certain persons one of whom is not in India at all and others are either Indian subjects or else residing within the original jurisdiction of the High Court. 35 C.W.N. 1088. Where certain British Indian subjects resident within the original jurisdiction were accused of offences committed outside British India. *Held*, that the complaint cannot be entertained by the Court on its appellate side. Cls. 24 and 29 not being applicable to such a case. 34 C.W.N. 1082. See also 34 C.W.N. 1086.

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Criminal Procedure.

38. And We do further ordain that the proceedings in all criminal cases which shall be brought before the said High Court of Judicature at Madras, [Bombay], [Fort William in Bengal] in the exercise of its ordinary original criminal jurisdiction, and also in all other criminal cases over which the said High Court had jurisdiction immediately before the publication of these presents, shall be regulated by the procedure and practice which was in use in the said High Court immediately before such publication subject to any law which has been or may be made in relation thereto by competent legislative authority for India; and that proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure prescribed by an Act passed by the Governor-General in Council, and being Act No. XXV of 1861, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid.

LETTERS PATENT CONSTITUTING THE HIGH COURT OF JUDICATURE AT PATNA.

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Criminal Jurisdiction.

15. And We do further ordain that the High Court of Judicature at Patna shall have ordinary original criminal jurisdiction in respect of all such persons within the Province of Bihar and Orissa as the High Court of Judicature at Fort William in Bengal had such criminal jurisdiction over immediately before the publication of these presents.

16. And We do further ordain that the High Court of Judicature at Patna, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law.

17. And We do further ordain that the High Court of Judicature at Patna shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court subject to its superintendence, and

CL. 15.—Order granting revocation of patent—Appeal lies. 43 C.W.N. 697.

CL. 17.—The High Court of Patna has jurisdiction to try persons against whom

the Government advocate with the previous sanction of the Local Government has exhibited an *ex officio* information. 1933 P.C. 127=64 M.L.J. 466=142 I.C. 335 (P.C.).

shall have authority to try at its discretion any such persons brought before it on charges preferred by any Magistrate or other officer specially empowered by the Government in that behalf.

No appeal from High Court exercising original jurisdiction.

be constituted by one or more judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

18. And We do further ordain that there shall be no appeal to the High Court of Judicature at Patna from any sentence or order passed or made by the Courts of original criminal jurisdiction which may be constituted by one or more judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

19. And We do further ordain that, on such point or points of law being so reserved as aforesaid, the High Court of Judicature at Patna shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court may seem right.

20. And We do further ordain that the High Court of Judicature at Patna shall be a Court of Appeal from the Criminal Courts of the Province of Bihar and Orissa and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the High Court of Judicature at Fort William in Bengal by virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court of Judicature at Patna by any law made by competent legislative authority for India.

21. And We do further ordain that the High Court of Judicature at Patna shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions Judges, or by any other officers in the Province of Bihar and Orissa, who were, immediately before the publication of these presents, authorized to refer cases to the High Court of Judicature at Fort William in Bengal, and to revise all such cases tried by any officer or Court possessing criminal jurisdiction in the Province of Bihar and Orissa, as were, immediately before the publication of these presents, subject to reference to or revision by the High Court of Judicature at Fort William in Bengal.

22. And We do further ordain that the High Court of Judicature at Patna shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court.

Criminal Law.

23. And We do further ordain that all persons brought for trial before the High Court of Judicature at Patna, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of appeal, reference or revision, charged with any offence for which provision is made by Act No. XLV of 1860, called the "Indian Penal Code", or by any Act amending or excluding

Offenders to be punished under Indian Penal Code.

the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

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Criminal Procedure.

30. And We do further ordain that the proceedings in all criminal cases

brought before the High Court of Judicature at Patna
Regulation of proceedings. in the exercise of its ordinary original jurisdiction, shall be regulated by the procedure and practice which was in use in the High Court of Judicature at Fort William in Bengal immediately before the publication of these presents, subject to any law which has been or may be made in relation thereto by competent legislative authority for India; and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure, being an Act, No. V of 1898, passed by the Governor-General in Council, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid.

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Appeals to Privy Council.

33. And We do further ordain that from any judgment, order or sentence

of the High Court of Judicature at Patna, made in
Appeal in criminal cases. the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court, in manner provided by the 18th clause of these presents, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order or sentence to appeal to Us, Our heirs or successors in Council, provided the said High Court declares that the case is a fit one for such appeal and the appeal be made under such conditions as the said High Court may establish or require, but subject always to such rules and orders as are now in force, or may from time to time be made respecting appeals to Ourselves in Council from the Courts of the Province of Bihar and Orissa.

LETTERS PATENT (LAHORE).

[9th February, 1919.]

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CL. 33: CONSTRUCTION AND SCOPE—CRIMINAL CASE—LEAVE TO APPEAL—GRANT OF.—The matter of appeals to His Majesty in Council from decisions of the High Court is limited by the Letters Patent under which the High Court's jurisdiction is exercised. While Cl. 31 of the Letters Patent refers to civil appeals, the matters of criminal appeals is dealt with by Cl. 33. The wording of Cl. 33 is very precise and must be strictly construed. Under that clause there is a right of

appeal from any judgment or order or sentence made in the exercise of original criminal jurisdiction. Leave to appeal is also granted when a point or points of law have been reserved for the opinion of the High Court in the manner provided by Cl. 18. When the case does not fall under either of these two categories, there is no right of appeal. 14 P. 318=155 I.C. 577=15 Pat.L.T. 833=1935 P. 66.

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23. Offenders to be punished under
Indian Penal Code.

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CLAUSES.

Criminal Procedure.

28. Regulation of Proceedings.

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31. Appeals to Privy Council.

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Criminal Jurisdiction.

15. And We do further ordain that the High Court of Judicature at Lahore shall have ordinary original criminal jurisdiction in respect of all such persons within the Provinces of the Punjab and Delhi as the Chief Court of the Punjab had such criminal jurisdiction over immediately before the publication of these presents.

16. And We do further ordain that the High Court of Judicature at Lahore in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law.

17. And We do further ordain that the High Court of Judicature at Lahore, shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court subject to its superintendence, and shall have authority to try at its discretion any such persons brought before it on charges preferred by any Magistrate or other officer specially empowered by the Government in that behalf.

18. And We do further ordain that there shall be no appeal to the High Court of Judicature at Lahore from any sentence or order passed or made by the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

19. And We do further ordain that, on such point or points of law being so reserved as aforesaid, the High Court of Judicature at Lahore shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of Original Jurisdiction, and to pass such judgment and sentence as to the said High Court may seem right.

20. And We do further ordain that the High Court of Judicature at Lahore shall be a Court of appeal from the Criminal Courts of the Provinces of the Punjab and Delhi and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the Chief Court of the Punjab by virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court of Judicature at Lahore by any law made by competent legislative authority for India.

CL. 15.—According to the Letters Patent the original criminal jurisdiction of the Lahore High Court is co-extensive with that of the Chief Court of the Punjab, which had

no original criminal jurisdiction to try any person except European British subjects.
115 I.C. 428—1929 Lah. 217.

21. And We do further ordain that the High Court of Judicature at Lahore shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions Judges, or by any other officers in the Provinces of the Punjab and Delhi who were, immediately before the publication of these presents, authorised to refer cases to the Chief Court of the Punjab and to revise all such cases tried by any officer or Court possessing criminal jurisdiction in the Provinces of the Punjab and Delhi, as were, immediately before the publication of these presents, subject to reference to or revision by the Chief Court of the Punjab.

22. And We do further ordain that the High Court of Judicature at Lahore shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such cases belongs in ordinary course to the jurisdiction of some other officer or Court.

Criminal Law.

23. And We do further ordain that all persons brought for trial before the High Court of Judicature at Lahore, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of appeal, reference or revision charged with any offence for which provision is made by Act No. XLV of 1860, called the "Indian Penal Code," or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

* * * *

Criminal Procedure.

28. And We do further ordain that the proceedings in all criminal cases brought before the High Court of Judicature at Lahore shall be regulated by the Code of Criminal Procedure, being an Act No. V of 1898, passed by the Governor-General in Council, or by such further or other laws in relation to criminal procedure as may have been or may be made by competent legislative authority for India.

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Appeals to Privy Council.

31. And We do further ordain that from any judgment, order or sentence of the High Court of Judicature at Lahore, made in the exercise of original criminal jurisdiction or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court, in manner provided by the 18th clause of these presents, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order or sentence to appeal to Us, Our heirs or successors in Council, provided the said High Court declares that the case is a fit one for such appeal, and that the appeal be made under such conditions as the said High Court may establish or require, but subject always to such rules and orders, as are now in force, or may from time to time be made respecting appeals to Ourselves in Council from the Courts of the Provinces of the Punjab and Delhi.

LETTERS PATENT (NAGPUR).

Letters Patent constituting the High Court of Judicature at Nagpur in the Central Provinces.

[2nd January, 1936.]

* * * * *

Criminal Jurisdiction of the High Court.

15. And We do further ordain that the High Court of Judicature at Nagpur shall have ordinary original criminal jurisdiction in respect of all such persons within the Central Provinces as the Court of the Judicial Commissioner of the Central Provinces had such criminal jurisdiction over immediately before the publication of these presents.

16. And We do further ordain that the High Court of Judicature at Nagpur, in the exercise of its ordinary original criminal jurisdiction, shall be empowered to try all persons brought before it in due course of law.

17. And We do further ordain that the High Court of Judicature at Nagpur shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court subject to its superintendence, and shall have authority to try at its discretion any such persons brought before it on charges preferred by any magistrate or other officer specially empowered by the Government in that behalf.

18. And We do further ordain that there shall be no appeal to the High Court of Judicature at Nagpur from any sentence or order passed or made by the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

19. And We do further ordain that, on such point or points of law being so reserved as aforesaid the High Court of Judicature at Nagpur shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court may seem right.

20. And We do further ordain that the High Court of Judicature at Nagpur shall be a Court of Appeal from the Criminal Courts of the Central Provinces and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the Court of the Judicial Commissioner or the Central Provinces by virtue of any law then in force, or as may after that date be declared subject to appeal to the High Court of Judicature at Nagpur by any law made by competent legislative authority for India.

21. And We do further ordain that the High Court of Judicature at Nagpur shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions

LEG. REF.

¹ As to appeal to Privy Council, see 1937

Nag. 318. As to limitation for appeals under Letters Patent, Nagpur, see 1939 N.L.J. 63.

Judges, or by any other officers in the Central Provinces who were, immediately before the publication of these presents, authorised to refer cases to the Court of the Judicial Commissioner of the Central Provinces and to revise all such cases tried by any officer or Court possessing criminal jurisdiction in the Central Provinces, as were, immediately before the publication of these presents subject to reference to or revision by the Court of the Judicial Commissioner of the Central Provinces.

22. And We do further ordain that the High Court of Judicature at Nagpur shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court.

Criminal Law.

23. And We do further ordain that all persons brought for trial before the High Court of Judicature at Nagpur, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of Appeal, reference or revision, charged with any offence for which provision is made by Act No. XLV of 1860, called the Indian Penal Code, or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

* * * * *

Criminal Procedure.

24. And We do further ordain that the proceedings in all criminal cases brought before the High Court of Judicature at Nagpur shall be regulated by the Code of Criminal Procedure, being an Act No. V of 1898, passed by the Governor-General in Council, or by such further or other laws in relation to criminal procedure as may have been or may be made by competent legislative authority for India.

Appeals to Privy Council.

25. And We do further ordain that any person or persons may appeal to Us, Our heirs and successors, in Our or Their Privy Council, in any matter not being of criminal jurisdiction from any final judgment, decree or order of the High Court of Judicature at Nagpur made on appeal, and from any final judgment, decree or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court, from which an appeal does not lie to the said High Court, under the provisions contained in the tenth clause of these presents:

Provided, in either case, that the sum or matter at issue is of the amount or value of not less than Rs. 10,000, or that such judgment, decree or order involves, directly or indirectly, some claim, demand or question to or respecting property amounting to or of the value of not less than 10,000 rupees; or from any other final judgment, decree or order made either on appeal or otherwise aforesaid, when the said High Court declares that the case is a fit one or appeal to Us, Our heirs or successors, in Our or Their Privy Council; but subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of

CLs. 29 and 30.—Petition by First Grade Pleader of Judicial Commissioner's Court for being enrolled as Advocate or Pleader of High Court without requiring to pay

Stamp duty rejected—No leave to appeal to Privy Council can be granted. I.L.R. (1938) Nag. 186—1937 Nag. 318.

the Central Provinces except so far as the said existing rules and orders respectively are hereby varied; and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

31. And We do further ordain that from any judgment, order or sentence Appeal in criminal cases. of the High Court of Judicature at Nagpur made in the exercise of original criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court, in manner provided by the 18th clause of these presents, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order or sentence to appeal to Us, Our heirs and successors, in Council, provided that the said High Court declares that the case is a fit one for such appeal and that the appeal be made under such conditions as the said High Court may establish or require, but subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the Central Provinces.

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Criminal Jurisdiction.

21. And We do further ordain that the High Court of Judicature at Rangoon shall have ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction; and also in respect of all persons beyond such limits over whom the Chief Court of Lower Burma had such criminal jurisdiction immediately before the publication of these presents.

22. And We do further ordain that the High Court of Judicature at Rangoon in the exercise of its ordinary original criminal jurisdiction shall be empowered to try all persons brought before it in due course of law.

23. And We do further ordain that the High Court of Judicature at Rangoon, shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court subject to its superintendence, and shall have authority to try at its discretion any such persons brought before it on charges preferred by the Government Advocate, or by any Magistrate or other officer specially empowered by the Government in that behalf.

24. And We do further ordain that there shall be no appeal to the High Court of Judicature at Rangoon, from any sentence or order passed or made in any criminal trial before the Courts of original criminal jurisdiction, which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

25. And We do further ordain that on such point or points of law being so reserved as aforesaid, or on its being certified by the Government Advocate that in his judgment, there is an error in the decision of a point or points of law decided by the Court of original criminal jurisdiction, or that a point or points of law which has or have been decided by the said Court, should be further considered, the High Court of Judicature at Rangoon shall have full power and authority to review the case or such part of it, as may be necessary, and finally determine such point or points of law and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court shall seem right.

26. And We do further ordain that the High Court of Judicature at Rangoon shall be a Court of Appeal from the Criminal Courts for which immediately before the publication of these presents the Chief Court of Lower Burma or the Judicial Commissioner of Upper Burma was a Court of Appeal and from all other Criminal Courts, whether within or without the Province of Burma, for which the said High Court is declared to be a Court of Appeal by any law made by the local legislature or by competent legislative authority for India, and shall exercise appellate jurisdiction in such cases as were, immediately before the date of the publication of these presents, subject to appeal to the Chief Court of Lower Burma or to the Judicial Commissioner of Upper Burma by virtue of any law then in force, or as may after that date be declared subject to appeal to the said High Court by any law made by the local legislature or by competent legislative authority for India.

27. And We do further ordain that the High Court of Judicature at Rangoon shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Sessions Judges, or by any other officers, who were, immediately before the publication of these presents, authorized to refer cases to the Chief Court of Lower Burma or to the Judicial Commissioner of Upper Burma, and to revise all such cases tried by any officer or Court possessing criminal jurisdiction, as were, immediately before the publication of these presents, subject to reference to or revision by the Chief Court of Lower Burma or the Judicial Commissioner of Upper Burma.

28. And We do further ordain that the High Court of Judicature at Ran-

CL. 26: DIFFERENCE OF OPINION IN DIVISION BENCH—PROCEDURE.—With the addition of sub-S. 3, S. 98, C.P. Code, made by the Repealing and Amending Act XVIII of 1928, that section has no application to cases heard by Division Bench of a Chartered High Court, whether on appeals from decrees of Subordinate Courts or from

decrees passed by a Judge of the High Court on the original Side. All cases of difference of opinion among the Judges composing the Division Bench are governed by Cl. 26, Letters Patent, and the Division Bench should state expressly the points of difference. 15 L. 425=149 I.O. 575=35 P.L.B. 760=1304 L. 371 (F.B.).

High Court may direct the transfer of a case from one Court to another. Rangoon shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court.

Criminal Law.

29. And We do further ordain that all persons brought for trial before the High Court of Judicature at Rangoon either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of Appeal, reference or revision, charged with any offence for which provision is made by the Indian Penal Code, being an Act passed by the Governor-General in Council and being Act No. XLV of 1860, or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents shall be liable to punishment under the said Act or Acts, and not otherwise.

* * * * *

Criminal Procedure.

36. And We do further ordain that the proceedings in all criminal cases brought before the High Court of Judicature at Rangoon shall be regulated by the Code of Criminal Procedure being an Act No. V of 1898, passed by the Governor-General of India in Legislative Council, or by such further or other laws in relation to criminal procedure as have been or may be made by the local legislature or by competent legislative authority for India.

* * * * *

Appeals to Privy Council.

39. And We do further ordain that from any judgment, order or sentence of the High Court of Judicature at Rangoon made in the exercise of original criminal jurisdiction or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court, in manner provided by the 24th clause of these presents, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order or sentence to appeal to Us, Our heirs and successors, in Our or Their Privy Council, provided the said High Court shall declare that the case is a fit one for such appeal, and that the appeal be made under such conditions as the said High Court may establish or require, but subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council from the Courts of the Province of Burma.

CL. 39: LEAVE TO APPEAL IN CRIMINAL CASES—GRANT OF—CONSIDERATION. — The grant of the leave to appeal to His Majesty in Council is a step ancillary to the determination of the appeal, and the principles which regulate the ultimate decision of the appeal cannot obviously be ignored when an application for leave is examined. Leave to appeal is not granted "except where some clear departure from the requirements of "justice" exists, nor unless "by a disregard of the forms of legal process, or by some violation of the principles of natural justice or otherwise, substantial and grave injustice has been done". Misdirection as such, even irregularity as such, will not suffice. There

must be something which, in the particular case, deprives the accused of the substance of fair trial and the protection of the law, or which, in general, tends to divert the due and orderly administration of the law into a new course, which may be drawn into an evil precedent in future. The admission of inadmissible evidence would, therefore, form no ground upon which an application under Cl. 39 could be based, if the course of the trial was in no way thereby deflected. 13 Rang. 141. An application by a person convicted and sentenced at the Sessions of the High Court for a declaration "that the case is a fit one" for appeal to His Majesty in Council lies under Cl. 39. *Ibid.*

THE INDIAN LIGHTHOUSE ACT (XVII OF 1927.

[Rep. in part by Act I of 1938.]

[21st September, 1927.

An Act to consolidate and amend the law relating to the provision, maintenance and control of lighthouses by the Government in British India.

WHEREAS it is expedient to consolidate and amend the law relating to the provision, maintenance and control of lighthouses by the Government in British India; It is hereby enacted as follows:—

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called THE INDIAN LIGHTHOUSE ACT, 1927.

(2) It extends to the whole of British India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "Customs-collector" means an officer of customs exercising the powers of a Customs-collector under the Sea Customs Act, 1878, and includes any person appointed by the Central Government to discharge the functions of a Customs-collector under this Act;

(b) "district" means an area defined as a district for the purposes of this Act under section 3;

(c) "general lighthouse" means any lighthouse which the Central Government may, by notification in the Official Gazette, declare to be a general lighthouse for the purposes of this Act;

(d) "lighthouse" includes any light-vessel, fog-signal, buoy beacon, or any mark, sign or apparatus exhibited or used for the guidance of ships;

(e) "lighthouse" means any lighthouse which is not a general lighthouse;

(f) "local lighthouse authority" means a Provincial Government local authority or other person having the superintendence and management of a local lighthouse;

(g) "owner" includes any part-owner, charterer or mortgagee in possession and any agent to him a ship is consigned;

(h) "port" means any port, as defined in the Indian Ports Act, 1908, to which that Act extends; and

(i) words and expressions used in this Act and not otherwise defined have the same meanings respectively as in the Indian Merchant Shipping Act, 1923.

Appointment of officers.

3. The Central Government may, by notification in the Official Gazette,—

(a) define areas to be districts for the purposes of this Act;

(b) appoint a person to be the Superintendent of Lighthouses in each district;

(c) appoint a person to be the Chief Inspector of Lighthouses in British India; and

(d) appoint persons to be Inspectors of Lighthouses.

Advisory Committees.

4. (1) The Central Government shall appoint a Central Advisory Committee and shall consult it in regard to—

(a) the erection or position of lighthouses or of any works appertaining thereto;

(b) additions to, or the alteration or removal of, lighthouses;

(c) the variation of the character of any lighthouse or of the mode of use thereof;

(d) the cost of any proposals relating to lighthouses; or
 (e) the making or alteration of any rules or rates of dues under this Act.

(2) The Central Government may, if he thinks fit, appoint an Advisory Committee for any district for the purpose of advising in regard to any of the matters specified in sub-section (1) in so far as the interests of the district are affected thereby.

(3) Advisory Committees shall consist of persons representing interest affected by this Act or having special knowledge of the subject-matter thereof.

GENERAL LIGHTHOUSES.

Management of general lighthouses by the Central Government and delegation of management.

5. (1) The superintendence and management of all general lighthouses are vested in the Central Government.

(2) The Central Government may require any local lighthouse authority to undertake the superintendence and management of any general lighthouse situated in or adjacent to the local limits within which the authority exercise its powers, and shall pay to the authority such sums to defray the cost of superintendence and management as he may determine.

LOCAL LIGHTHOUSES.

6. (1) The Chief Inspector of Lighthouses may, at any time, and any Superintendent or Inspector of Lighthouses may, if authorised in this behalf by a general or special order in writing of the Central Government, enter upon and inspect any local lighthouse and make such inquiries in respect thereof or of the management thereof as he thinks fit.

(2) Every person having the charge of, or concerned in the management of, any lighthouse shall be bound to furnish to any officer authorised by or under sub-section (1) to inspect the lighthouse all such information regarding the same as the officer may require.

(3) Every local lighthouse authority shall furnish to the Central Government all such returns and other information in respect of the lighthouses under its supervision and management, or of any of them, as he may require.

7. (1) If, after an inspection under section 6 or such other inquiry as he thinks fit, the Central Government is satisfied that a direction under this sub-section is necessary or expedient for the safety, or otherwise in the interests of shipping, he may direct any local lighthouse authority—

(a) to remove or discontinue or to refrain from moving or discontinuing any lighthouse under its superintendence and management or to make or refrain from making any variation in the character or mode of use of any such lighthouse, or

(b) to erect, place or maintain, or to refrain from erecting, placing or maintaining, any lighthouse within the local limits within which the local lighthouse authority exercises its powers.

(2) A local lighthouse authority shall not erect, place, remove or discontinue any lighthouse or vary the character or mode of use of any lighthouse, unless it has given to the Central Government at least one month's notice in writing of its intention so to do:

Provided that, in cases of emergency, a local lighthouse authority may take such action as it deems necessary and shall give immediate notice of the same to the Central Government and, so far as is possible, to all shipping approaching or in the vicinity of the lighthouse.

(3) If a local lighthouse authority—

(a) fails to comply with any direction made under sub-section (1), or

(b) fails to exercise or perform, or exercise or perform in an improper, inefficient or unsuitable manner, any power or duty relating to the superintendence or management of lighthouses conferred or imposed upon it by or under any law for the time being in force, or

(c) fails to make adequate financial provision for the performance of any such duty,
the Central Government may, by order in writing, require the local lighthouse authority to comply with the direction, or to make arrangements to his satisfaction for the proper exercise of the power or performance of the duty, or to make financial provision to his satisfaction for the performance of the duty, as the case may be, within such period as he may specify.

(4) If the local lighthouse authority fails to comply with an order made under sub-section (3) within the specified period or within such further time as the Central Government may allow, the Central Government may exercise the power or perform the duty or make the requisite financial provision, as the case may be, and the local lighthouse authority shall be liable to repay to the Central Government any expenditure incurred by him in so doing.

8. The Central Government may, at the request of a local lighthouse authority, undertake the superintendence and management of any local lighthouse on its behalf, and the local lighthouse authority shall pay to the Central Government such sums to defray the cost of superintendence and management as may be agreed.

LIGHT-DUES.

9. For the purpose of providing or maintaining or of providing and maintaining lighthouses for the benefit of ships voyaging to or from British India or between ports in British India, the Central Government shall, subject to the provisions of this Act, cause light-dues to be levied and collected in respect of every ship arriving at or departing from any port in British India.

10. (1) The Central Government may, by notification in the Official Gazette, prescribe rates, not exceeding two annas per ton, at which light-dues shall be payable, and may prescribe, different rates for different classes of ships or for ships of the same class when in use for different purposes or in different circumstances.

(2) Light-dues payable in respect of a ship shall be paid by the owner or master of the ship on its arrival at, and on its departure from, any port in British India:

Provided that, if light-dues have been paid in accordance with the provisions of this Act in respect of any ship, no further dues shall become payable in respect of that ship for a period of thirty days from the date on which the dues so paid became payable.

(3) An order under sub-section (1) imposing, abolishing or varying light-dues shall not take effect till the expiration of thirty days from the day on which the order was notified in the Official Gazette.

11. Light-dues shall be paid to the Customs-collector who shall grant to the person paying the same a receipt in writing specifying—

- (a) the port at which the dues have been paid;
- (b) the amount of the payment;
- (c) the date on which the dues became payable; and
- (d) the name, tonnage and other proper description of the ship in respect of which the payment is made.

12. (1) For the purpose of the levy of light-dues, a ship's tonnage shall be reckoned as under the Merchant Shipping Acts for dues payable on a ship's tonnage, with the addition required under section 85 of the Merchant Shipping Act, 1894, with respect to deck cargo.

(2) In order to ascertain the tonnage of any ship for the purpose of levying light-dues, the Customs-collector may—

(a) if the ship is registered under any law for the time being in force in British India or under the law of any foreign country in respect of which an Order in Council has been made under section 84 of the Merchant Shipping Act, 1894, that ships of that country shall be deemed to be of the tonnage denoted in their certificates of registry or other national papers, any such ship being hereafter in this section referred to as a registered ship, require the owner or master or other person having possession of the ship's register or other papers denoting her tonnage to produce the same for inspection and, if such owner, master or other person refuses or neglects to produce the register or papers, as the case may be, or otherwise to satisfy the Customs-collector as to the tonnage of the ship, cause the ship to be measured and the tonnage to be ascertained; or

(b) if the ship is not a registered ship and the owner or master fails to satisfy the Customs-collector as to the true tonnage thereof according to the mode of measurement prescribed by the law for the time being in force for regulating the measurement of registered ships, cause the ship to be measured and the tonnage thereof to be ascertained according to such mode.

(3) If any person refuses or neglects to produce any register or other papers or otherwise to satisfy the Customs-collector as to the true tonnage of any ship when required to do so under this section, such person shall be liable to pay the expenses of the measurement of the ship and of the ascertainment of the tonnage, and, if the ship is a registered ship, shall further on conviction by a Presidency Magistrate or Magistrate of the first class having jurisdiction in the port where the ship lies or in any port to which she may proceed be punishable with fine which may extend to one thousand rupees.

13. (1) If the owner or master of any ship refuses or neglects to pay to the Customs-collector on demand the amount of any light-dues or expenses payable under this Act in respect of the ship, the Customs-collector may seize the ship and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount of the dues or expenses, together with the costs of the seizure and detention, is paid.

(2) If any part of such dues, expenses or costs remains unpaid after the expiry of five days following the date of seizure, the Customs-collector may cause the ship or other thing seized to be sold, and with the proceeds of the sale may satisfy the dues, expenses or costs remaining unpaid, together with the costs of the sale, and shall repay the surplus, if any, to the person by whom the same were payable.

14. The officer whose duty it is to grant a port-clearance for any ship shall not grant the port-clearance until the amount of all light-dues or expenses and costs payable in respect of the ship under this Act and of any fines imposed thereunder has been paid, or until security for the payment thereof has been given to his satisfaction.

15. If any dispute arises as to whether light-dues, expenses or costs are payable in respect of any ship under this Act or as to the amount of such dues, expenses or costs, the dispute shall, on application made in this behalf by either of the disputing parties, be heard and determined by a Presidency Magistrate or Magistrate of the first class having jurisdiction at the place where the dispute arises, and the decision of such Magistrate shall be final.

16. (1) If the master of any ship in respect of which any light-dues are payable at any port causes the ship to leave such port without having paid the same, the Customs-collector at that port may by writing require the Customs-collector at any other port in British India to which the ship may proceed or in which she may be to recover the dues remaining unpaid.

(2) Any Customs-collector to whom such a requisition is directed shall proceed to levy such sum as if it were payable under this Act at the port at which he is the Customs-collector, and a certificate by the Customs-collector at the port at which the light-dues first became payable, stating the amount payable, shall be sufficient proof in any proceeding under section 13 or section 15 that such amount is payable.

17. (1) If the owner or master of a ship evades or attempts to evade the payment of any light-dues, expenses or costs payable in respect of the ship under this Act, he shall, on conviction by a Presidency Magistrate or Magistrate of the first class having jurisdiction in any port to which the vessel may proceed or in which she may be found, be punishable with fine which may extend to five times the amount of the sum payable.

(2) In any proceeding before a Magistrate in a prosecution under sub-section (1), any such certificate as is mentioned in sub-section (2) of section 16, stating that the owner or master has evaded such payment, shall be sufficient proof of the evasion, unless the owner or master shows to the satisfaction of the Magistrate that the departure of the vessel without payment of the sum was caused by stress of weather, or that there was lawful or reasonable grounds for such departure.

Exemption from payment of light-dues.

18. The following ships shall be exempted from the payment of light-dues under this Act, namely:—

(a) any ship belonging to His Majesty ¹[* *] or to a foreign Prince or State and not carrying cargo or passengers for freight or fares; and

(b) any ship of a tonnage of less than fifty tons; and the Central Government may, by notification in the Official Gazette, exempt any other ships or classes of ships or ships performing specified voyages from such payment, either wholly or to such extent only as may be specified in the notification.

19. Where light-dues have been paid in respect of any ship in excess of the amount payable under this Act, no claim to refund of such excess payment shall be admissible, unless it is made within six months from the date of each payment.

ACCOUNTS.

20. (1) The Central Government shall cause to be maintained a separate account of all amounts received by way of light-dues, expenses, costs and fines under this Act and of all expenditure incurred for the purposes of this Act, and shall cause such account to be laid before the Central Advisory Committee, as soon as possible, after the close of each financial year.

(2) The Central Government shall cause to be laid before the Central Advisory Committee before the close of each financial year a statement of the estimated receipts under, and expenditure for the purposes of, this Act during the forthcoming year.

LEG. REF.

¹ Words 'or the Government' omitted by

the Government of India (Adaptation of Indian Laws) Order, 1937.

RULES

21. (1) The Central Government may make rules consistent with this Act to carry into effect the purposes thereof.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the powers and duties of the Chief Inspector of Lighthouses and of Superintendents and Inspectors of Lighthouses;

(b) the procedure and conduct of business of Advisory Committees constituted under this Act;

(c) the rate of travelling and subsistence allowance payable to members of Advisory Committees; and

(d) the period in respect of which and the form in which the separate account referred to in sub-section (1) of section 20 shall be kept and the forms in which that account and the statement referred to in sub-section (2) of that section shall respectively be presented to the Central Advisory Committee.

22. REPEALS. [*Repealed by Act I of 1938.*]

THE SCHEDULE.—[*Repealed by Act I of 1938.*]

THE INDIAN LUNACY ACT (IV OF 1912).

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101. [Repealed.]

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THE INDIAN LUNACY ACT (IV OF 1912).

[16th March, 1912]

An Act to consolidate and amend the law relating to Lunacy.

WHEREAS it is expedient to consolidate and amend the law relating to lunacy; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

CHAPTER I.

Short title and extent.

1. (1) This Act may be called THE INDIAN LUNACY ACT, 1912.

(2) It extends to the whole of British India, including British Baluchistan, the Sonthal Parganas, and the Pargana of Spiti.

2. Nothing contained in Part II shall be deemed to affect the powers of any High Court which is or hereafter may be¹ [constituted by His Majesty by Letters Patent], over any

Savings.

person found to be a lunatic by inquisition or over the property of such lunatic, or the rights of any person appointed by such Court as guardian of the person or manager of the estate of such lunatic.

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

(1) "asylum" means an asylum² [or mental hospital] for lunatics established or licensed by³ [any Government in British India]:

LEG. REF.

¹ Substituted for "established under the Indian High Courts Acts, 1861 to 1911" by A.O., 1937.

² Inserted by Act VI of 1922, S. 2.

³ Substituted for "Government" by A.O., 1937.

SEC. 1: OBJECT OF THE ACT.—The law does not contemplate that a person alleged to be a lunatic should be exposed to the publicity and harassment of a trial unless there is some foundation for apprehension

that he is incapable to manage his affairs. 9 I.C. 207=8 A.L.J. 179. See also 19 C.W.N. 45.

APPLICABILITY OF THE ACT.—The Act is not absolutely exhaustive. 42 C.W.N. 92=1937 C. 735. Act XXXV of 1858 had no application to a Hindu coparcener who has no separate property. 23 M.L.J. 706=17 I.C. 473=1913 M.W.N. 79. See also 25 C. 585. The provisions should be strictly followed. 1930 L. 289.

SEC. 3, CL. (1): Where there is no provision in the order of appointment of

(2) "cost of maintenance" in an asylum includes the cost of lodging, maintenance, clothing, medicine and care of a lunatic and any expenditure incurred in removing such lunatic to and from an asylum ¹[together with any other charges specified in this behalf by the ²[Provincial Government], in exercise of any power conferred upon ³[it] by this Act]:

(3) "District Court" means the principal Civil Court of original jurisdiction in any area outside the local limits for the time being of the presidency-towns:

(4) "criminal lunatic" means any person for whose ⁴[detention] in, or removal to an asylum, jail or other place of safe custody an order has been made in accordance with the provisions of section 466 or section 471 of the Code of Criminal Procedure, 1898, or of section 30 of the Prisoners Act, 1900, ⁵[or of section 103-A of the Indian Army Act, 1911]:

(5) "lunatic" means an idiot or person of unsound mind:

(6) "Magistrate" means a Presidency Magistrate, District Magistrate, sub-Divisional Magistrate or a Magistrate of the first class specially empowered by the Provincial Government to perform the functions of a Magistrate under this Act:

(7) "medical officer" means a gazetted ⁶[medical officer in the service of the Crown] and includes a medical practitioner declared by general or special order of the Provincial Government to be a medical officer for the purposes of this Act:

(8) "medical practitioner" means a holder of a qualification to practise medicine and surgery which can be registered in the United Kingdom in accordance with the law for the time being in force for the registration of medical practitioners, and includes any person declared by general or special order of the Provincial Government to be a medical practitioner for the purposes of this Act:

(9) "prescribed" means prescribed by this Act or by rule made thereunder:

(10) "reception order" means an order made under the provisions of this Act for the reception into asylum of a lunatic other than a lunatic so found by inquisition:

(11) "relative" includes any person related by blood, marriage or adoption: and

(12) "rule" means a rule made under this Act.

LEG. REF.

¹ Inserted by Act VI of 1922, S. 2.

² Substituted for "Governor-General in Council" by A.O., 1937.

³ Substituted for "him" by *ibid.*

⁴ Substituted for 'confinement' by Act XI of 1923, S. 2 and Sch. I.

⁵ Inserted by Act XXXIII of 1923, S. 5.

⁶ Substituted for 'medical officer of Government' by A.O., 1937.

joint managers for the estate of lunatic, the office of the survivor manager terminates on the death of the co-manager. 61 Cal. 986=60 C.L.J. 14=38 C.W.N. 1054.

Sec. 3, Cl. (2).—Under the Lunacy Act, the Court has no power to award costs to an unsuccessful applicant out of the estate of the alleged lunatic, even though the application is *bona fide* and in the best interests of the lunatic. In the absence of a provision in the Act, similar to S. 109 of the English Lunacy Act of 1890, the Court has no discretion to award costs. 152 I.C. 882=40

L.W. 710=67 M.L.J. 797.

Sec. 3 (5).—The elaborate procedure prescribed by the Act should be strictly followed the Court should not consider itself relieved of its responsibility by the mere circumstance that some or all of the relatives of the person concerned have declared that he is a lunatic. The Court ought to form its own independent judgment on the point. 122 I.C. 570=1930 L. 289. Unsoundness of mind includes imbecility, lunacy or mental aberration. 7 B. 15. See also 1905 A.W. N. 8; 4 C.L.J. 115. But mere weakness of intellect is not. 4 C.L.J. 115. As to what is lunacy, see also 24 W.R. 124; 20 W.R. 55.

LUNATIC.—The term "Lunatic" also includes one who is so found by a competent Court on proper evidence. 2 A.L.J. 154; 31 C. 210. A man is not a lunatic simply because he had delusions on one or two points and is incapable of managing his own affairs. 9 I.C. 207=8 A.L.J. 179.

Sec. 3 (11).—The brother of the wife is

PART II
RECEPTION, CARE AND TREATMENT OF LUNATICS.
CHAPTER II.

RECEPTION OF LUNATICS.

14. (1) No person other than a criminal lunatic or a lunatic so found by inquisition shall be received or detained in an asylum without a reception order save as provided by sections 8, 16 and 98:

Reception of persons in asylum. Provided that any person in charge of an asylum may, with the consent of two of the visitors of such asylum, which consent shall not be given except upon a written application from the intending boarder, receive and lodge as a boarder in such asylum any person who is desirous of submitting himself to treatment.

(2) A boarder received in an asylum under the proviso to sub-section (1) shall not be detained in the asylum for more than twenty-four hours after he has given to the person in charge of the asylum notice in writing of his desire to leave such asylum.

Reception orders on petition.

5. (1) An application for a reception order shall be made by petition accompanied by a statement of particulars to the Magistrate within the local limits of whose jurisdiction the alleged lunatic ordinarily resides, shall be in the form prescribed and shall be supported by two medical certificates on separate sheets of paper, one of which certificates shall be from a medical officer.

(2) If either of the medical certificates is signed by any relative, partner or assistant of the lunatic or of the petitioner, the petition shall state the fact and, where the person signing is a relative, the exact manner in which he is related to the lunatic or petitioner.

(3) The petition shall also state whether any previous application has been presented for an inquiry into the mental capacity of the alleged lunatic in any Court; and if such application has been made, a certified copy of the order made thereon shall be attached to the petition.

(4) No application for a reception order shall be entertained in any area outside the Presidency-towns unless the Provincial Government has, by notification in the Official Gazette, declared such area as an area in which reception orders may be made.

6. ²[(1) Subject to the provisions of sub-section (3), the petition shall be presented by the husband or wife of the alleged lunatic, or, if there is no husband or wife or the husband or wife is prevented by reason of insanity, absence from India or otherwise from making the presentation, by the nearest relative of the alleged lunatic who is not so prevented.]

(2) ²[If the petition is not presented by the husband or wife, or, where there is no husband or wife, by the nearest relative of the alleged lunatic, the petition] shall contain a statement of the reasons why it is not so presented, and of the connection of the petitioner with the alleged lunatic, and the circumstances under which he presents the petition.

(3) No person shall present a petition unless he has attained the age of majority as determined by the law to which he is subject, and as within four-

LEG. REF.

¹ MADRAS AMENDMENT.—“In sub-S. (1) of sec. 4 of the Indian Lunacy Act, 1912, for the words and figures “save as provided by secs. 8, 16 and 98”, the words, figures and letter “save as provided by secs. 8, 16 and 98 of this Act and by sec. 39-A of the Prisons Act, 1894” shall be substituted (Madras Act XIV of 1938).

² Substituted by Act V. of 1926, S. 2.

related by marriage to the husband of his sister and is therefore a “relative” within S. 3 (11) of the Act and he is competent to make an application for inquisition under S. 62 of the Act. A narrow construction should not be placed upon the term “relative” as defined in S. 3 (11). 22 C.W.N. 547=43 I.C. 511.

Sec. 4.—See 4 L. 1=73 I.C. 696.

teen days before the presentation of the petition, personally seen the said lunatic.

(4) The petition shall be signed and verified by the petitioner, and the statement of prescribed particulars by the person making such statement.

7. (1) Upon the presentation of the petition the Magistrate shall consider the allegations in the petition and the evidence of lunacy appearing by the medical certificates.

(2) If he considers that there are grounds for proceeding further, he shall personally examine the alleged lunatic unless for reasons to be recorded in writing he thinks it unnecessary or inexpedient so to do.

(3) If he is satisfied that a reception order may properly be made forthwith, he may make the same accordingly.

(4) If he is not so satisfied, he shall fix a date (notice whereof shall be given to the petitioner and to any other person to whom in the opinion of the magistrate notice should be given) for the consideration of the petition, and he may make such further or other inquiries of or concerning the alleged lunatic as he thinks fit.

8. Upon the presentation of the petition, the Magistrate may make such order as he thinks fit for the suitable custody of the alleged lunatic pending the conclusion of the inquiry.

9. The petition shall be considered in private in the presence of the petitioner, the alleged lunatic (unless the Magistrate in his discretion otherwise directs), any person appointed by the alleged lunatic to represent him and such other persons as the Magistrate thinks fit.

10. (1) At the time appointed for the consideration of the petition, the Magistrate may either make a reception order or dismiss the petition, or may adjourn the same for further evidence or inquiry and may make such order as to the payment of the costs of the inquiry by the person upon whose application it was made, or out of the estate of the alleged lunatic if found to be of unsound mind, or otherwise as he thinks fit.

(2) If the petition is dismissed, the Magistrate shall record in writing his reasons for dismissing the same, and shall deliver or cause to be delivered to the petitioner a copy of such order.

11. No reception order shall be made under section 7 or section 10, save in the case of a lunatic who is dangerous and unfit to be at large, unless—

(a) the Magistrate is satisfied that the person in charge of an asylum is willing to receive the lunatic, and

(b) the petitioner or some other person engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic.

¹[11-A. (1) The Magistrate may, subject to the provisions of this section by order in writing (hereinafter referred to as an order of substitution), transfer the duties and responsibilities under this Act of the person on whose petition a reception order has been made to any other person who is willing to undertake the same, and such other person shall thereupon be deemed for the purposes of this Act to be

LEG. REF.

¹ S. 11-A was inserted by Act V of 1926, sec. 3.

cial determination carefully made on adequate materials. 54 C. 836; 35 C.W.N. 481.

SEC. 7: DUTY OF JUDGE IN MAKING AN ORDER FOR INQUISITION.—It must be a judi-

SECS. 11 TO 14.—Orders of a District Magistrate are executive and cannot form the subject-matter of revision. 4 L. 1=73

the person on whose petition the reception order was made, and all references in this Act to such lost-mentioned person shall be construed accordingly:

Provided that no such order of substitution shall release the person upon whose petition the reception order was made or, if he is dead, his legal representative from any liability incurred before the order of substitution was made.

(2) Before making any order of substitution, the Magistrate shall send a notice to the person upon whose petition the reception order was made, if he is alive, and to any relative of the lunatic to whom, in the opinion of the Magistrate, notice should be given; the notice shall specify the name of the person in whose favour it is proposed to make such order and the date, which shall be not less than twenty days from the sending of the notice, upon which any objection to the making of the order will be considered.

(3) On such date or any subsequent date to which the proceedings may be adjourned, the Magistrate shall consider any objection made by any person to whom notice has been sent, or by any other relative of the lunatic, and shall receive all such evidence as may be produced by or on behalf of any such persons and such further evidence, if any, as the Magistrate thinks necessary, and may thereafter make or refrain from making an order of substitution;

Provided that, if the person on whose petition the reception order was made is dead and any other person is willing and, in the opinion of the Magistrate, fitted to undertake the duties and responsibilities under this Act of such first-mentioned person, the Magistrate shall make such an order.

(4) If in proceedings under this section any question arises as to the person to whom the duties and responsibility under this Act of a person upon whose petition a reception order has been made shall be entrusted, the Magistrate shall give preference to the person who is the nearest relative of the lunatic unless, for reasons to be recorded in writing, the Magistrate considers that such preference would not be in the interests of the lunatic.

(5) The Magistrate may make such order for the payment of the costs of an inquiry under this section by any person who is a party thereto or out of the estate of the lunatic, as he thinks fit.

(6) Any notice under sub-section (2) may be sent by post to the last known address of the person for whom it is intended.]

¹[11-B. (1) When an arrangement has been made with any foreign

Reception order in case
of lunatics from foreign
States in India.

European State with respect to the reception of lunatics in asylums in British India, the Central Government may, by notification in the Official Gazette,

direct that reception orders may be made under this Act in the case of any lunatic or class of lunatics residing in the territories in India of such foreign European State, and shall in such notification specify the province or provinces within which such reception orders may be made.

(2) On publication of a notification under sub-section (1), the provisions of this Act as to the making of reception orders on petition and for temporary detention in suitable custody shall apply in the case of such lunatics, with the following modifications, namely:—

(a) an application for a reception order may be made by petition presented by such officer or agent of the foreign State in which the alleged lunatic ordinarily resides, as may by general or special order be approved by the Provincial Government in this behalf;

(b) the functions of the Magistrate shall be performed by such officer as the Provincial Government may, by general or special order, appoint in this behalf, and such officer shall be deemed to be the Magistrate having jurisdiction over the alleged lunatic for all the purposes of the said provisions:

LEG. REF.

¹ This section was originally inserted as S. 11-A by Act XII of 1916 and was re-numbered as S. 11-B by Act V of 1926, S. 3.

I.C. 696=1924 L. 55. Great care is to be taken before declaring a person a lunatic. 5 W.R. (Mis.) 5.

(c) for the purposes of sections 5 and 18 (1), the expressions "medical officer" and "medical practitioner" shall include such person or class of persons as the Provincial Government may specify in this behalf;

(d) the Magistrate may in his discretion extend the period prescribed by section 19 within which the alleged lunatic must have been medically examined; and

(e) section 6 (1), (2), (3), 11, ¹[11-A] and 34 of the Act, shall not apply, and with such other modifications, restrictions or adaptations as the Central Government may, by notification in the Official Gazette, direct for the purpose of facilitating the application of the said provisions.

(3) A reception order made under this section shall be deemed to be a reception order made under section 7 or section 10, as the case may be.

Reception orders otherwise than on petition.

12. When any European who is subject to the provisions of the Army Act

²[the Naval Discipline Act or that Act as modified by the Indian Navy (Discipline) Act, 1934,] Reception order in case of a European lunatic soldier, sailor or airman. ³[the Air Force Act or the Indian Air Force Act, 1932]

has been declared a lunatic in accordance with the provisions of the military ²[Naval] ⁴[or air force] regulations in force for the time being, and it appears to any administrative medical officer that he should be removed to an asylum, such administrative medical officer may, if he thinks fit, make a reception order under his hand for the admission of the said lunatic into any asylum which has been duly authorized for the purpose by the Central Government.

13. (1) Every officer in charge of a police station may arrest or cause to

Powers and duties of police in respect of wandering or dangerous lunatics and lunatics cruelly treated or not under proper care and control.

be arrested all persons found wandering at large within the limits of his station whom he has reason to believe to be lunatics, and shall arrest or cause to be arrested all persons within the limits of his station whom he has reason to believe to be dangerous by reason of lunacy. Any person so arrested shall be taken forthwith before the Magistrate.

(2) Every officer in charge of a police-station who has reason to believe that any person within the limits of his station is deemed to be a lunatic and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the charge of him, shall immediately report the fact to the Magistrate.

14. Whenever any person is brought before a Magistrate under the provi-

Reception order in case of wandering and dangerous lunatics.

sions of sub-section (1) of section 13, the Magistrate shall examine such person, and if he thinks that there are grounds for proceeding further, shall cause him to be examined by a medical officer, and may

make such other inquiries as he thinks fit; and if the Magistrate is satisfied that such person is a lunatic and a proper person to be detained, he may, if the medical officer who has examined such person gives a medical certificate with regard to such person, make a reception order for the admission of such lunatic into an asylum:

Provided that, if any friend or relative desires that the lunatic be sent to a licensed asylum and engages in writing to the satisfaction of the Magistrate to

LEG. REF.

¹ Inserted by Act V of 1926, sec. 4.

² Inserted by Act XXXV of 1934, S. 2 and Sch.

³ Substituted by Act XIV of 1932, S. 130 and Sch. for "or the Air Force Act" which had been inserted by Act X of 1927, S. 2 and Sch. I.

⁴ Inserted by Act X of 1927, S. 2 and Sch. I.

SEC. 13.—See 5 W.R. (Mis.) 5; 9 C. 341.

SECS. 14, 15 (3) AND 16.—Sec. 16 which applies only to temporary detention for specific time and purpose, also applies to a

pay the cost of maintenance of the lunatic in such asylum, the Magistrate shall, if the person in charge of such asylum consents, make a reception order for the admission of the lunatic into the licensed asylum mentioned in the engagement:

Provided further that if any friend or relative of the lunatic enters into a bond with or without sureties for such sum of money as the Magistrate thinks fit, conditioned that such lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or to others, the Magistrate, instead of making a reception order, may, if he thinks fit, make him over to the care of such friend or relative.

15. (1) If it appears to the Magistrate, on the report of a police-officer or the information of any other person, that any person

Order in case of lunatic
cruelly treated or not under
proper care and control.

within the limits of his jurisdiction deemed to be a lunatic is not under proper care and control or is cruelly treated or neglected by any relative or other

person having the charge of him, the Magistrate may cause the alleged lunatic to be produced before him, and summon such relative or other person as has or ought to have the charge of him.

(2) If such relative or other person is legally bound to maintain the alleged lunatic, the Magistrate may make an order for such alleged lunatic being properly cared for and treated, and, if such relative or other person wilfully neglects to comply with the said order, the Magistrate may sentence him to imprisonment for a term which may extend to one month.

(3) If there is no person legally bound to maintain the alleged lunatic, or if the Magistrate thinks fit so to do, he may proceed as prescribed in section 14, and upon being satisfied in manner aforesaid that the person deemed to be a lunatic is a lunatic and a proper person to be detained under care and treatment may, if a medical officer gives a medical certificate with regard to such lunatic, make a reception order for the admission of such lunatic into an asylum.

16. (1) When any person alleged to be a lunatic is brought before a Magistrate under the provisions of section 13 or

Detention of alleged
lunatic pending report by
medical officer.

section 15, the Magistrate may, by an order in writing authorize the detention of the alleged lunatic in suitable custody for such time not exceeding ten

days as may be, in his opinion necessary to enable the medical officer to determine whether such alleged lunatic is a person in respect of whom a medical certificate may be properly given.

(2) The Magistrate may, from time to time, for the same purpose by order in writing, authorize such further detention of the alleged lunatic for periods not exceeding ten days at a time as he thinks necessary:

case where Magistrate acting under sec. 14 thinks detention necessary for observation. In such a case, by reason of sec. 15 (3), the two provisos of sec. 14 will also apply if necessary. 29 S.L.R. 431=165 I.C. 119=1936 Sind 156.

Seco. 15.—Words ‘report of Police Officer, etc.’ do not suggest personal presentation of a written complaint. Information contained in official correspondence is sufficient. 29 S.L.R. 431=165 I.C. 119=1936 Sind 156. Where a lunatic is not ‘under proper care and control,’ it is not necessary, though desirable, to formally summon the relatives. But omission to do so does not render the proceedings illegal. (*Ibid.*)

SECS. 15 AND 88.—A Magistrate who passes a reception order against a lunatic under S. 15 has no jurisdiction to pass an order for

the payment of the costs of the maintenance of the lunatic. He must under the provisions of S. 88 apply to the High Court or the District Court for such an order. 40 P.L.R. 496.

Sec. 16.—A Gazetted Resident Medical Officer of a hospital is a medical officer under this section. 29 S.L.R. 431=165 I.C. 119=1936 Sind 156. It is competent to Magistrate to vary and shorten the period of detention originally ordered, on medical report. (*Ibid.*) Under the Lunacy Acts IV of 1912 and X of 1914 the Magistrates or Courts are themselves competent to direct the reception of a criminal lunatic into any asylum prescribed for the purpose without reporting the case for orders of the Local Government under S. 471 (1), Cr. P. Code. 8 L.B.R. 290=30 I.C. 654.

Provided that no person shall be detained in accordance with the provisions of this section for a total period exceeding thirty days from the date on which he was first brought before the Magistrate.

17. All acts which the Magistrate is authorized or required to do by sections 14, 15 or 16 may be done in the Presidency-towns ¹[* * *] by the Commissioner of Police; and all duties which an officer in charge of a police station is authorized or required to perform may be performed in any of the Presidency-towns by an officer of the police force not below the rank of an inspector.

Commissioner of Police,
etc., to act in the Presi-
dency-town.

Further provisions as to reception orders and medical certificates.

18. (1) Every medical certificate under this Act shall be made and signed by a medical practitioner or a medical officer, as the case may be, and shall be in the form prescribed.

(2) Every medical certificate shall state the facts upon which the person certifying has formed his opinion that the alleged lunatic is a lunatic, distinguishing facts observed by himself from facts communicated by others; and no reception order on petition shall be made upon a certificate founded only upon facts communicated by others.

Medical certificates.

(3) Every medical certificate made under this Act shall be evidence of the facts therein appearing and of the judgment therein stated to have been formed by the person certifying on such facts, as if the matters therein appearing had been verified on oath.

19. (1) A reception order required to be founded on a medical certificate shall not be made unless the person who signs the medical certificate, or, where two certificates are required, each person who signs a certificate has personally examined the alleged lunatic, in the case of an order upon petition, not more than seven clear days before the date of the presentation of the petition, and, in all other cases not more than seven clear days before the date of the order.

(2) Where two medical certificates are required, a reception order shall not be made unless each person signing a certificate has examined the alleged lunatic separately from the other.

20. A reception order, if the same appears to be in conformity with this Act, shall be sufficient authority for the petitioner or any person authorised by him, or in the case of an order not made upon petition, for the person authorized so to do by the person making the order, to take the lunatic and convey him to the place mentioned in such order and for his reception and detention therein, or in any asylum to which he may be removed in accordance with the provisions of this Act, and the order may be acted on without further evidence of the signature or of the jurisdiction of the person making the order:

Authority for reception.

²[Provided that no reception order shall continue to have effect—

(a) After the expiry of thirty days from the date on which it was made, unless the lunatic has been admitted to the place mentioned therein within that period, or

(b) After the discharge, under the provisions of this Act, of the lunatic from such place or from any asylum to which he may have been removed.]

Copy of reception order
to be sent to person in
charge of asylum.

21. Any authority making a reception order under this Part shall forthwith send a certified copy of the order to the person in charge of the asylum into which such lunatic is to be admitted.

Restriction as to asylums into which reception orders may direct admission.

22. Subject to the provisions of section 85, no Magistrate shall make a reception order for the admission of any lunatic into [any Government asylum] outside the province in which the Magistrate exercises jurisdiction.

Detention of lunatics pending removal to asylum.

23. When any reception order has been made under sections 7, 10, 14 or 15, the Magistrate may, for reasons to be recorded in writing, direct that the lunatic, pending his removal to an asylum, be detained in suitable custody in such place as the Magistrate thinks fit.

Reception and detention of criminal lunatics.

24. An order under section 466 or section 471 of the Code of Criminal Procedure, 1898, or under section 30 of the Prisoners Act, 1900 ²[or under section 103-A of the Indian Army Act, 1911], directing the reception of a criminal lunatic into any asylum which is prescribed for the reception of criminal lunatics shall be sufficient authority for the reception and detention of any person named therein in such asylum or in any other asylum to which he may be lawfully transferred.

Reception after inquisition.

Reception after inquisition.

25. A lunatic so found by inquisition may be admitted into an asylum—

(1) in the case of an inquisition under Chapter IV, on an order made by, or under the authority of, the High Court;

(2) in the case of an inquisition under Chapter V, on an order made by the District Court.

26. (1) When any lunatic has been admitted into an asylum in accordance with the provisions of section 25, the High Court or the District Court, as the case may be, shall, on the application of the person in charge of the asylum, make an order for the payment of the cost of maintenance of the lunatic in the asylum, and may from time to time direct that any sum of money payable under such order shall be recovered from the estate of the lunatic or of any person legally bound to maintain him:

Provided that if at any time it shall appear to the satisfaction of the Court that the lunatic has not sufficient property, and that no person legally bound to maintain such lunatic has sufficient means for the payment of such cost, the Court shall certify the same instead of making such order for the payment of the cost as aforesaid.

(2) An order under sub-section (1) shall be enforced in the same manner and shall be of the same force and effect and subject to the same appeal as a decree made by the Court in a suit in respect of the property or person therein mentioned.

Amendment of order or certificate.

27. If, after the reception of any lunatic into any asylum on a reception order, it appears that the order upon which he was

Amendment of order or certificate.

received or the medical certificate or certificates upon which such order was made is or are defective or incorrect, the same may at any time afterwards be amended by the person or persons signing the same with the sanction of two or more of the visitors of the said asylum, one of whom shall be a medical officer.

LEG. REF.

¹ Substituted for "any asylum established

by Government" by A.O., 1937.

² Inserted by Act XXXIII of 1923, S. 5.

CHAPTER III.
CARE AND TREATMENT.
Visitors.

28. (1) The Provincial Government shall appoint for every asylum not less than three visitors, one of whom at least shall be a medical officer.

(2) The Inspector-General of Prisons (where such office exists) shall be a visitor *ex officio* of all the asylums within the limits of his jurisdiction.

29. Two or more of the visitors, one of whom shall be a medical officer, shall, once at least in every month, together inspect every part of the asylum of which they are visitors, and see and examine, as far as circumstances will permit, every lunatic and boarder therein, and the order and certificate for the admission of every lunatic admitted since the last visitation of the visitors, and shall enter in a book to be kept for that purpose any remarks which they may deem proper in regard to the management and condition of the asylum and the inmates thereof.

30. (1) When any person is ¹[detained] under the provisions of section 466 or section 471 of the Code of Criminal Procedure, 1898 ²[or under the provisions of section 103-A of the Indian Army Act, 1911] the Inspector-General of Prisons, if such person is ¹[detained] in a jail or the visitors of the asylum or any two of them, if he is ¹[detained] in an asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector-General or by two of such visitors as aforesaid; and such Inspector-General or visitors shall make a special report as to the state of mind of such person to the authority under whose order he is ¹[detained].

(2) The Provincial Government may empower the officer in charge of the jail in which such person may be ¹[detained] to discharge all or any of the functions of the Inspector-General under sub-section (1).

Discharge of lunatics.

31. (1) Three of the visitors of any asylum, of whom one shall be a medical officer, may, by order in writing, direct the discharge of any person detained in such asylum, and such person shall thereupon be discharged:

Provided that no order under this sub-section shall be made in the case of a person detained under a reception order under section 12, or, in the case of a criminal lunatic, otherwise than as provided by section 30 of the Prisoners Act, 1900.

(2) When such order is made, if the person is detained under the order of any public authority, notice of the order of discharge shall be immediately communicated to such authority.

32. (1) A lunatic detained in an asylum under a reception order, made on petition, shall be discharged if the person on whose petition the reception order was made so applies in writing to the person in charge of the asylum:

Provided that no lunatic shall be discharged under the provisions of sub-section (1) if the officer in charge of the asylum certifies in writing that the lunatic is dangerous and unfit to be at large.

(2) A person detained in an asylum under a reception order made under section 12 shall be detained therein until he is discharged therefrom in accordance with the military ¹[, naval] ²[or air force] regulations in force for the time being, or until the officer making the order applies for his transfer to the military ¹[, naval] ²[or air force] authorities in view to his removal to England.

(3) Whenever it appears to the officer in charge of an asylum that the discharge of a person therein detained under an order made under section 12 is necessary either on account of his recovery, or for any other purpose, such person shall be brought before the visitors of the asylum, and on the visitors recording their opinion that the discharge should be made, the General or other Officer commanding the division, district, brigade or force, or other officer authorized to order the admission of such persons into an asylum, shall forthwith direct him to be discharged, and such discharge shall take place in accordance with the military ¹[, naval] ²[or air force] regulations in force for the time being.

33. When any relative or friend of a lunatic detained in any asylum under

Order of discharge on undertaking of relative for due care of the lunatic.

the provisions of sections 14, 15 or 17 is desirous that such lunatic shall be delivered over to his care and custody, he may make application to the authority under whose order the lunatic is detained, and such authority, if it thinks fit in consultation with the person in charge of the asylum and with the visitors or with one of them being a medical officer and upon such relative or friend entering into a bond with or without sureties for such sum of money as the said authority thinks fit conditioned that such lunatic shall be properly taken care of and shall be prevented from doing injury to himself or to others may make an order for the discharge of such lunatic, and such lunatic shall thereupon be discharged.

34. If any lunatic detained in an asylum on a reception order made under

Discharge of person subsequently found on inquisition not to be of unsound mind.

sections 7, 10, 14, 15 or 17 is subsequently found on an inquisition under Chapter IV or Chapter V not to be of unsound mind and incapable of managing himself and his affairs, the person in charge of the asylum shall forthwith, on the production of a certified copy of such finding, discharge the alleged lunatic from the asylum.

Removal of lunatics.

35. (1) ³[Any lunatic may, in accordance with any general or special

Removal of lunatics and criminal lunatics.

order of the Provincial Government, be removed from ⁴[any Government asylum] to any other asylum within the province, or to any other asylum in any other province, with the consent of the Provincial Government of that province]:

LEG. REF.

¹ Inserted by Act XXXV of 1934, S. 2 and Sch.

² Inserted by Act X of 1927, S. 2 and Sch. I.

SCE. 33: MADRAS AMENDMENT.—After S. 33 of the Indian Lunacy Act, 1912, the following shall be inserted, namely:—

“Sec. 33-A.—If the person in charge of any asylum in which a lunatic is detained under the provisions of Ss. 14, 15 or 17, is satisfied that in the interests of the health of the lunatic, it is necessary to discharge him temporarily, the person aforesaid may

order such discharge for such period as he may think fit and subject to such conditions as the Provincial Government may by rule prescribe”. (Madras Act XV of 1938).

³ Substituted by Act XXXVIII of 1920, S. 2 and Sch. I.

⁴ Substituted for “any asylum established by Government” by A.O., 1937.

SCE. 33.—The appropriate remedy of the relatives of a person who has been wrongly confined as a lunatic is under this section, and not by way of application in *habeas corpus*. 29 S.L.R. 431=165 I.C. 119=1936 Sind 156.

Provided that no lunatic admitted into an asylum on a reception order made on petition shall be removed in accordance with the provisions of this sub-section until notice of such intended removal has been given to the petitioner.

(2) The Provincial Government may make such general or special order as [it] thinks fit directing the removal of any person for whose [detention] an order has been made under section 466 or section 471 of the Code of Criminal Procedure, 1898, [or under section 103-A of the Indian Army Act, 1911], from the place where he is for the time being [detained] to any asylum, jail or other place of safe custody [in the province, or to any asylum, jail or other place of safety in any other province with the consent of the Provincial Government of that province].

Escape and recapture.

36. Every person received into an asylum under any such order as is required by this Act, may be detained therein until he is removed or discharged as authorized by law, and in case of escape may, by virtue of such order, be retaken by any police-officer or by the person

Order to justify detention and recapture after escape.

in charge of such asylum, or any officer or servant belonging thereto, or any other person authorized in that behalf by the said person in charge, and conveyed to and received and detained in such asylum:

Provided that in the case of a lunatic not being a criminal lunatic or a lunatic in respect of whom a reception order has been made under section 12, the power to retake such escaped lunatic under this section shall be exercisable only for a period of one month from the date of his escape.

PART III.

JUDICIAL INQUISITION AS TO LUNACY.

CHAPTER IV.

PROCEEDINGS IN LUNACY IN PRESIDENCY-TOWNS.

Inquisition.

Jurisdiction in lunacy in Presidency-towns.

37. The Courts having jurisdiction under this Chapter shall be the High Courts of Judicature at Fort William, Madras and Bombay.

LEG. REF.

¹ Substituted by Act XXXVIII of 1920, S. 2 and Sch. I, for "he".

² Substituted by Act XI of 1923, S. 2 and Sch. I, for "confinement".

³ Inserted by Act XXXIII of 1923, S. 5.

⁴ Substituted by Act XI of 1923, S. 2 and Sch. I for "confined".

⁵ Substituted by Act XXXVIII of 1920, S. 2 and Sch. I, for "in British India".

SECS. 37 AND 38: SCOPE OF SECTIONS.—The Lunacy Act contemplates the question of lunacy or sanity at the time of the enquiry which shall not extend to the ascertainment of the period at which the alleged lunatic first became of unsound mind. 27 I.C. 459=19 C.W.N. 45. See also 4 L. 1=73 I.C. 696. Time of commencement of lunacy is beyond scope of inquiry. 13 M.I. A. 519. As to finding of lunacy in case of lucid intervals, see 18 M. 472. In order to find a person to be a lunatic the incapacity to manage his affairs must be on account of unsoundness of mind. 1905 A.W.N. 8; 4 C.L.J. 115. Where *D* had two places of

residence, one in Patna and the other in Calcutta and his wife instituted proceedings for his inquisition in Patna, held, that as resident in Calcutta *D* was subject to the jurisdiction of the High Court and that therefore the District Court of Patna had no jurisdiction to entertain the proceedings. 48 C. 577=65 I.C. 57=25 C. W.N. 178. See also 57 I.C. 768=32 C. L.J. 314.

INQUISITION PROCEEDINGS.—A Judge has got discretion under this Act to stop proceedings in an inquisition for proper grounds; a petitioner is not entitled to have the enquiry conducted so long as he is able to tender witnesses for examination. 33 I. C. 857=3 L.W. 402. Where a person has been found a lunatic under the Act the presumption is that he continues to be of unsound mind until the contrary is shown. 3 L.W. 290=33 I.C. 578.

SEC. 38.—The Original Side of the Calcutta High Court has no jurisdiction to direct an inquisition or appoint a guardian of person or property in the case of an Indian not resident in Calcutta. 58 C. 919=

38. (1) The Court may upon application by order direct an inquisition whether a person subject to the jurisdiction of the Court who is alleged to be insane, is of unsound mind and incapable of managing himself and his affairs.

(2) Such order may also contain directions for inquiries concerning the nature of the property belonging to the alleged lunatic, the persons who are his relatives, the time during which he has been of unsound mind, or such other matters as to the Court may seem proper.

Application by whom to be made.

39. Application for such inquisition may be made by any relative of the alleged lunatic, or by the Advocate-General.

Notice of time and place of inquisition.

40. (1) Notice shall be given to the alleged lunatic of the time and place at which it is proposed to hold the inquisition.

(2) If it appears that personal service on the alleged lunatic would be ineffectual, the Court may direct such substituted service of the notice as it thinks fit.

(3) The Court may also direct a copy of such notice to be served upon any relative of the alleged lunatic and upon any other person to whom in the opinion of the Court notice of the application should be given.

41. (1) The Court may require the alleged lunatic to attend at such convenient time and place as it may appoint for the purpose of being personally examined by the Court, or by any person from whom the Court may desire to have a report of the mental capacity and condition of such alleged lunatic.

Powers of Court in respect of attendance and examination of lunatic.

(2) The Court may likewise make an order authorizing any person or persons therein named to have access to the alleged lunatic for the purpose of a personal examination.

42. The attendance and examination of the alleged lunatic under the provisions of section 41 shall, if the alleged lunatic be a woman who, according to the manners and customs of the country, ought not to be compelled to appear in public, be regulated by the law and practice for the examination of such persons in other civil cases.

Rules respecting attendance and examination of females alleged to be lunatic.

133 I.C. 188. In an application for an order directing an inquisition under the Lunacy Act, what has to be found is that the person is of unsound mind and that the unsoundness of mind is such as to make him incapable of managing his affairs. The Court must hold that both unsoundness of mind and incapacity to manage his affairs are present and that the latter is due to the former. 152 I.C. 882=40 L.W. 710=67 M.L.J. 797.

SECS. 38 AND 41.—Court's duty before ordering inquisition. To have an inquisition into the state of health, the state of mind, the state of property and the general capacity of a person is a thing which affects that person so prejudicially that it ought not to be taken except it be first ordered on a careful consideration of evidence. 28 C.W.N. 513=51 C. 480=1924 C. 658; 1930 L. 287=122 I.C. 570.

Sec. 39.—Application for inquisition must be verified. 5 W.R. Misc. 54; 7 W.R. 267. A member of the same tribe is not a relative. 94 P.R. 1906. Proof of lunacy. 22

W.R. 38. On this section, see also 18 M. 422; 4 C.L.J. 115; 28 C.W.N. 513.

Sec. 40.—Notice under the section is a notice drawn up after an order directing an inquisition. 54 C. 836=103 I.C. 725=1927 C. 636. Where lunatic has been served with notice, inquisition can proceed *ex parte* even though the lunatic cannot be traced thereafter. 96 I.C. 956=1926 S. 223.

Sec. 41.—Cross-examination of a lunatic as witness is not contemplated by this section. 7 W.R. 426; 8 A.L.J. 179. Non-appearance of a lunatic is no ground for striking off the case from the file. (*Ibid.*)

Sec. 42.—S. 42 lays down that the attendance and examination of the alleged lunatic, if she be a woman who according to the manners and customs of the country ought not to be compelled to appear in public shall be regulated by the law and practice for the examination of such persons, in other civil cases. The section in terms refers only to the attendance and examination of the lunatic in Court but the principle would equally apply to her attendance and examination

43. (1) If the alleged lunatic is not within the local limits of the jurisdiction of the Court, and the inquisition cannot conveniently be made in the manner hereinbefore provided, the Court may direct the inquisition to be made before the District Court within whose local jurisdiction the alleged lunatic may be; and such District Court shall accordingly proceed to make such inquisition in the same manner as if the alleged lunatic were subject to its jurisdiction, and shall certify its finding upon the matters of inquisition to the Court directing the inquisition.

Power to direct District Court to make inquisition in certain cases.

(2) The record of evidence taken upon the inquisition shall be transmitted, together with any remarks the Court may think fit to make thereon, to the Court by which the inquisition was directed.

Amendment of finding of District Court if defective or insufficient in form.

44. If the finding of the District Court appears to the Court directing the inquisition to be defective or insufficient in point of form, it may either amend the same or refer it back to the Court which made the inquisition to be amended.

45. The finding of the Court on the inquisition or the finding of the District Court to which the inquisition may have been referred under the provisions of section 43 with such amendments as may be made under the provisions of section 44, as the case may be, shall have the same effect, and be proceeded on in the same manner in regard to the appointment of a guardian of the person and a manager of the estate of the lunatic as the findings referred to in section 12 of the Lunacy (Supreme Courts) Act, 1858, immediately before the commencement of this Act.

Proceedings on finding of Court.

Judicial powers over person and estate of lunatic.

Custody of lunatics and management of their estates.

46. (1) The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates.

(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provision for the maintenance of the lunatic and of such members of his family as are dependent on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic.

47. The Court, on the appointment of a manager of the estate of a lunatic,

Powers of Manager in respect of management of lunatic's estates.

may direct by the order of appointment, or by any subsequent order, that such manager shall have such powers for the management of the estate as to the Court may seem necessary and proper, reference being had to the nature of the property, whether movable or immovable, of which the estate may consist:

Provided that no manager so appointed shall without the permission of the Court—

(a) mortgage, charge or transfer by sale, gift, exchange or otherwise, any immovable property of the lunatic; or

(b) lease any such property for a term exceeding five years.

before a doctor. The proper course for the Court under such circumstances would be to have the lady examined by a lady doctor. 7 O.W.N. 483=1930 O. 301.

SEC. 43.—See 3 Agra 3; 11 W.R. 100.

SECS. 46 AND 47.—Lunatic's estate—Appointment of manager—Court of Wards—

Superintendence of an estate of lunatic—Guardian of property. See 14 M.L.T. 489; 20 W.R. 477; 23 M.L.J. 706=13 M.L.T. 585; 30 C. 973; 15 I.C. 265; 16 I.C. 885; 13 Bom.L.R. 772; 6 I.C. 158; 18 M. 472.

Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose.

48. The Court may, on application made to it by petition concerning any matter whatsoever connected with the lunatic or his

Power to make order concerning any matter connected with the lunacy. estate, make such order, subject to the provisions of this Chapter, respecting the application, as in the circumstances it thinks fit.

Management and administration.

49. The Court may, if it appears to be just or for the lunatic's benefit order that any property, movable or immovable, of the

Power to dispose of lunatic's property for certain purposes.

lunatic, and whether in possession, reversion, remainder, or contingency, be sold, charged, mortgaged, dealt

with or otherwise disposed of as may seem most ex-

pedient for the purpose of raising or securing or repaying with or without interest money to be applied or which has been applied to all or any of the following purposes, namely—

(1) the payment of the lunatic's debts or engagements;

(2) the discharge of any incumbrance on his property;

(3) the payment of any debt or expenditure incurred for the lunatic's maintenance or otherwise for his benefit;

(4) the payment of or provision for the expenses of his future maintenance and the maintenance of such members of his family as are dependent on him for maintenance, including the expenses of his removal to Europe, if he shall be so removed, and all expenses incidental thereto;

(5) the payment of the costs of any inquiry under this Chapter, and of any costs incurred by order or under the authority of the Court.

50. (1) The manager of the lunatic's estate shall in the name and on behalf of the lunatic execute all such conveyances and

Execution of conveyances and powers by manager under order of Court.

instruments of transfer relative to any sale, mortgage or other disposition of his estate as the Court may order.

(2) Such manager shall, in like manner, under the order of the Court, exercise all powers whatsoever vested in a lunatic, whether the same are vested in him for his own benefit or in the character of trustee or guardian.

51. Where a person, having contracted to sell or otherwise dispose of his estate or any part thereof, afterwards becomes luna-

Court may order performance of contract.

tic, the Court may, if the contract is such as the Court thinks ought to be performed, direct the manager

SEC. 48.—The language of S. 48 is not mandatory but permissive. By the use of the word "may" a discretion is given to the Court to make an order under the section. The words "concerning any matter whatsoever connected with the lunatic or his estate" are very wide, and empower the Court by the proceedings mentioned in the section to decide a question as to whether the properties referred to in the application before the Court form part of the estate of the lunatic. The intention of the legislature is to provide a summary procedure in regard to matters concerning lunatics and their estates. The Court should, however, refer the parties to a regular suit in cases which it considers likely to be complex or lengthy or properly matters which should be voiced by way of a suit and which cannot conveniently be dealt with by the summary procedure indicated in sec. 48. 1938 M.W.

N. 1143=48 L.W. 856=(1938) 2 M.L.J. 1072. The use of the word "*petition*" in S. 48 of the Act is used in contradistinction to a "*suit*" and indicates that matters properly the subject of the provisions of the section can be brought before the Court by a proceeding other than a suit. The Court having been seized of the matter regarding the lunatic and his estate by means of an original petition under which it is found that the person is of unsound mind and incapable of managing his affairs, it is not necessary that any further proceedings arising in respect of the matter should have to be prosecuted by means of an original petition. 1938 M.W.N. 1143=48 L.W. 856=(1938) 2 M.L.J. 1072.

SEC. 49.—Permission not necessary for ordinary cultivating lease. 6 I.C. 158. On this section, see also 20 W.R. 477; 15 W.R. 259.

of the estate to execute such conveyances and to do such other acts in fulfilment of contract as it shall think proper.

Dissolution and disposal of property of partnership on a member becoming lunatic.

52. (1) Where a person, being a member of a partnership firm, is found to be a lunatic, the Court may, on the application of the other partners, or of any person who appears to the Court to be entitled to require the same, dissolve the partnership.

(2) Upon such dissolution or upon a dissolution by decree of Court or otherwise by due course of law, the manager of the estate may, in the name and on behalf of the lunatic, join with the other partners in disposing of the partnership property upon such terms, and shall do all such acts for carrying into effect the dissolution of the partnership, as the Court shall think proper.

53. Where a lunatic has been engaged in business the Court may, if it appears to be for the lunatic's benefit that the business premises should be disposed of, order the manager of the estate to sell and dispose of the same, and the moneys arising from such sale shall be applied in such manner as the Court may direct.

54. Where a lunatic is entitled to a lease or under-lease, and it appears to be for the benefit of his estate that it should be disposed of, the manager of the estate may, by order of the Court, surrender, assign or otherwise dispose of the same to such person for such valuable or nominal consideration, and upon such terms, as the Court thinks fit.

55. If a lunatic is possessed of any immovable property situate beyond the local limits of the jurisdiction of the Court which by the law in force in the Province wherein such property is situated, subjects the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the said Court of Wards may assume the charge of such property and manage the same according to the law for the time being in force for such management;

Assumption of charge by Court of Wards of land belonging to a lunatic in certain cases.

Provided that—

(1) in such case, no further proceedings in respect of the lunacy shall be taken under any such law, nor shall it be competent to the Court of Wards or to any Collector to appoint a guardian of the person of the said lunatic or a manager of the estate except of the immovable property which so subjects the proprietor as aforesaid;

(2) the surplus of the income of such property, after providing for the payment of the Government revenue and expenses of management, shall be disposed of from time to time in such manner as the High Court may direct;

(3) nothing contained in this section shall affect the powers given to the High Court by sections 49, 50 and 51 or (except so far as relates to the management of the said immovable property which so subjects the proprietor as aforesaid) the powers given by any other section.

56. (1) If it appears to the Court, having regard to the situation and condition in life of the lunatic and his family and the other circumstances of the case to be expedient that his property should be made available for his or their maintenance in a direct and inexpensive manner it may, instead of appointing a manager of the estate, order that the property if money or if of any other description the produce thereof, when realized, be paid to such person as the Court may think fit, to be applied for the purpose aforesaid.

Power to apply property for lunatic's maintenance without appointing manager in certain cases.

SEC. 55.—Appointment of manager is valid assumption of charge by Court of Wards. 15 I.C. 265; 6 S.L.R. 25.

(2) The receipt of the person so appointed shall be a valid discharge to any person who pays any money or delivers any property of the lunatic to such person.

Vesting orders.

57. Where any stock or Government securities or any share in a company (transferable within British India or the dividends of which are payable there) is or are standing in the name of, or vested in, a lunatic, beneficially entitled thereto, or in a manager of the estate of a lunatic, or in a trustee for him, and the manager dies intestate, or himself becomes lunatic, or is out of the jurisdiction of the Court, or it is uncertain whether the manager is living or dead, or he neglects or refuses to transfer the stock, securities or shares, or to receive and pay over thereof the dividends to a new manager or as the Court directs, within fourteen days after being required by the Court to do so, then the Court may order some fit person to make such transfer, or to transfer the same, and to receive and pay over the dividends in such manner as the Court directs.

58. Where any such stock or Government securities or share in a company is or are standing in the name of, or vested in, any person residing out of British India and not in any part of the United Kingdom, the Court upon being satisfied that such person has been declared lunatic, and that his personal estate has been vested in a person appointed for the management thereof, according to the law of the place where he is residing, may order some fit person to make such transfer of the stock, securities or shares or of any part thereof, to or into the name of the person so appointed or otherwise, and also to receive and pay over the dividends and proceeds as the Court thinks fit.

General.

59. If it appears to the Court that the unsoundness of mind of a lunatic is in its nature temporary, and that it is expedient to make temporary provision for his maintenance or for the maintenance of such members of his family as are dependent on him for their maintenance, the Court may, in like manner as under section 56, direct his property or a sufficient part of it to be applied for the purpose aforesaid.

60. (1) When any person has been found under this Chapter to be of unsound mind, and it is subsequently shown to the Court that there is reason to believe that such unsoundness of mind has ceased, the Court may make an order for inquiring whether such person is still of unsound mind and incapable of managing himself and his affairs.

(2) The inquiry shall be conducted as far as may be in the manner prescribed in this Chapter for an inquisition into the unsoundness of mind of an alleged lunatic; and if it is found that the unsoundness of mind has ceased, the Court shall order all proceedings in the lunacy to cease or to be set aside on such terms and conditions as to the Court may seem fit.

61. The Court may, from time to time, make rules for the purpose of carrying into effect the provisions of this Chapter in matters of lunacy.

SEC. 57.—See 8 B. 280; 16 I.C. 885.

SEC. 60.—As to evidence, see 31 C. 210; 2 A.L.J. 154.

SEC. 61.—S. 61 and the rules framed thereunder are applicable only to cases in

Presidency Towns and in the absence of a rule applicable to cases outside the Presidency Towns those rules may be made applicable to such cases also. 22 C.W.N. 547 = 43 I.C. 511 = 27 C.L.J. 205.

CHAPTER V.

PROCEEDINGS IN LUNACY OUTSIDE PRESIDENCY TOWNS.

Inquisition.

62. Whenever any person not subject to the jurisdiction of any of the Courts mentioned in section 37 is possessed of property and is alleged to be a lunatic, the District Court, within whose jurisdiction such person is residing may, upon application, by order direct an inquisition for the purpose of ascertaining whether such person is of unsound mind and incapable of managing himself and his affairs.

Power of District Court to institute inquisition as to persons alleged to be lunatic.

Sec. 62.—Adjudication of lunatic, when made. 30 C.W.N. 180=1926 C. 155. Under S. 65 it is open to the Courts to find that a man is of unsound mind so as to be incapable of managing himself and is not dangerous to himself or to others. Both conditions must be satisfied before a man can be found to be a lunatic under the Act. The mere fact that a man's mental condition is weak will not enable such an order being passed. 90 I.C. 878=30 C.W.N. 180. It is indubitable that an order directing an inquisition into a man's state of mind is a very serious thing and that such an order is intended by the statute to be a judicial determination carefully made upon adequate materials. It will not be wise to make such an order without serving a notice upon the lunatic first. In such an application the Judge should then consider carefully whether the case is one which calls for an order directing an inquisition. 54 C. 836. Where lunatic is served with notice, inquisition can proceed *ex parte*, even though the lunatic cannot be traced thereafter. See 96 I.C. 956=1926 S. 223. Orders for the custody of lunatic and for the management of their estate do not come into question at all until there has been a finding of lunacy as a result of an inquisition. There is no question of interim orders on such matters pending the determination as to the person's state of mind. Where notices were issued on a petition for inquisition and on the date of hearing evidence was recorded and orders were passed simultaneously ordering an inquisition and declaring the person to be a lunatic. *Held*, that the procedure adopted was wrong in law. 54 C. 836=103 I.C. 725=1927 C. 636. Applicants in cases under S. 62 should come into Court fortified with a valid medical certificate of insanity. 96 I.C. 778=24 A.L.J. 906. Where the fact of lunacy is being disputed, Court should not have its conclusions on mere personal observation, but follow the procedure laid down in this section. 27 Punj.L.R. 649=1926 L. 586. [See also cases under Ss. 38 and 41, *supra*.] An inquisition under S. 62 once started must be prosecuted to the very end. Before such an inquisition is ordered or started, there ought to be a careful and thorough preliminary enquiry and the Judge ought to satisfy himself that there is a real ground for an inquisition. An application for an inquisition should ordinarily be sup-

ported by affidavit or by examination on oath of the applicant and by a medical certificate of some doctors as to the condition of the alleged lunatic. It would also be desirable in many cases that the Judge should seek some personal interview with the alleged lunatic with a view to satisfy himself that there is a real ground for supposing the existence of an abnormal mental condition which might bring the person within the Lunacy Act. 42 A. 504=58 I.C. 617; 49 A. 3=1927 A. 225 (1). On the section, see also 29 M. 310.

JURISDICTION.—The alleged lunatic was a person ordinarily residing within the District Court of Nadia where he had his house and family. In 1927, however, he was for sometime living temporarily in Calcutta for the purpose of his treatment and during that time the Chief Presidency Magistrate of Calcutta had passed an order directing the authorities of the mental hospital to receive the alleged lunatic. In 1928 an application was made to the District Court, Nadia, for an inquisition under the Lunacy Act. *Held*, that it could not be said that at the date of the application the alleged lunatic was subject to the jurisdiction of the High Court of Calcutta so as to take away the jurisdiction of the District Court to make an order for inquisition. 35 C.W.N. 543=134 I.C. 1135=1931 C. 711. Where a lunatic is a permanent resident within the jurisdiction of a particular District Court and has properties in that district and his wife applies to the District Court for the appointment of a person as manager of his properties, that District Judge has jurisdiction to take cognizance of the application, and to direct inquisition under S. 62, notwithstanding the fact that the lunatic temporarily resides in a mental hospital outside the jurisdiction of that Court. 1929 C. 512. Temporary removal of a lunatic to the mofussil does not oust the jurisdiction of the High Court over the lunatic and an application under S. 62 in relation to such lunatic must be made on the Original Side of the High Court. 57 I.C. 768=32 C.L.J. 314. A temporary removal vests jurisdiction over the lunatic in the District Court in whose jurisdiction he is removed unless the lunatic is at the same time subject to the jurisdiction of the High Court. It is not necessary that the property of the lunatic must be within the jurisdiction of

Lunacy.

63. (1) Application for such inquisition may be made by any relative of the alleged lunatic or by any public Curator appointed under the Succession (Property Protection) Act, 1841 (hereinafter referred to as the Curator),

Application by whom to be made.

or by the Government Pleader, as defined in the Code of Civil Procedure, 1908, or if the property of the alleged lunatic consists in whole or in part of land or any interest in land, by the Collector of the District in which it is situate.

(2) If the property or any part thereof is of such a description that it would by the law in force in any Province where such property is situate subject the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the application may be made by the Collector on behalf of the Court of Wards.

Regulation of proceedings of District Courts.

64. The provisions of sections 40, 41 and 42 shall regulate the proceedings of the District Court with regard to the matters to which they relate.

Inquisition by District Court and finding thereon.

65. (1) The District Court, if it thinks fit, may appoint two or more persons to act as assessors to the Court in the said inquisition.

(2) Upon the completion of the inquisition, the Court shall determine whether the alleged lunatic is of unsound mind and incapable of managing himself and his affairs or may come to a special finding that such alleged lunatic is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others.

66. (1) If the alleged lunatic resides at a distance of more than fifty miles from the place where the District Court is held to which the application is made, the said Court may issue a commission to any subordinate Court to make the inquisition, and such subordinate Court shall thereupon conduct the inquisition in the manner hereinbefore provided in this Chapter.

Inquisition by subordinate Court on commission issued by District Court and proceedings thereon.

the District Judge. 57 I.C. 768=32 C.L.J. 314.

SECS. 62 AND 65.—Where an application is made to ascertain whether certain persons are of sound mind by an inquisition, the Judge should form his independent judgment on the point. After examining the parties he may reject the petition *in limine* if he thinks that no *prima facie* case for enquiry is disclosed. Or he may after examining the pleadings of the parties or as a result of his own personal interview with the alleged lunatic come to the conclusion that there are grounds for supposing that the mental condition is such as to bring him within the Lunacy Act. In that case he must order an "inquisition" and proceed in the manner mentioned in S. 65 (a) on the materials before him. It is only when these findings have been arrived at as a result of the inquisition that the jurisdiction of the Court to proceed further with the case arises. In determining these questions the paramount consideration is the benefit of the lunatic. 122 I.C. 570=1930 L. 289.

Sec. 63.—See cases under Ss. 61 and 62. See also 1926 Sind 223.

SECS. 63 AND 80: "CURATOR"—MEANING OF.—The word "curator" is used in the Lunacy Act in the sense of a public curator appointed under the Succession (Property Protection) Act. Hence a person who has not been appointed curator in the above sense can be removed from guardian of the

lunatic under S. 80, Lunacy Act. 146 I.C. 553=1933 L. 626.

SEC. 65.—See 33 C.W.N. 180; 1930 L. 289, cited under S. 62.

ORDER IN LUNACY—BINDING NATURE OF.—Although an order in lunacy is not a judgment which is conclusive against the world as one of the judgments enumerated in S. 41 of the Evidence Act, it is still relevant and binding upon the parties thereto and those who claim under them just like any other judgment of a Civil Court. 56 M. 904=1933 M. 624=65 M.L.J. 279.

FINDING AS TO LUNACY—INTERFERENCE BY HIGH COURT.—A person who is not sufficiently intelligent to manage his own affairs, is not necessarily of unsound mind. Under S. 65 there must be a finding that the alleged lunatic is of unsound mind and incapable of managing himself and his affairs. The High Court has power to interfere to correct a wrong finding under S. 65 (2). 30 N.L.R. 224=148 I.C. 462=1934 N. 27.

SECS. 65 AND 67.—For purposes of S. 65 the degree of unsoundness of mind of a person has to be found in relation to his capacity to manage the affairs of his estate. Where it is found that a person could not look after property, whether big or small but could at best only look to his physical needs, a Court would be stultifying the scope of the Act if it deprived such a person of the protection that law gives him. A suitable person should be appointed for his

(2) On the completion of the inquisition, the subordinate Court shall transmit the record of its proceedings with the opinions of the assessors if assessors have been appointed, and its own opinion on the case; and the District Court shall thereupon proceed to dispose of the application in the manner provided in section 65, sub-section (2):

Provided that the District Court may direct the subordinate Court to make such further or other inquiries as it thinks fit before disposing of the application.

Judicial powers over person and estate of lunatic.

Custody of lunatics and management of their estates.

67. (1) The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates.

(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provisions for the maintenance of the lunatic and of such members of his family as are dependent on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic.

68. If the estate of a lunatic so found or any part thereof consists of property which, by the law for the time being in force, subjects the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the Court of Wards shall be authorized to take charge of the same.

Court of Wards to be authorized in certain cases to take charge of estate of lunatic.

69. (1) If the estate of a lunatic so found consists in whole or in part of land or any interest in land, but is not of such a nature that it would subject the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the District Court may direct the Collector to take charge of the person and estate of the lunatic:

Power to direct Collector to take charge of person and estate of lunatic in certain cases.

Provided that no such order shall be made without the consent of the Collector previously obtained.

(2) The Collector shall thereupon appoint a manager of the estate, and may appoint a guardian of the person of the lunatic.

70. All proceedings of the Collector in regard to the person or estate of a lunatic under this Chapter shall be subject to the control of the Provincial Government or of such authority as it may appoint in this behalf.

Control over proceedings of Collector.

Power of District Court to appoint guardian and manager and take security from manager.

71. (1) In all other cases the District Court shall appoint a manager of the estate of the lunatic and may appoint a guardian of his person:

estate as contemplated by S. 67 (2). I.L.R. (1939) All. 510=1939 All. 333.

SEC. 67.—See 23 M.L.J. 706. See also 1939 All. 333, cited under S. 65, *supra*. The guardian of a lunatic's property appointed under S. 67 is not competent to maintain a suit after the lunatic's death for recovery of arrears of rent accrued due subsequent to the lunatic's death. The right of action in respect of such rent would rest in the heir entitled to take the property after the death of the lunatic. Whether or not the manager appointed under S. 67 would have power to realise assets outstanding at the time of the lunatic's death in respect of the claim arising subsequent to the death of the lunatic, the Court has no jurisdiction to sanction the institution of

proceedings. 56 L.W. 129=A.I.R. 1943 Mad. 265=(1943) 1 M.L.J. 22 (2). There is no provision in the Lunacy Act, which would empower the Court to appoint an interim curator of a lunatic. 45 Bom.L.R. 782=A.I.R. 1943 Bom. 387.

SEC. 68.—See 15 I.C. 265; 6 S.L.R. 65. The Court of Wards must be given an opportunity of assuming charge of the estate of a lunatic landlord, if they do desire. Till the Court of Wards has not elected to exercise jurisdiction, the Courts are precluded from appointing his brother manager of the estate of the lunatic. 211 I.C. 487=A.I.R. 1944 Sind 72.

SEC. 69.—See 7 W.R. 5.

SEC. 71.—If a member of a joint Hindu family under the Mitakshara law be a luna-

Provided that a District Court may, instead of appointing a manager of the estate of a lunatic, exercise any of the powers conferred on the High Court under sections 56 and 59.

(2) Any person who has been appointed by the District Court or Collector to manage the estate of a lunatic shall, if so required, enter into a bond in such form and with such sureties as to the Court or the Collector, as the case may be, may seem fit, engaging duly to account for what he may receive in respect of the property of the lunatic.

Restriction on appointment of legal heir of lunatic to be guardian of his person.

72. The legal heir of a lunatic shall not be appointed to be the guardian of the person of such lunatic unless the Court or the Collector, as the case may be, for reasons to be recorded in writing, considers that such an appointment is for the benefit of the lunatic.

73. A guardian of the person of a lunatic or a manager of his estate appointed under this Chapter shall be paid such allowance, if any, as the Court or the Collector, as the case may be, thinks fit for his care and pains in the execution of his duties.

Duties of guardian.

74. (1) The person appointed to be guardian of a lunatic's person shall have the care of his person and maintenance.

(2) When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as may be fixed by the District Court or the Collector, as the case may be, for the maintenance of the lunatic and such members of his family as are dependent on him for their maintenance.

75. (1) Every manager of the estate of a lunatic appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a lunatic, and may collect and pay all just claims, debts and liabilities due to or by the estate of the lunatic:

Provided that no manager so appointed shall without the permission of the Court—

(a) mortgage, charge, or transfer by sale, gift, exchange or otherwise any immovable property of the lunatic,

(b) lease any such property for a term exceeding five years.

Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose.

tic, where it is shown that his property is being wasted the Civil Courts have power to appoint a manager of the lunatic's share under the Lunacy Act, although no doubt a strong case must be made out for the appointment of a manager. 25 N.L.R. 61=116 I.C. 663=1929 N. 93. On this section, see 33 I.C. 106; 24 C. 133; 16 B. 132; 6 M. 380; 39 A. 158. A person who has been appointed guardian of the person of a lunatic under S. 71 is, in the absence of every special circumstances, entitled to the custody of the lunatic and the Court appointing the guardian has power to give such custody. 40 L.W. 712=1934 M. 724=67 M. L. J. 661. The Legislature never intended that a manager appointed under S. 9 of the Lunacy Act should be competent to interfere with the personal law of a lunatic member of a joint Hindu family. 1.L.R. (1942) All. 518=1942 A.L.J. 197=A.I.R. 1942

All. 267 (2).

SEC. 72.—See 39 A. 158; 23 C. 512; 15 A. 29. Section does not apply where near relations only can be appointed guardians of lunatic. 85 I.C. 276=1925 O. 642. S. 72 operates as a kind of warning that particular care should be exercised by the Court, where a person is entitled to inherit part of the property of a lunatic and would therefore benefit by his death, to see that the appointment of such person as the guardian of a lunatic is a beneficial one. Hence a legal heir whose interest would be greater if the lunatic dies should not be appointed guardian of the person of the minor in preference to another who is a non-heir. (15 A. 29 and 39 A. 158, Ref.) 152 I.C. 512=1934 R. 164.

SEC. 74.—See 23 C. 512.

SEC. 75.—See 20 B. 150. .

(2) Before granting any such permission, the Court may cause notice of the application for such permission to be served on any relative or friends of the lunatic, and may make or cause to be made such inquiries as to the Court may seem necessary in the interests of the lunatic.

76. (1) Every person appointed by the District Court or by the Collector to be manager of the estate of a lunatic shall, within six months from the date of his appointment, deliver in Court or to the Collector, as the case may be, an inventory of the immovable property belonging to the lunatic and of all such money, or other movable property, as he may receive on account of the estate, together with a statement of all debts due by or to the same.

(2) Every such manager shall also furnish to the Court or to the Collector annually, within three months of the close of the year of the era current in the district, an account of the property in his charge, exhibiting the sums received and disbursed on account of the estate and the balance remaining in his hands.

77. If any relative of the lunatic, or the Collector by petition to the Court, impugns the accuracy of the said inventory and statement, or of any annual account, the Court may summon the manager and inquire summarily into the matter and make such order thereon as it thinks fit; or the Court, at its discretion, may refer any such petition to any subordinate Court or to the Collector if the manager was appointed by the Collector.

78. All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the lunatic or of the estate, shall be paid into the public treasury on account of the estate, and shall be invested from time to time in any of the securities specified in section 20 of the Indian Trusts Act, 1882, unless the Court or the Collector, as the case may be, for reasons to be recorded in writing, directs that such sums be in the interest of the lunatic otherwise invested or applied.

79. Any relative of a lunatic may with the leave of the District Court sue for an account from any manager appointed under this Chapter, or from any such person after his removal from office or trust, or from his legal representative in case of his death, in respect of any estate then or formerly under

SEC. 77.—Where accounts filed by manager of lunatic's estate are impugned under this section, some kind of inquiry and record should be made. Reasons also should be shown in passing orders, as the orders are appealable. 161 I.C. 591 (2)=1936 Rang. 51.

SECS. 77 AND 83.—Order passed under S. 77 simply to the effect that the accounts are passed, implies that the objections to the accounts are rejected, and hence appeal lies to the High Court under S. 83. 161 I.C. 591 (2)=1936 Rang. 51.

SECS. 77 AND 79: SCOPE.—CLAIM FOR ACCOUNTS AGAINST MANAGER.—APPLICATION OR SUIT.—Where there are very large number of items of expenditure by the manager of the estate of a lunatic which are questioned and it appears to be also necessary to inquire into the amount of profits likely to have been realised from the estate, it is not a matter that can be enquired into conveniently by the District Judge in an application, and leave should be granted to file a suit against

the manager for account or against his legal representatives as the case may be. (1944) 2 M.L.J. 377.

SEC. 79: APPLICABILITY AND SCOPE.—SUIT AGAINST SURETY FOR MANAGER.—LEAVE OF COURT.—NECESSITY.—ASSIGNMENT OF SECURITY BOND.—DUTY OF COURT.—No sanction is necessary to sue a surety who has executed a security bond along with the manager. Nor is there any express provision in the Act for the assignment of the security as in cases under the Guardians and Wards Act. If there are sufficient circumstances to indicate that some amount is likely to be due from the manager to the estate, the proper course would be to assign the security bond even before the suit is filed, if there be a *prima facie* case, as it would be necessary and desirable to have the matter decided in the presence of the sureties and the manager or his legal representatives as to whether any amount had become payable from the manager to the estate of the lunatic. (1944) 2 M.L.J. 377.

his care or management or of any sums of money or other property received by him on account of such estate.

80. (1) The District Court, for any sufficient cause, may remove any manager appointed by it not being the Curator, and may appoint such Curator or any other fit person in his place, and may compel the person so removed to make over the property in his hands to his successor and to account to such successor for all money received or disbursed by him.

(2) The Court may also for any sufficient cause, remove any guardian of the person of the lunatic appointed by it, and may appoint any other fit person in his place.

(3) The Collector, for any sufficient cause, may remove any manager of the estate of a lunatic or guardian of the person of a lunatic appointed by him and may appoint any other fit person in place of such manager or guardian; and the District Court, on the application of the Collector, may compel any manager removed under this section to make over the property and all accounts in his hands to his successor and to account to such successor for all money received or disbursed by him.

81. The District Court may impose a fine not exceeding five hundred rupees on any manager of the estate of a lunatic who wilfully neglects or refuses to deliver his accounts or any property in his hands within the time fixed by the Court, and may realize such fine as if it were a sum due under a decree of the Court, and may also commit the recusant to the civil jail until he delivers such accounts or property.

82. (1) When any person has been found under this Chapter to be of unsound mind, and it is subsequently shown to the District Court that there is reason to believe that such unsoundness of mind has ceased, such Court may make an order for inquiring whether such person is still of unsound mind and incapable of managing himself and his affairs.

(2) The inquiry shall, as far as may be, be conducted in the same manner as is prescribed in this Chapter for an inquisition into the unsoundness of mind of an alleged lunatic, and if it is found that the unsoundness of mind has ceased, the Court shall order all proceedings in the lunacy to cease or to be set aside on such terms and conditions as to the Court may seem fit.

SEC. 81: ORDER IMPOSING FINE ON GUARDIAN FOR CONTUMACIOUS CONDUCT.—If "DECREE" UNDER SCH. II, ART. 2, COURT-FEES ACT.—Although the fine imposed on a guardian of a lunatic by the Court for contumacious conduct under S. 81 can be recovered as if it were due under a decree of Court, it is doubtful if the order imposing the fine can be said to have the force of decree under Sch. II, Art. 2, Court-Fees Act, for the purposes of appeal. 150 I.C. 664=36 P.L.R. 179=1934 L. 853 (1).

SEC. 82.—The District Judge under this Act is partly a judicial and partly an administrative authority. The enquiry into the state of mind of a person affected is to satisfy his own mind, the relatives to whom notices are issued, being merely *amici curiæ* and not parties to the proceedings. They are allowed to be heard and have no right

to be heard. 36 I.C. 705=19 O.C. 353. Where material is placed before a Judge to show that a lunatic had come to his normal soundness of mind, the Judge should proceed with the inquiry prescribed by law irrespective of the fact that certain proceedings were pending in Court relating to his rights as if he were a lunatic. 88 I.C. 580=1925 L. 533. It is sufficient to invite the application of S. 88 if the father as the manager of a joint Hindu family is liable to maintain his son as a member thereof. In that case he is a person legally bound to maintain the lunatic within the meaning of the section and it does not matter for the purposes of the section whether under the Hindu Law his liability is limited to the extent of the joint family property in his hands. 51 B. 120=29 Bom. L. R. 52=1927 B. 91.

Appeals.

83. An appeal shall lie to the High Court from any order made by a District Court, under this Chapter.

PART IV.

MISCELLANEOUS.

CHAPTER VI.

ESTABLISHMENT OF ASYLUMS.

84. The Provincial Government may establish or licence the establishment of asylums at such places as it thinks fit ¹[if it is satisfied that provision has been or will be made for the curative treatment therein of persons suffering from mental diseases].

Provincial Government may establish or license the establishment of asylums.

²[84-A. If in any licensed asylum no provision for curative treatment has been made, or the Provincial Government considers that the provision made is insufficient, the Provincial Government may require the person in charge of the asylum to take such measures for making or supplementing such provision as it may deem necessary, and, if such person does not comply with the requisition within a reasonable time, the Provincial Government may revoke the licence.]

Power to cancel licence if provision for curative treatment is insufficient.

³[85. The Magistrates or Courts exercising jurisdiction in any province may send lunatics or any class of lunatics to any asylum situate in any other province in accordance with any general or special order of the Provincial Government made in that behalf with the consent of the Provincial Government of such other province.]

Provision for admission of lunatics in asylums outside a province.

CHAPTER VII.

EXPENSES OF LUNATICS.

86. (1) When any lunatic is admitted to a licensed asylum under a reception order or an order under section 25, and no engagement has been taken from the friends or relatives of the lunatic or order made by the Court for the payment of expenses under the provisions of this Act, the cost of maintenance of such lunatic shall, subject to the provision of any law for the time being in force, be paid by the Government to the person in charge of such asylum.

Payment of cost of maintenance in licensed asylums in certain cases by Government.

(2) The paymaster of the military circle within which any asylum is situated shall pay to the officer in charge of such asylum the cost of maintenance of every lunatic received and detained therein under an order made under section 12.

87. Any money in the possession of a lunatic found wandering at large may be applied by the Magistrate towards the payment of the cost of maintenance of the lunatic or of any other expenses incurred on his behalf, and any movable property found on the person of the lunatic may be sold by the Magistrate, and the proceeds thereof similarly applied.

Application of property in the possession of a lunatic found wandering.

LEG. REF.

¹ Inserted by Act VI of 1922, S. 3.

² Inserted by *ibid.*, S. 4.

³ Substituted by Act XXXVIII of 1920, S. 2 and Sch. I.

SEC. 83.—See 4 C.W.N. 526; 8 C. 263; 28 P.L.R. 1911. An order of the District Judge, dismissing the application of a guar-

dian for custody of the lunatic is appealable to the High Court under S. 83. 40 L.W. 712=1934 M. 724=67 M.L.J. 661, Order under S. 77 simply to the effect that accounts are passed, implies that the objections to the accounts have been rejected, and hence an appeal lies under this section. 161 I.C. 591 (2)=1936 Rang. 51.

¹[88. If a lunatic detained in an asylum on a reception order made under

Application to Civil Court for order for the payment of cost of maintenance out of the lunatic's estate, or by person bound to maintain him.

section 14, section 15 or section 17 has an estate applicable to his maintenance, or if any person legally bound to maintain such lunatic has the means to maintain him, the authority which made the reception order or any local authority liable for the cost of maintenance of such lunatic under any law for the time being in force may apply to the High Court or District Court within the local limits of the original jurisdiction of which the estate of the lunatic is situate or the person legally bound to maintain him resides, for an order for the payment of the cost of maintenance of the lunatic.

²89. (1) The Court shall inquire into the matter in a summary way, and

Order of Court and enforcement thereof.

on being satisfied that such lunatic has an estate applicable to his maintenance, or that any person is legally bound to maintain and has the means of maintaining such lunatic, may make an order for the recovery of the cost of maintenance of such lunatic, together with the cost of the application out of such estate or from such person.

(2) Such order shall be enforced in the same manner, and shall be of the same force and effect and subject to the same appeal as a decree made by the said Court in a suit in respect of the property or person therein mentioned.

³[89-A. (1) In computing the amount payable on account of the cost of

Fixation of cost of maintenance.

maintenance of lunatics detained in any asylum for the cost of whose maintenance any Provincial Government is liable, charges may be included on account of the upkeep of the asylum and of the capital cost of establishment thereof.

(2) In the case of any such lunatic under detention immediately before the commencement of Part III of the Government of India Act, 1935, the amount payable by any Provincial Government on account of the cost of his maintenance shall be determined in accordance with any general or special orders of the Governor-General in Council in force immediately before that date and applicable to his case.]

⁴[89-B. (1) When under the provisions of this

Incidence of costs of maintenance payable by Government.

Act the cost of the maintenance of a lunatic is payable by the Government, then such cost shall be payable—

LEG. REF.

¹ MADRAS AMENDMENT.—In S. 88 of this Act, for the words and figures “on a reception order made under S. 14, S. 15 or S. 17,” the words and figures “on a reception order made under Ss. 7, 10, 14, 15 or 17 or on an order made under S. 8 or 16” and for the words “authority which made the reception order” the words “authority which made the reception or other order aforesaid” shall be substituted (Madras Act XV of 1938).

² MADRAS AMENDMENT.—In sub-S. (1) of S. 89 of this Act, for the words “may make an order for the recovery of the cost of maintenance of such lunatic together with the costs of the application out of such estate or from such person,” the following words shall be substituted, namely:—

“may make an order for the recovery of the whole or any portion of the cost of maintenance of such lunatic and of the costs of the application, out of such estate or from such person:

Provided that an order directing recovery out of such estate shall be made only after

making due allowance for the needs of the wife, children and other dependants, if any, of the lunatic” (Madras Act XV of 1938).

³ Substituted by A. O., for the original S. 89-A, which was inserted by Act VI of 1922, S. 5.

⁴ Inserted by Act VI of 1922, S. 5.

SEC. 88.—See 1927 B. 91, cited under S. 88. The father in a joint Hindu family is liable to pay the maintenance charges of his lunatic daughter-in-law. 32 Bom.L.R. 606 = 124 I.C. 813 = 1930 B. 319. See also 40 P.L.R. 496, cited under S. 15, *supra*.

SEC. 89.—Under S. 89 the Court has to determine whether the father has the means to maintain the son. The word “means” in that section has no relation to their source. Thus if there is a person legally bound to maintain the lunatic and if he has the means to maintain him with or without reference to joint family property, under the Lunacy Act the Court can make an order for the costs of his maintenance in the asylum. 51 B. 120 = 29 Bom.L.R. 52 = 1927 B. 91, ..

(a) in the case of a lunatic not domiciled in British India, by the Provincial Government of the province in which the reception order or the order under section 25, as the case may be, was made; and

(b) in the case of a lunatic domiciled in British India, by the Provincial Government of the province in which the lunatic has last resided for a period of five years before the reception order or the order under section 25, as the case may be, was made; or, if the lunatic has not been resident in any one province for such period, by the Provincial Government of the province in which such order was made.

¹[* * * * *]

Saving of liability of relatives to maintain lunatic.

90. The liability of any relative or person to maintain any lunatic shall not be taken away or affected by any provision contained in this Act.

CHAPTER VIII.

RULES.

Power of Provincial Government to make rules.

²91. (1) ³[* * * * *]

The Provincial Government may make rules for all or any of the following purposes, namely:—

(a) to prescribe forms for any proceeding under this Act other than a proceeding before a High Court which is or may hereafter be ⁴[constituted by His Majesty by Letters Patent];

(b) to prescribe places of detention and regulate the care and treatment of persons detained under section 8 or section 16;

(c) to regulate the ⁵[detention], care, treatment and discharge of criminal lunatics;

(d) to regulate the management of asylums and the care and custody of the inmates thereof and their transfer from one asylum to another;

(e) to regulate the transfer of criminal lunatics to asylums;

(f) to prescribe the procedure to be followed by District Courts and Magistrates before a lunatic is sent to any asylum established by Government;

(g) to prescribe the ⁶[Government asylums] within the province to which lunatics from any area or any class of lunatics shall be sent;

(h) to prescribe conditions subject to which asylums may be licensed;

(i) save as otherwise provided in this Act, generally to carry into effect the provisions of the Act.

(2) In making any rule under this section, the Provincial Governments may direct that a breach of it shall be punishable with fine which may extend to fifty rupees.

92. All rules made under section 91 shall be published in the Official Gazette, and shall thereupon have effect as if enacted in this Act.

LEG. REF.

¹ Sub-S. (2) omitted by A.O., 1937.

² MADRAS AMENDMENT.—In sub-S. (1) of S. 91 of this Act, after Cl. (c), the following clause shall be inserted, namely:—“(cc) to prescribe the conditions subject to which lunatics may be discharged temporarily under S. 33-A” (Madras Act XV of 1938).

³ The words “Subject to the control of the Governor-General in Council” were omitted by Act XXXVIII of 1920, S. 2 and Sch. I.

⁴ Substituted for ‘established under the Indian High Courts Acts, 1861-1911’ by A.O., 1937.

⁵ Substituted for “confinement” by Act XI of 1923, S. 2 and Sch. I.

⁶ Substituted for ‘asylums established by Government’ by A.O., 1937.

Sec. 91 (1) (c).—Rule 18 (ii) of the rules framed under the Act prescribing fees for maintenance is not *ultra vires*. 51 B. 120=29 Bom.L.R. 52=1927 B. 91. The words “District funds” in R. 185 of the Rules framed by the Punjab Government under Lunacy Act does not include the funds of the Small Town Committee. 15 L. 480=36 P.L.R. 350=1934 L. 148.

CHAPTER IX.

SUPPLEMENTAL PROVISIONS.

Penalty for improper
reception or detention of
lunatic.

93. Any person who—

(a) otherwise than in accordance with the provisions of this Act receives or detains a lunatic or alleged lunatic in an asylum, or

(b) for gain detains two or more lunatics in any place not being an asylum,
shall be punishable with imprisonment which may extend to two years or with fine or with both.

94. The provisions of Chapter XIIII of the Code of Criminal Procedure, 1898, shall, so far as may be, apply to bonds taken under this Act.

95. (1) When any sum is payable in respect of pay, pension, gratuity, or other similar allowance to any person ¹[by the Secretary of State or any Government in British India] and the person to whom the sum is payable is certified by a Magistrate to be a lunatic, the Government officer under whose authority such sum would be payable if the patee were not a lunatic may pay so much of the said sum as he thinks fit to the person having charge of the lunatic, and may pay the surplus, if any, or such part thereof, as he thinks fit for the maintenance of such members of the lunatic's family as are dependent on him for maintenance.

(2) ²[The Secretary of State or, as the case may be, the Government concerned] shall be discharged of all liability in respect of any amounts paid in accordance with this section.

96. Subject to any rules, the forms set forth in the First Schedule, with such variation as the circumstances of each case may require, shall be used for the respective purposes therein mentioned, and if used shall be sufficient.

97. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

98. Any officer in charge of an asylum may give effect to any order or warrant for the reception and detention of any lunatic made or issued by any Court or tribunal beyond the limits of British India in the exercise of jurisdiction conferred by His Majesty or ³[the Central Government or the Crown Representative or by the law of Burma].

Power to make rules for
reception of lunatics received
from outside British
India.

99. The ⁴[Provincial Government] may make rules regulating the procedure for the reception and detention in asylums in ⁵[the province] of lunatics whose reception and detention are provided for by section 98.

LEG. REF.

¹ Substituted for 'by Government' by A.O., 1937.

² Substituted for 'Secretary of State for India in Council' by *ibid.*

³ Substituted for 'the Governor-General in Council' by *ibid.*

⁴ Substituted by A.O., for "Local Government" which were substituted by Act XXXVIII of 1920, S. 2 and Sch. I, for "Governor-General in Council".

⁵ Substituted for "British India" by Act XXXVIII of 1920, S. 2 and Sch. I.

100. (1) In the case of orders made before the commencement of this Act under section 7 of the Indian Lunatic Asylums Act, 1858, for the reception of persons into an asylum, Orders under repealed Acts. the persons who signed the order shall have all the powers and be subject to the obligations by this Act conferred or imposed upon the petitioner for reception order, and the provisions of this Act relating to persons upon whose petition a reception order was made shall apply in the case of a person who has signed an order, under section 7 of the Indian Lunatic Asylums Act, 1858, before the commencement of this Act as if the order had been made after the commencement of this Act upon a petition presented by him.

(2) All orders for the detention of lunatics made and all undertakings given under any enactment hereby repealed shall have the same force and effect as if they had been made or given under this Act and by or to the authority empowered thereby in such behalf.

¹[100-A. The powers conferred by this Act upon the Provincial Government shall, in relation to the Ranchi European Mental Hospital. Mental Hospital, be powers of the Central Government.]

101. [Repeal of enactments]. Rep. by the second Repealing and Amending Act (XVII of 1914), S. 3 and Sch. II.

SCHEDULE I.

FORMS.

(See section 96.)

FORM 1.

APPLICATION FOR RECEPTION ORDER.

(See sections 5 and 6.)

In the matter of A.B.,² residing at _____, by occupation _____, son of _____; a person alleged to be a lunatic.
To _____ Presidency Magistrate, for _____ [or District Magistrate of _____, or Sub-Divisional Magistrate of _____ or Magistrate specially empowered under Act IV of 1912 for _____].
The petition of C.D.,³ residing at _____, by occupation _____, son of _____, in the town of _____ [or sub-division of _____] in the district of _____.

1. I am _____ years of age.

2. I desire to obtain an order for the reception of A.B. as a lunatic in the _____ asylum of _____ situate at⁴ _____

3. I last saw the said A.B. at _____ on the _____ day of _____

4. I am the _____ of the said A.B. _____

[or if the petitioner is not a relative of the patient state as follows:]

I am not a relative of the said A.B. The reasons why this petition is not presented by a relative are as follows: [State them.]

The circumstances under which this petition is presented by me are as follows: [State them.]

5. The persons signing the medical certificates which accompany the petition are.⁵

6. A statement of particulars relating to the said A.B. accompanies this petition.

7. [If that is the fact.] An application for an enquiry into the mental capacity of the said A.B. was made to the _____ on the _____ and a certified copy of the order made on the said petition is annexed hereto.

[Or if that is the fact.]

No application for an inquiry into the mental capacity of the said A.B. has been made previous to this application.

LEG. REF.

¹ Inserted by A.O., 1937.

² Full name, caste and titles.

³ Enter the number of completed years. The petitioner must be at least 18 or 21 whichever is the age of majority under the law to which the petitioner is subject.

⁴ Insert the full description of the name and locality of the asylum or the name, address and description of the person in charge

of the asylum.

⁵ A day within 14 days before the date of the presentation of the petition is requisite.

⁶ Here state the relationship with the patient.

⁷ Here state whether either of the persons signing the medical certificates is a relative, partner or assistant of the lunatic or of the petitioner and, if a relative of either, the exact relationship.

The petitioner therefore prays that a reception order may be made in accordance with the foregoing statement.

(Sd.) C.D.

The statements contained or referred to in paragraphs are true to my knowledge; the other statements are true to my information and belief.

Dated

(Sd.) C.D.

STATEMENT OF PARTICULARS.

[If any of the particulars in this statement is not known, the fact to be so stated.]

The following is a statement of particulars relating to the said A.B. :—

Name of patient at length.

Sex and age.

Married, single or widowed.

Previous occupation.

Caste and religious belief, as far as known.

Residence at or immediately previous to the date hereof.

Names of any near relatives to the patient who are alive.

Whether this is first attack of lunacy.

Age (if known) on first attack.

When and where previously under care and treatment as a lunatic.

Duration of existing attack.

Supposed cause.

whether the patient is subject to epilepsy.

Whether suicidal.

Whether the patient is known to be suffering from phthisis or any form of tubercular disease.

Whether dangerous to others, and in what way.

Whether any near relative (stating the relationship) has been afflicted with insanity.

Whether the patient is addicted to alcohol, or the use of opium, ganja, charas, bhang, cocaine or other intoxicant.

[The statements contained or referred to in paras. are true to my knowledge.

The other statements are true to my information and belief.]

[Signature by person making the statement.]

FORM 2.

RECEPTION ORDER ON PETITION.

(See sections 7 and 10.)

I, the undersigned E.F., being a Presidency Magistrate of District Magistrate of or the Sub-Divisional Magistrate of or a Magistrate of the first class specially empowered by Government to perform the functions of a Magistrate under Act IV of 1912] upon the petition of C.D. of¹ in the matter of A.B.² a lunatic, accompanied by the medical certificates of G.H., a medical officer, and of J.K., a medical practitioner [or medical officer], under the said Act, hereto annexed, hereby authorize you to receive the said A.B. into your asylum. And I declare that I have [or have not] personally seen the said A.B. before making this order.

(Sd.) E. F.

(Designation as above.)

To²

FORM 3.

MEDICAL CERTIFICATE.

(See sections 18 and 19.)

In the matter of A.B. of³ in the town of [or the sub-division of in the district of] an alleged lunatic,

I, the undersigned C.D., do hereby certify as follows:—

a gazetted medical officer [or a medical practitioner declared by

1. I am—

a holder of⁴

[or declared by Provincial Government to be a Government to be medical officer under Act IV of 1912]

—and I am in the actual practice

medical practitioner under Act IV of 1912] of the medical profession.

2. On the day of 19 at⁵ in the town of village of

[or the sub-division of in the district of] [separately from any other practitioner],⁶ I personally examined the said A.B. and came to the conclusion that the said A.B. is a lunatic and a proper person to be taken charge of and detained under care and treatment.

LEG. REF.

¹ Address and description.

² To be addressed to the officer or person in charge of the asylum.

³ Insert residence of patient.

⁴ Insert qualification to practise medicine

and surgery registrable in the United Kingdom.

⁵ Insert place of examination.

⁶ Omit this where only one certificate is required.

3. I formed this conclusion on the following grounds, *viz.* :—

(a) Facts indicating insanity observed by myself, *viz.* :—

(b) Other facts (if any) indicating insanity communicated to me by others, *viz.* :—
Here state the information and from whom.

(Sd.) C.D.
(Designation as above.)

FORM 4.

RECEPTION ORDER IN CASE OF LUNATIC SOLDIER.

(See section 12.)

Whereas it appears to me that A.B., a European, subject to the Army Act, who has been declared a lunatic in accordance with the provisions of the military regulations, should be removed to an asylum, I do hereby authorise you to receive the said A.B. into your asylum.

(Sd.) E.F.

To¹

(Administrative Medical Officer.)

FORM 5.

RECEPTION ORDER IN CASE OF WANDERING OR DANGEROUS LUNATICS OR LUNATICS NOT UNDER PROPER CONTROL OR CRUELLY TREATED (SENT TO AN ASYLUM ESTABLISHED BY GOVERNMENT.)

(See sections 14, 15 and 17.)

I, C.D., Presidency Magistrate of [or Commissioner of Police for [or the District Magistrate of [or the Sub-Divisional Magistrate of [or a Magistrate specially empowered by Government under Act IV of 1912] having caused A.B. to be examined by E.F., a Medical Officer under the Indian Lunacy Act, 1912, and being satisfied that A.B. [describing him] is a lunatic who was wandering at large [or is a person dangerous by reason of lunacy] [or is a lunatic not under proper care and control or is cruelly treated or neglected by the person having the care or charge of him] and a proper person to be taken charge of and detained under care and treatment, hereby direct you to receive the said A.B. into your asylum.

(Sd.) C.D.
(Designation as above.)

Dated the

To the Officer in charge of the asylum at

FORM 6.

SAME WHEN SENT TO A LICENSED ASYLUM.

I, C.D., [as above down to "care and treatment"] and being satisfied with the engagement entered into in writing by G.H. of [here insert address and description] who has desired that the said A.B. may be sent to the asylum at [here insert description of asylum and name of the person in charge] to pay the cost of maintenance of the said A.B., in the said asylum, hereby authorize you to receive the said A.B., into your asylum.

(Sd.) C.D.
(Designation as above.)

Dated the

To the person in charge of the asylum at

FORM 7.

BOND ON THE MAKING OVER OF A LUNATIC TO THE CARE OF RELATIVE OR FRIEND.

(See sections 14, 15 and 17.)

WHEREAS A.B., son of [or inhabitant of [or Commissioner of Police for [or the District Magistrate of [or a Sub-Divisional Magistrate of the first class specially empowered under Act IV of 1912] and is a lunatic who is believed to be dangerous [or deemed to be a lunatic who is not under proper care and control or is cruelly treated or neglected by the person having the charge of him] and whereas, I, E.F., son of [or inhabitant of [or Commissioner of Police], that the said A.B. may be delivered to my care:

I, E.F., abovenamed hereby bind myself that on the said A.B. being made over to my care, I will have the said A.B. properly taken care of and prevented from doing injury to himself or to others; and in case of my making default therein, I hereby bind myself to forfeit to His Majesty the King-Emperor of India, the sum of Rupees.

Dated this day of 19 (Sd.) F.F.

(Where a bond with sureties is to be executed add)—We do hereby declare ourselves sureties for the abovenamed E.F., that he will, on the aforesaid A.B. being made

LEG. REF.

¹ To be addressed to the person in charge of an asylum duly authorised by Govern-

ment to receive lunatic Europeans subject to the Army Act.

over to his care, have the said A.B. properly taken care of and prevented from doing injury to himself or to others; and in case of the said E.F. making default therein, we bind ourselves, jointly and severally, to forfeit to His Majesty the King-Emperor of India, the sum of rupees

Dated this day of 19 (Signature.)

FORM 8.

BOND ON THE DISCHARGE OF A LUNATIC FROM AN ASYLUM ON THE UNDERTAKING OF RELATIVE OR FRIEND TO TAKE DUE CARE.

(See section 33.)

WHEREAS A.B., son of , inhabitant of , is a lunatic who is now detained in the asylum at under an order made by C.D., a Presidency Magistrate for the town of [or Commissioner of Police for District]

] [or the Magistrate of , or a Magistrate Sub-divisional

of the first class specially empowered under Act IV of 1912] under section 14 [or section 15] of Act IV of 1912, and whereas I, E.F., son of , inhabitant of , have applied to the said Magistrate [or Commissioner of Police] that the said A.B. may be delivered to my care and custody:

I hereby bind myself that on the said A.B. being made over to my care and custody, I will have him properly taken care of and prevented from doing injury to himself or to others; and in case of my making default therein, I hereby bind myself to forfeit to His Majesty the King-Emperor of India, the sum of rupees

Dated this day of 19 (Sd.) E.F.

(Where a bond with sureties is to be executed add)—We do hereby declare ourselves sureties for the abovenamed E.F. that he will, on the aforesaid A.B. being delivered to his care and custody, have the said A.B. properly taken care of and prevented from doing injury to himself or to others; and in case of the said E.F. making default therein, we bind ourselves, jointly and severally, to forfeit to His Majesty the King-Emperor of India, the sum of rupees

Dated this day of 19 (Signature.)

SCHEDULE II.

[Repealed by Act XVII of 1914.]

THE INDIAN LUNACY (MADRAS AMENDMENT) ACT (XV OF 1938).

[3rd October, 1938.

An Act further to amend the Indian Lunacy Act, 1912, in its application to the Province of Madras for certain purposes.

WHEREAS it is expedient further to amend the Indian Lunacy Act, 1912, in its application to the Province of Madras for the purposes hereinafter appearing; It is hereby enacted as follows:—

1. This Act may be called THE INDIAN LUNACY (MADRAS AMENDMENT) ACT, 1938.

2. After section 33 of the Indian Lunacy Act, 1912 (hereinafter referred to as the said Act), the following section shall be inserted, namely:—

“33-A. If the person in charge of any asylum in which a lunatic is detained under the provisions of sections 14, 15 or 17, is satisfied that, in the interests of the health of the lunatic, it is necessary to discharge him temporarily, the person aforesaid may order such discharge for

Temporary order of discharge of lunatic in interests of his health.

such period as he may think fit and subject to such conditions as the Provincial Government may by rule prescribe.”

3. In section 88 of the said Act, for the words and figures “on reception

Amendment of section 88, Act IV of 1912.

order made under section 14, section 15 or section 17,” the words and figures “on a reception order made under sections 7, 10, 14, 15 or 17 or on an order made under sections 8 or 16” and for the words “authority which made the

reception order" the words "authority which made the reception or other order aforesaid" shall be substituted.

4. In sub-section (1) of section 89 of the said Act, for the words "may make an order for the recovery of the cost of maintenance of such lunatic together with the costs of the application out of such estate or from such person," the following words shall be substituted, namely:—

"may make an order for the recovery of the whole or any portion of the cost of maintenance of such lunatic and of the costs of the application, out of such estate or from such person:

Provided that an order directing recovery out of such estate shall be made only after making due allowance for the needs of the wife, children and other dependants, if any, of the lunatic."

Amendment of section 91. 5. In sub-section (1) of section 91 of the said Act, after clause (c), the following clause shall be inserted, namely:—

"(cc) to prescribe the conditions subject to which lunatics may be discharged temporarily under section 33-A."

THE MAINTENANCE ORDERS ENFORCEMENT ACT (XVIII OF 1921).¹

An Act to facilitate the enforcement in British India of Maintenance Orders made in other parts of His Majesty's Dominions and Protectorates and vice versa.

WHEREAS it is expedient to facilitate the enforcement in British India of Maintenance Orders² made in other parts of His Majesty's Dominions and Protectorates and *vice versa*; It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called THE MAINTENANCE ORDERS ENFORCEMENT ACT, 1921.

(2) It extends to the whole of British India including the Sonthal Parganas and British Baluchistan.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

"Court of summary jurisdiction" means the Court of a Chief Presidency Magistrate or of a District Magistrate;

"dependants" means such persons as a person against whom a maintenance order is made is liable to maintain according to the law in force in the part of His Majesty's Dominions in which the maintenance order is made;

"maintenance order" means a decree or order, other than an order of affiliation, made by a Court in the exercise of civil or criminal jurisdiction for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made;

"prescribed" means prescribed by rules made under this Act;

"proper authority" means the authority appointed by or under the law

LEG. REF.

¹ For Statement of Objects and Reasons, see *Gazette of India*, 1921, Pt. V, p. 5. For Report of Select Committee, see *ibid.*, Pt. V, p. 127.

² For extension by the Colony of Seychelles and New South Wales of their respective Maintenance Orders Legislation to British India, see *Gazette of India*, 1924, Pt. I, pp. 316 and 1021.

this section is limited by sec. 488, Cr. P. Code. This Act confers no jurisdiction on Magistrates in India to award any sum they think fit as maintenance payable to wife and children who are in India and whose husbands or fathers are in England. This Act is merely an extension of the principle laid down in sec. 488, Cr. P. Code, and was enacted to meet cases where the wife and children are in India and the husband in England and *vice versa*. 1937 M. W. N. 1127.

of, a reciprocating territory to receive and transmit documents to which this Act applies; and

"reciprocating territory" means any part of His Majesty's Dominions outside British India in respect of which this Act for the time being applies.

3. (1) If the Central Government is satisfied that provisions have been

Reciprocal arrangements. made by the Legislature of any part of His Majesty's Dominions for the enforcement within that part of maintenance orders made by Courts in British India, the Central Government may, by notification in the Official Gazette, declare that this Act applies in respect of that part of His Majesty's Dominions and thereupon it shall apply accordingly.

(2) The Central Government may, by like notification, declare that this Act applies in respect of any British protectorate, or in respect of any State in India, and where such a declaration has been made, this Act shall apply as if such protectorate or State were a reciprocating territory.

4. (1) Where a maintenance order has, whether before or after the passing

Registration in British India of maintenance orders made in other parts of His Majesty's Dominions.

of this Act, been made against any person by any Court in any reciprocating territory, and a certified copy of the order has been transmitted by the proper authority of that territory to the Central Government, the Central Government shall send a copy of the order to the prescribed officer of a Court in British

India for registration, and, on receipt thereof, the order shall be registered in the prescribed manner.

(2) The Court in which an order is to be so registered as aforesaid shall, if the Court by which the order was made was, in the opinion of the Central Government, a Court of superior jurisdiction, be a High Court, and, if the Court was not, in its opinion, a Court of superior jurisdiction, be a Court of summary jurisdiction.

5. Where a Court in British India has, whether before or after the commencement of this Act, made a maintenance order

Transmission of maintenance orders made in British India.

against any person, and it is proved to that Court that the person against whom the order was made is resident in a reciprocating territory, the Court shall

send to the Central Government, for transmission to the proper authority of that territory, a certified copy of the order.

6. (1) Where application is made to a Court of summary jurisdiction in

Power of summary courts to make provisional maintenance orders against persons resident in His Majesty's Dominions outside British India.

British India for a maintenance order against any person, and it is proved that that person is resident in a reciprocating territory, the Court may, in the absence of that person, if after hearing the evidence it is satisfied of the justice of the application, make any such order as it might have made if that person had wilfully neglected to attend the Court; but in

such case the order shall be provisional only and shall have no effect unless and until confirmed by a competent Court in such territory.

(2) The evidence of every witness who is examined on any such application shall be reduced to writing, and such deposition shall be read over to, and signed by, him.

SECS. 6 AND 7.—Order of Chief Presidency Magistrate under the Act, finality of.—Power of High Court to interfere with the order in revision. See 30 Bom.L.R. 350. Court has wide powers before confirming a provisional order under the Act to take further

evidence and its powers are not delimited to the provisions of sec. 7; evidence of desertion subsequent to the date of the provisional order is admissible for purposes of confirmation of the said order. 52 B. 262—30 Bom.L.R. 350.

(3) Where such an order is made, the Court shall send to the Central Government, for transmission to the proper authority of the reciprocating territory in which the person against whom the order is made is alleged to reside, the depositions so taken and a certified copy of the order together with a statement of the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with a summons and had appeared at the hearing and such information as the Court possesses for facilitating the identification of that person and ascertaining his whereabouts.

(4) Where any such provisional order has come before a Court in a reciprocating territory for confirmation, and the order has by that Court been remitted to the Court of summary jurisdiction which made the order for the purpose of taking further evidence, the Court shall, after giving the prescribed notice, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application.

(5) If it appears to the Court hearing such evidence that the order ought not to have been made, the Court may rescind the order but in any other case the depositions shall be sent to the Central Government and dealt with in like manner as the original depositions.

(6) The confirmation of an order made under this section shall not affect any power of a Court of summary jurisdiction to vary or rescind that order:

Provided that, on the making of a varying or rescinding order, the Court shall send a certified copy thereof to the Central Government for transmission to the proper authority of the reciprocating territory in which the original order was confirmed, or to which it was sent for confirmation and that, in the case of an order varying the original order, the order shall not have any effect unless and until confirmed in like manner as the original order.

7. (1) Where a maintenance order has been made by a Court in a reciprocating territory and the order is provisional only, and has no effect unless and until confirmed by a Court of summary jurisdiction in British India, and a certified copy of the order, together with the depositions of the witnesses and a statement of the

Power of Court of summary jurisdiction to confirm maintenance order made out of British India.

grounds on which the order might have been opposed, has been transmitted to the Central Government, and it appears to the Central Government that the person against whom the order has been made is resident in British India, the Central Government may send the said documents to the prescribed officer of a Court of summary jurisdiction, with a requisition that a summons be issued calling upon the person to show cause why that order should not be confirmed, and, upon receipt of such documents and requisition, the Court shall issue such a summons and cause it to be served upon such person.

(2) A summons issued under sub-section (1) shall for all purposes be deemed to be a summons issued by the Court in the exercise of its original criminal jurisdiction.

(3) At the hearing it shall be open to the person to whom the summons was issued to raise any defence which he might have raised in the original proceedings had he been a party thereto, but no other defence, and the certificate from the Court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings shall be conclusive evidence that those grounds are grounds on which objection may be taken.

(4) If at the hearing the person served with the summons does not appear or, on appearing, fails to satisfy the Court that the order ought not to be confirmed, the Court may, notwithstanding any pecuniary limit imposed on its power by any law for the time being in force in British India, confirm the order either without modification or with such modifications as to the Court after hearing the evidence may seem just:

Provided that no sum shall be awarded as maintenance under this section, or shall be recoverable as such, at a rate exceeding that proposed in the provisional order.

(5) If the person to whom the summons was issued appears at the hearing and satisfies the Court that for the purpose of any defence it is necessary to remit the case to the Court which made the provisional order for the taking of any further evidence the Court may for that purpose send a certified copy of the record to the Central Government for transmission to that Court through the proper authority of the reciprocating territory, and may adjourn the proceedings.

(6) Where a provisional order has been confirmed under this section, it may be varied or rescinded in like manner as if it had originally been made by the confirming Court, and where on an application for rescission or variation the Court is satisfied that it is necessary to remit the case to the Court which made the provisional order for the purpose of taking any further evidence, the Court may for that purpose send a certified copy of the record to the Central Government for transmission to that Court through the proper authority of the reciprocating territory, and may adjourn the proceedings.

8. (1) Subject to the provisions of this Act, where an order has been registered under this Act in a High Court, the order shall, from the date of such registration, be of the same force and effect, and all proceedings may be taken thereon as if it had been an order originally obtained in the High Court in the exercise of its civil jurisdiction, or in such Civil Court subordinate to that High Court as may be named by the High Court in this behalf, and that Court shall have power to enforce the order accordingly.

(2) A Court of summary jurisdiction in which an order has been registered under this Act or by which an order has been confirmed under this Act, and the officers of such Court, shall have such powers and perform such duties, for the purpose of enforcing the order, as may be prescribed.

9. A Court in registering or confirming an order for maintenance in accordance with the provisions of this Act shall direct that the charges for the transmission to the Court, from which the order has been received or in which the provisional order has been made, as the case may be, of the sum awarded as maintenance shall be borne by the person against whom the order has been so made or confirmed, and shall be recovered from him in addition to the sum awarded as maintenance and in addition to, and in the same manner as, such other costs and charges as may be awarded or levied by the Court.

10. For the purposes of this Act, any document purporting to be signed by a judge or officer of a Court outside British India shall, until the contrary is proved, be deemed to have been so signed without proof of the signature of judicial or official character of the person appearing to have signed it, and the officer of a Court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the Court to sign the document.

11. Depositions taken in a Court in any reciprocating territory may, for the purposes of this Act, be received in evidence in proceedings before Courts of summary jurisdiction under this Act.

12. The Central Government may make rules for the purpose of carrying into effect the purposes of this Act, and in particular may make rules, for the levy of the costs or charges for anything done under this Act and for all matters which are directed or permitted to be prescribed.

THE MANOEUVRES FIELD FIRING AND ARTILLERY PRACTICE ACT (V OF 1938).

[12th March, 1938.

An Act to provide facilities for military manoeuvres and for field firing and artillery practice.

WHEREAS it is expedient to provide facilities for military manoeuvres and for field firing and artillery practice; It is hereby enacted as follows:—

Short title and extent. 1. (1) This Act may be called THE MANOEUVRES, FIELD FIRING AND ARTILLERY PRACTICE ACT, 1938.

(2) It extends to the whole of British India.

CHAPTER I.

MANOEUVRES.

Power of Provincial Government to authorise manoeuvres.

2. (1) The Provincial Government may, by notification in the local official Gazette, authorise the execution of military manoeuvres over any area specified in the notification during a specified period not exceeding three months:

Provided that the same area or any part thereof shall not ordinarily be so specified more than once in any period of three years.

(2) The Provincial Government shall publish notice of its intention to issue a notification under sub-section (1) as early as possible in advance of the issue of the notification, and no such notification shall be issued until the expiry of three months from the date of the first publication of such notice in the local official Gazette.

(3) The notice required by sub-section (2) shall be given by publication in the local official Gazette and shall also be given throughout the area which it is proposed to specify in the notification by publication in the manner prescribed by rules made under section 13, and shall be repeated by like publication one month and one week as nearly as may be before the commencement of the manoeuvres.

3. (1) Where a notification under sub-section (1) of section 2 has been issued, such persons as are included in the military forces engaged in the manoeuvres may, within the specified limits and during the specified periods,—

(a) pass over, or encamp, construct military works of a temporary character, or execute military manoeuvres on, the area specified in the notification, and

(b) supply themselves with water from any source of water in such area:

Provided that nothing herein contained shall authorise the taking of water from any source of supply, whether belonging to a private owner or a public authority, of an amount in excess of the reasonable requirements of the military forces or of such amount as to curtail the supply ordinarily required by those entitled to the use of such water-supply.

(2) The provisions of sub-section (1) shall not authorise entry on or interference with any well or tank held sacred by any religious community or any place of worship or ground attached thereto except for the legitimate purpose of offering prayers or any place or building reserved or used for the disposal of the dead, or any dwelling house or premises attached thereto or any educational institution, factory, workshop or store or any premises used for the carrying on of any trade, business or manufacture or any garden or pleasure ground, or any ancient monument as defined in section 2 of the Ancient Monuments Preservation Act, 1904.

4. The Officer in Command of the military forces engaged in the manoeuvres shall cause all lands used under the powers conferred by this Chapter to be restored, as soon and as far as practicable, to their previous condition.
5. Where a notification issued under section 2 authorises the execution of military manoeuvres compensation shall be payable from the Defence Estimates for any damage to person or property or interference with rights or privileges arising from such manoeuvres including expenses reasonably incurred in protecting person, property, rights and privileges.
6. (1) The Collector of the district in which any area utilised for the purpose of manoeuvres is situated shall depute one or more Revenue Officers to accompany the forces engaged in the manoeuvres for the purpose of determining the amount of any compensation payable under section 5.
 Method of assessing compensation.
- (2) The Revenue Officer shall consider all claims for compensation under section 5 and determine, on local investigation and where possible after hearing the claimant, the amount of compensation, if any, which shall be awarded in each case; and shall disburse on the spot to the claimant the compensation so determined as payable.
- (3) Any claimant, dissatisfied with a refusal of the Revenue Officer to award him compensation or with the amount of compensation awarded to him by the Revenue Officer, may, at any time within fifteen days from the communication to him of the decision of the Revenue Officer, give notice to the Revenue Officer of his intention to appeal against the decision.
- (4) Where any such notice has been given, the Collector of the district shall constitute a commission consisting of himself as chairman, a person nominated by the Officer Commanding the forces engaged in the manoeuvres and two persons nominated by the District Board, and the commission shall decide all appeals of which notice has been given.
- (5) The commission may exercise its powers notwithstanding the absence of any member of the commission, and the chairman of the commission shall have a casting vote in the case of an equal division of opinion.
- (6) The decision of the commission shall be final and no suit shall lie in any Civil Court in respect of any matter decided by the commission.
- (7) No fee shall be charged in connection with any claim, notice, appeal, application or document filed before the Revenue Officer, Collector or the commission under this section.

Offences.
 7. If, within the area and during the period specified in a notification under sub-section (1) of section 2, any person—

- (a) wilfully obstructs or interferes with the execution of the manoeuvres,
 - or
 - (b) without due authority enters or remains in any camp, or
 - (c) without due authority interferes with any flag or mark or any apparatus used for the purposes of the manoeuvres,
- he shall be punishable with fine which may extend to ten rupees.

CHAPTER II. FIELD FIRING AND ARTILLERY PRACTICE.

Definitions.

8. In this Chapter—

- (a) "field firing" includes air armament practice;
- (b) "notified area" means an area defined in a notification issued under sub-section (1) of section 9.

9. (1) The Provincial Government may, by notification in the local official Gazette, define any area as an area within which for a specified term of years the carrying out periodically of field firing and artillery practice may be authorised.

Power of Provincial Government to authorise field firing and artillery practice.

(2) The Provincial Government may, by notification in the local official Gazette, authorise the carrying out of field firing and artillery practice throughout a notified area or any specified part thereof during any period or periods specified in the notification.

(3) Before any notification under sub-section (2) is issued, the Provincial Government shall publish notice of its intention to issue such notification as early as possible in advance of the issue of the notification, and no such notification shall be issued until the expiry of two months from the date of the first publication of the notice in the local official Gazette.

(4) The notice required by sub-section (3) shall be given by publication in the local official Gazette and shall also be given throughout the notified area by publication in some newspaper circulating in and in the language commonly understood in that area and by beat of drum and by affixation in all prominent places of copies of the said notice in the language of the locality and in such other manner as may be prescribed by rules made under section 13 and shall be repeated by like publication one week as nearly as may be before the commencement of the period or of each period specified in the notification:

Provided that the fact of the said beat of drum and affixation shall be verified in writing by the headman and two other literate inhabitants of the locality and provided further that such notice by the beat of drum shall be given seven and two days as nearly as may be before the commencement of such field firing and artillery practice.

10. (1) Where a notification under sub-section (2) of section 9 has been issued, such persons as are included in the forces engaged in field firing or artillery practice may, within the notified area or specified part thereof during the specified period or periods,—

Powers exercisable for purposes of field firing and artillery practice.

- (a) carry out field firing and artillery practice with lethal missiles, and
- (b) exercise, subject to the provisions of sections 3 and 4, any of the rights conferred by section 3 on forces engaged in military manœuvres:

Provided that the provisions of sub-section (2) of section 3 shall not debar entry into, or interference with, any place specified in that sub-section, if it is situated in an area declared to be a danger zone under sub-section (2) of this section, to the extent that may be necessary to ensure the exclusion from it of persons and domestic animals:

Provided further that in the case of a dwelling house occupied by women adequate warning shall be given through a local inhabitant and entry shall be effected after such warning in the presence of two respectable inhabitants of the locality.

(2) The Officer Commanding the forces engaged in any such practice may, within the notified area or specified part thereof, declare any area to be a danger zone, and thereupon the Collector shall, on application made to him by the Officer Commanding the forces engaged in the practice, prohibit the entry into and secure the removal from such danger zone of all persons and domestic animals during the times when the discharge of lethal missiles is taking place or there is danger to life or health.

11. The provisions of sections 5 and 6 shall apply in the case of field firing and artillery practice as they apply in the case of military manœuvres:

Compensation.

Provided that the compensation payable under this section shall include compensation for exclusion or removal from any place declared to be a danger

zone of persons or domestic animals, such compensation to be disbursed at not less than the minimum rates prescribed by rules made under section 13 before the exclusion or removal is enforced, and shall also include compensation for any loss of employment or deterioration of crops resulting from any such exclusion or removal.

12. If, during any period specified in a notification issued under sub-section (2) of section 9, any person within a notified area—

- (a) wilfully obstructs or interferes with the carrying out of field firing or artillery practice, or
 - (b) without due authority enters or remains in any camp, or
 - (c) without due authority enters or remains in any area declared to be a danger zone at a time when entry thereto is prohibited, or
 - (d) without due authority interferes with any flag or mark or target or any apparatus used for the purposes of the practice,
- he shall be punishable with fine which may extend to ten rupees.

CHAPTER III.

GENERAL.

Power to make rules.

13. The Provincial Government may, by notification in the local official Gazette, make rules—

- (a) prescribing the manner in which the notices required by sub-section (2) of section 2 and sub-section (3) of section 9 shall be published in the areas concerned;
- (b) regulating the use under this Act of land for manœuvres or field firing and artillery practice in such manner as to secure the public against danger and to enable the manœuvres or practice to be carried out without interference and with the minimum inconvenience to the inhabitants of the areas affected;
- (c) regulating the procedure of the Revenue Officers and commissions referred to in section 6 in such manner as to secure due publicity regarding the method of making claims for compensation and preferring appeals from original awards of compensation, the expeditious settlement of claims and of appeals and the payment of compensation so far as possible direct to the claimants; and
- (d) defining the principles to be followed by the Revenue Officers and commissions referred to in section 6 in assessing the amount of compensation to be awarded.

INDIAN MARINE ACT.

[Repealed by the Indian Navy Discipline Act, XXXIV of 1934.]

THE MEASURES OF LENGTH ACT (II OF 1889).

[Amended by Act XXIV of 1934.]

[15th February, 1889.

An Act to declare the Imperial standard yard for the United Kingdom to be the legal standard measure of length in British India.

WHEREAS it is expedient to declare the Imperial standard yard for the United Kingdom to be the legal standard measure of length in British India: It is hereby enacted as follows:—

Title, extent and commencement.

1. (1) This Act may be called THE MEASURES OF LENGTH ACT, 1889.

(2) It extends to the whole of British India; and

(3) It shall come into force on such day¹ as the Central Government may appoint in this behalf.

LEG. REF.

¹ Came into force on 15th June, 1889.

2. The Imperial standard yard for the United Kingdom shall be the legal standard measure of length in British India and be called the standard yard.

3. A copy, approved by the ¹[Provincial Government] of the imperial standard for determining the length of the imperial standard yard for the United Kingdom shall be kept in such place within the limits of the ²[Province] as the ¹[Provincial Government] may prescribe,³ and shall be the standard for determining the length of the standard yard:

⁴[Provided that, until action is taken by the Provincial Government under this section, the copy of the imperial standard yard approved by the Central Government before the commencement of Part III of the Government of India Act, 1935, and kept in the place within the limits of the Town of Calcutta prescribed before that date by the Central Government, shall be the standard for determining the length of the standard yard in each Province.]

4. One-third part of the standard yard shall be called a standard foot, and one-thirty-sixth part of such a yard shall be called a standard inch.

5. Any measure having stamped thereon or affixed thereto a certificate purporting to be made ⁵[before the first day of April, 1937, under the authority of any Government in British India or on or after that date under the authority of the Provincial Government] and stating that the measure is of the length of the standard yard or that a measure marked thereon as a foot or inch is of the length of the standard foot or standard inch, as the case may be, shall, when produced before any Court by any public servant having charge of the measure in pursuance of any direction published in an official Gazette ⁶[by order of the Provincial Government], or by any person acting under the general or special authority of such a public servant, be deemed to be correct until its inaccuracy is proved.

6. A public servant having in pursuance of such a direction charge of such a measure as is mentioned in the last foregoing section shall allow any person to inspect it free of charge at all reasonable times and to compare there-with or with any measure marked thereon any measure which such person may have in his possession.

7. There shall be kept by the Commissioner of Police in the Town of Calcutta under section 55 of the Calcutta Police Act, 1866, ⁶[* * *] by the Commissioner of Police in the City of Madras under section 32 of the Madras City Police Act, 1888, by the Municipal Commissioner in the City of Bombay under section 418 of the City of Bombay Municipal Act, 1888, and by the District Magistrate under section 20 of Regulation XII of 1827 of the Bombay Code, such certified measures of the standard yard, standard foot and standard inch as are mentioned in section 5.

LEG. REF.

¹ substituted for 'Governor-General in Council' by A.O., 1937.

² Substituted for 'Town of Calcutta' by *ibid.*

³ For notification prescribing such a place, see Genl. Stat. R. & O., Vol. II.

⁴ Inserted by A.O., 1937.

⁵ Substituted by *ibid.*

⁶ Omitted by Act XXIV of 1934.

THE INDIAN MEDICAL DEGREES ACT (VII OF 1916).¹

[Amended by Madras Act XX of 1940.]

[16th March, 1916.

An Act to regulate the grant of titles implying qualifications in western medical science, and the assumption and use by unqualified persons of such titles.

WHEREAS it is expedient to regulate the grant of titles implying qualifications in western medical science, and the assumption and use by unqualified persons of such titles;

It is hereby enacted as follows:—

Short title.

1. This Act may be called THE INDIAN MEDICAL DEGREES ACT, 1916.

2. In this Act “western medical science” means the western methods of Allopathic medicine, Obstetrics and Surgery, but does not include the Homeopathic or Ayurvedic or

Definition.

Unani system of medicine.

3. The right of conferring, granting, or issuing in British India degrees, diplomas, licences, certificates or other documents stating or implying that the holder, grantee or recipient thereof is qualified to practise western medical science, shall be exercisable only by the authorities specified in the Schedule, and by such other authority as the ²[Provincial Government] may, by notification in the Official Gazette, and subject to such conditions and restrictions as ³[it] thinks fit to impose, authorize in this behalf.

Right to confer degrees, etc.

Prohibition of unauthorised conferment of degrees, etc.

western medical science.

4. Whoever contravenes the provisions of section 3 shall be punishable with fine which may extend to one thousand rupees; and, if the person so contravening is an association, every member of such association who knowingly and wilfully authorises or permits the contravention, shall be punishable with fine which may extend to five hundred rupees.

Contravention of section 4.

Penalty for falsely assuming or using medical titles.

Medical Education of the United Kingdom, or that he is qualified to practise

LEG. REF.

¹ For Statement of Objects and Reasons, see *Gazette of India*, 1915, Pt. V, p. 76; for Report of Sel. Com., see *ibid.*, 1916, Pt. V, p. 7; and for proceedings in Council, see *ibid.*, 1915, Pt. VI, p. 460; *ibid.*, 1916, Pt. VI, pp. 5 and 206.

² Substituted for ‘Governor-General in Council’ by A.O., 1937.

³ Substituted for ‘he’ by *ibid.*

SECS. 4 AND 5.—Where the accused led people to believe that his college was an allopathic college and awarded certificates as allopathic diplomas and granted “M. M. B.” degree, implying that the holder was

qualified to practise western medical science, held that the accused was guilty under S. 5. 34 Cr.L.J. 603=37 C.W.N. 767=1933 C. 456. See also 1925 S. 71.

SEC. 6.—The plain meaning of S. 6 is that when a man voluntarily and falsely assumes or uses any title, etc., or any addition to his name he is liable to be dealt thereunder if the title or description or addition implies (i) that he holds a degree, etc., conferred by the authority referred to in S. 3 or the General Council of Medical Education of the United Kingdom or (ii) that he is qualified to practise western medical science. A.I.R. 1944 Lah. 384.

SECS. 6 AND 7.—A person was conduct-

western medical science, shall be punishable with fine which may extend to two hundred and fifty rupees, or, if he subsequently commits, and is convicted of, an offence punishable under this section, with fine which may extend to five hundred rupees:

Provided that nothing in this section shall apply to the use by any person of any title, description, or addition which, prior to the commencement of this Act, he used in virtue of any degree, diploma, licence or certificate conferred upon, or granted or issued to him.¹

7. No Court shall take cognizance of an offence punishable under this Act except upon complaint made by order of the Provincial Government, or upon complaint made, with the previous sanction of the Provincial Government, by a Council of Medical Registration established by any enactment for the time being in force in the province.

8. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

SCHEDULE.

(See Section 3.)

1. Every University established by an ²[Act of the Central Legislature].
2. The state medical faculty in Bengal.
3. The College of Physicians and Surgeons of Bombay.
4. The Board of Examiners, Medical College, Madras.

THE MEDICAL DIPLOMAS ACT (XXVIII OF 1939).

[26th September, 1939.

An Act to make the provision referred to in sub-section (1) of section 120 of the Government of India Act, 1935.

WHEREAS it is expedient to make the provision relating to medical diplomas granted in the United Kingdom or Burma which is referred to in sub-section (1) of section 120 of the Government of India Act, 26 Geo. V, c. 2, 1935;

It is hereby enacted as follows:—

1. (1) This Act may be called THE MEDICAL DIPLOMAS ACT, 1939.

LEG. REF.

¹Insertion of new S. 6-A by Madras Act XX of 1940.

"6-A. (1) No person shall add to his name any title, description, letters or abbreviations which imply that he holds a degree, diploma, licence or certificate as his qualification to practise any system of medicine unless—

(a) he actually holds such degree, diploma, licence or certificate; and

(b) such degree, diploma, licence or certificate—

(i) is recognized by any law for the time being in force in British India or in any part thereof; or

(ii) has been conferred, granted or issued by an authority referred to in section 3; or

(iii) has been recognized by the General Council of Medical Education of the United Kingdom; or

(iv) in cases not falling under sub-clause (i), sub-clause (ii) or sub-clause (iii) has been conferred, granted or issued by an authority empowered, or recognised as competent, by the Provincial Government to confer, grant or issue such degree, diploma,

licence or certificate.

(2) Whoever contravenes the provisions of sub-section (1) shall, notwithstanding anything contained in section 6, be punished in the case of a first conviction, with fine which may extend to two hundred and fifty rupees and in the case of a subsequent conviction, with fine which may extend to five hundred rupees."

²Substituted for 'Act of the Governor-General in Council' by A.O., 1937.

ing a dispensary with a sign board which contained the initials M. D. B., L. M. H., attached to his name, they were contractions for Doctor of Biochemic Medicines and Licentiate of Homeopathic Medicines. He was convicted under S. 6. *Held*, the conviction was wrong inasmuch as the initials did not represent any degree, diploma, licence or certificate issued by any body or society referred to in the section. 25 Cr.L.J. 709 = 81 I.C. 197 = 1925 S. 71. See also 143 I.C. 567 = 1933 C. 456. As to whether such a person could call himself a Doctor and escape liability under the section, see 25 Cr.L.J. 709 = 81 I.C. 197 = 1925 S. 71.

(2) It extends to the whole of British India.

Definitions.

2. In this Act—

(a) “diploma” has the meaning assigned to it in sub-section (7) of section 120 of the Government of India Act, 1935;

(b) “United Kingdom” means the United Kingdom of Great Britain and Northern Ireland.

3. So long as the condition set out in sub-section (3) of section 120 of the Government of India Act, 1935, continues to be fulfilled, a British subject domiciled in the United Kingdom or India who, by virtue of a medical diploma granted to him in the United Kingdom, is, or is entitled to be, registered in the United Kingdom as a qualified medical practitioner shall not by or under any law for the time being in force, be excluded from practising medicine, surgery or midwifery in British India or in any part thereof, or from being registered as qualified so to do, on the ground that such diploma does not furnish a sufficient guarantee of his possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, except in accordance with the following conditions, namely:—

Conditions for excluding from practice British subjects domiciled in the United Kingdom or India who hold medical diplomas granted in the United Kingdom on the ground of inadequacy of such diplomas.

filled, a British subject domiciled in the United Kingdom or India who, by virtue of a medical diploma granted to him in the United Kingdom, is, or is entitled to be, registered in the United Kingdom as a qualified medical practitioner shall not by or under any law for the time being in force, be excluded from practising medicine, surgery or midwifery in British India or in any part thereof, or

from being registered as qualified so to do, on the ground that such diploma does not furnish a sufficient guarantee of his possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, except in accordance with the following conditions, namely:—

(a) Notice of every proposal for excluding the holders of any such diploma from practice or registration shall be given in such form and in such manner as the Central Government may by rules made in this behalf prescribe, to the university or other body granting that diploma, and where such proposal is not made by the Central Government, to the Central Government also.

(b) No such proposal shall become operative until the expiration of twelve months after the notices referred to in clause (a) have been given.

(c) Such a proposal shall not become operative or, as the case may be, shall cease to operate, if His Majesty's Privy Council, on an application made to them under sub-section (2) of section 120 of the Government of India Act, 1935, determine that the diploma in question ought to be recognised as furnishing such a sufficient guarantee as aforesaid.

4. A British subject domiciled in Burma who, by virtue of a medical diploma granted to him in the United Kingdom or Burma, is, or is entitled to be, registered in the United Kingdom as a qualified medical practitioner shall not, by or under any law for the time being in force, be excluded from practising medicine, surgery or midwifery in British India or in any part thereof, or from being registered as qualified so to do, on the ground that such diploma does not furnish a sufficient guarantee of his possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, except in accordance with conditions such as are set out in clauses (a), (b) and (c) of section 3.

Conditions for excluding from practice British subjects domiciled in Burma who hold medical diplomas granted in the United Kingdom or Burma on a similar ground.

Burma, is, or is entitled to be, registered in the United Kingdom as a qualified medical practitioner shall not, by or under any law for the time being in force, be excluded from practising medicine, surgery or midwifery in British India or in any part thereof, or from being registered as qualified so to do, on the

ground that such diploma does not furnish a sufficient guarantee of his possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, except in accordance with conditions such as are set out in clauses (a), (b) and (c) of section 3.

THE INDIAN MERCHANDISE MARKS ACT (IV OF 1889).

Rep. in pt. and Am., Act IX of 1891:

Am. Acts I of 1938, II of 1941 and V of 1945.

Declared in force in Upper Burma (except the Shan States), Act XIII of 1898, S. 4.

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[1st March, 1889.

An Act to amend the Law relating to Fraudulent Marks on Merchandise.

WHEREAS it is expedient to amend the law relating to fraudulent marks on merchandise; it is hereby enacted as follows:

Title, extent and commencement.

1. (1) This Act may be called THE INDIAN MERCHANDISE MARKS ACT, 1889.¹

(2) It extends to the whole of British India; ²[* * *].

(3) It shall come into force on the first day of April, 1889.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

³[(1) "mark" has the meaning assigned to that expression in clause (f) of sub-section (1) of section 2 of the Trade Marks Act, 1940:

(1-A) "trade mark" means a "registered trade mark" as defined in clause (j) of sub-section (1) of section 2 of the Trade Marks Act, 1940, or a mark used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right as proprietor to use the mark:]

(2) "trade description" means any description, statement or other indication, direct or indirect,—

(a) as to the number, quantity, measure, gauge or weight of any goods; or

(b) as to the place or country in which, or the time at which, any goods were made or produced; or

(c) as to the mode of manufacturing or producing any goods; or

(d) as to the material of which any goods are composed; or

(e) as to any goods being the subject of an existing patent, privilege or copyright;

and the use of any ⁴[mark] which according to the custom of the trade is com-

LEG. REF.

¹ For Statement of Objects and Reasons, see *Gazette of India*, 1888, Pt. V, p. 109; for Report of Sel. Com., see *ibid.*, 1889, Pt. V, p. 27; and for Proceedings in Council, see *ibid.*, 1888, Pt. VI, pp. 111 and 136 and *ibid.*, 1889, Pt. VI, p. 38.

² Repealed by Act IX of 1891.

³ Substituted by Act II of 1941.

⁴ Substituted for the words "numeral word or mark" by Act II of 1941.

SEC. 2 (2).—See 4 M.L.T. 360=15 M. L.J. 45,

SEC. 2 (2) (b).—See (1906) 95 L. T. 424; (1900) 83 L.T. 592=17 T.L.R. 174; (1901) 1 K.B. 1; 70 L.J.K.B. 15.

SEC. 2 (2) (e).—S. 2 (2) (e) does not apply where there is no existing patent, privilege or copyright. 140 I.C. 1084=1933 N. 344.

SECS. 2 (2), 4 AND 7.—Where a design covers the whole body of goods and is part and parcel of the goods themselves, it is not a trade mark but a "design" under the Patents and Designs Act, 1911. Nor is it a "Trade description" within S. 2 (2) of this Act. 8 S.L.R. 39=25 I.C. 998,

monly taken to be an indication of any of the above matters shall be deemed to be a trade description within the meaning of this Act:

(3) "false trade description" means a trade description which is untrue in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement or otherwise, where that alteration makes the description untrue in a material respect, and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Act:

(4) "goods" means anything which is the subject of trade or manufacture: and

(5) "name" includes any abbreviation of a name.

Amendment of the Indian Penal Code.

3. [Substitution of new sections for sections 478 to 489 of the Indian Penal Code.] *Rep. by Act I of 1938.*

Trade Descriptions.

4. (1) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any such ¹[marks], or arrangement or combination thereof, whether including a trade mark or not, as are or is reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are, and to goods having such ¹[marks], or arrangement or combination, applied thereto.

(2) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means as applied to any goods, any name or initials—

(a) not being a trade mark, or part of a trade mark, and

(b) being identical with, or a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description and not having authorized the use of such name or initials, ²[and

(c) being the name or initials of a fictitious person or of a person not carrying on business in connection with the goods of the same description.]

(3) A trade description which denotes or implies that there are contained in any goods to which it is applied more yards, feet or inches than there are contained therein standard yards, standard feet or standard inches is a false trade description.

Application of trade descriptions.

5. (1) A person shall be deemed to apply a trade description to goods who—

(a) applies it to the goods themselves, or

(b) applies it to any covering, label, reel or other thing in or with which the goods are sold or are exposed or had in possession for sale or any purpose of trade or manufacture, or

LEG. REF.

¹ Substituted for the words "numeral word or mark" by Act II of 1941.

² Inserted by *ibid.*

SEC. 2 (3).—*See* (1898) 2 Q. B. 19; (1906) 1 K. B. 16; 75 L.J.K.B. 72; 26 B. 289.

SEC. 2 (4).—*See* 17 M.L.J. 490; 26 C.

232.

SEC. 4.—*Cf.* the 'Merchandise Marks Act, 1887 [50 and 51 Vict., c. 28, S. 3 (2)], and Wright thereon, pp. 16 and 38.

SEC. 4 (2).—*Cf.* the Merchandise Marks Act, 1887 [50 and 51 Vict., c. 28, S. 3 (3)]. Case-law, *see* 25 I.C. 998; 15 M.L.J. 45.

SEC. 5.—*Cf.* the Merchandise Marks Act, 1887 [50 and 51 Vict., c. 28, S. 5].

(c) places, encloses or annexes any goods which are sold, or are exposed or had in possession for sale or any purpose of trade or manufacture, in, with, or to any covering, label, reel or other thing to which a trade description has been applied, or

(d) uses a trade description in any manner reasonably calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade description.

(2) A trade description shall be deemed to be applied whether it is woven, impressed or otherwise worked into or annexed or affixed to the goods or any covering, label, reel or other thing.

(3) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper, and the expression "label" includes any band or ticket.

6. If a person applies a false trade description to goods, he shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be punished with imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees, and in case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both.

7. If a person sells, or exposes or has in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade description is applied, ¹[or which, being required by notification under section 12-A to have applied to them an indication of the country or place in which they were made or produced, and without the indication required by such notification] he shall, unless he proves—

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade description, ²[or that any offence against this section had been committed in respect of the goods], and

LEG. REF.

¹ Inserted by Act II of 1941.

SEC. 5 (c).—See (1910) 103 L.T. 540.

SEC. 5 (d).—(1891) 1 Q.B. 408=60 L.J.M.C. 95.

SECS. 5 AND 6.—Using hand-bill intended to mislead. 1935 Sind 107. On this section, see also 40 C. 281.

SEC. 6.—Cf. the Merchandise Marks Act, 1887 [50 and 51 Vict., c. 28, S. 2 (1)]. For instructions as to prosecutions under this section for offences relating to the short reeling of yarn in Indian mills, see Bombay Government Gazette, 1906, Pt. I, p. 487. Mere imitation, if offence. 146 I.C. 1084=1933 Nag. 344. See 31 C. 411; 23 I.C. 689. Where the charge under S. 6 of the Act is not tried at the place where the offence of applying the false trade description had been committed, the defect is curable under S. 531, Cr. P. Code. 1940 Cal. 583.

"FALSE DESCRIPTION TO GOODS."—As to the application of this paragraph, see (1891) 1 Q.B. 408; (1890) 24 Q.B.D. 90=59 L.J.M.C. 13. Where the charge under S. 6 is not tried at the place where the offence of applying the false trade description had been

committed, the defect is curable under S. 531, Cr. P. Code. 192 I.C. 835=42 Cr.L.J. 334=1940 Cal. 583.

SECS. 6 AND 7.—The word "Merchandise" includes goods selected or guaranteed by the proprietor of the trade mark, and the selector-importer who affixes his name or trade mark to those goods is a person "whose merchandise they are" within S. 480, I.P. Code. 12 S.L.R. 129=50 I.C. 165=20 Cr.L.J. 277. The main object of the Act is to prevent a trader passing off his own goods as those of another. (*Ibid.*) Registration of design of bottle and label thereon under Patents and Designs Act—Rival trader using bottles innocently—Conviction under Ss. 6 and 7 is not sustainable. See 32 C.W.N. 1115. On this section, see also 8 S.L.R. 39=25 I.C. 998, cited under S. 2, *supra*. As to the liability of master or principal for acts of servants or agents, see (1898) 2 Q.B. 300 (306)=67 L.J.Q.B. 689.

SEC. 7.—For instructions as to prosecutions under this section for offences relating to the short reeling of yarn in Indian mills, see Bombay Government Gazette, 1906, Pt. I, p. 487.

(b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(c) that otherwise he had acted innocently, be punished with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, and in case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both.

¹[7-A. If a person tampers with, alters or effaces a mark which has been applied to any goods to which it is required to be applied by notification made under section 12-A, he shall, unless he proves that he acted without intent to defraud, be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, and, in the case of a second or subsequent conviction, with imprisonment which may extend to two years, or with fine, or with both.]

Unintentional Contravention of the Law relating to Marks and Descriptions.

8. Where a person is accused under section 482 of the Indian Penal Code of using a false trade mark or property mark by reason of his having applied a mark to any goods, property or receptacle in the manner mentioned in section 480 or section 481 of that Code, as the case may be, or under section 6 of this Act of applying to goods any false trade description, or under section 485 of the Indian Penal Code of making any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark, and proves—

(a) that in the ordinary course of business he is employed, on behalf of other persons, to apply trade marks or property marks, or trade descriptions, or, as the case may be, to make dies, plates or other instruments for making, or being used in making, trade marks or property marks, and that in the case which is the subject of the charge he was so employed and was not interested in the goods or other thing by way of profit or commission dependent on the sale thereof, and

(b) that he took reasonable precautions against committing the offence charged, and

(c) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark or description, and

(d) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the mark or description was applied, he shall be acquitted.

Forfeiture of Goods.

9. (1) When a person is convicted under section 482 of the Indian Penal Code of using a false trade mark, or under section 486 of that Code of selling, or exposing or having in possession for sale or any purpose of trade or manufacture, any goods, or things with a counterfeit trade mark applied thereto, or under section 487, or section 488 of that Code of making, or making use of, a false mark, or under section 6 or section 7 of this Act of applying a false trade description to goods or of selling, or exposing or having in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade description is applied,

LEG. REF.

¹ Inserted by Act II of 1941.

SEC. 8.—Cf. the Merchandise Marks Act,
CR. C. M.-I-110

1887 (50 and 51 Vict., c. 28, S. 6).

SEC. 9.—Cf. the Merchandise Marks Act,
1887 [50 and 51 Vict., c. 28, S. 2 (3) (iii)].

¹[or which, being required by notification under section 12-A to have applied to them an indication of the country or place in which they were made or produced, are without the indication required by such notification,] or is acquitted on proof of the matter or matters specified in section 486 of the Indian Penal Code or section 7 or section 8 of this Act, the Court convicting or acquitting him may direct the forfeiture to Her Majesty of all goods and things by means of, or in relation to, which the offence has been committed or, but for such proof as aforesaid, would have been committed.

(2) When a forfeiture is directed on a conviction, and an appeal lies against the conviction, an appeal shall lie against the forfeiture also.

(3) When a forfeiture is directed on an acquittal and the goods or things to which the direction relates are of value exceeding fifty rupees, an appeal against the forfeiture may be preferred, within thirty days from the date of the direction, to the Court to which in appealable cases appeals lie from sentences of the Court which directed the forfeiture.

Amendment of the Sea Customs Act, 1878.

10 and 11. [*Amendment of the Sea Customs Act, 1878.*] *Rep. by the Repealing Act (I of 1938), S. 2 and Sch.*

²[*Stamping of Piece-goods, Cotton Yarn and Thread.*]

12. (1) Piece-goods, such as are ordinarily sold by length or by the piece,

which have been manufactured, bleached, dyed, printed or finished in premises which are a factory, as defined in the Factories Act, 1934, shall not be removed for sale from the last of such premises in which they underwent any of the said processes without having conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece and except when the goods are sold from the factory for export from British India, without being conspicuously marked on each piece with the name of the manufacturer, or of the occupier of the premises in which the piece was finally processed or of the whole purchaser in India of the piece.

(2) Cotton yarn such as is ordinarily sold in bundles, and *[cotton thread, namely sewing, darning, crochet or handicraft thread] which have been manufactured, bleached, dyed or finished *[in any premises not exempted by rules made under section 20 of this Act], shall not be removed for sale from those premises unless, in accordance with *[the said rules], in the case of yarn the bundles are conspicuously marked with an indication of the weight of yarn in each bundle and the count of the yarn contained in the bundle and in the case of thread each unit is conspicuously *[marked with the length or weight of thread in the unit] and *[in such other manner as may be required by the said rule], and, except where the goods are sold *[from the premises] for export from British India, unless each bundle or unit is conspicuously marked with the name of the manufacturer or of the wholesale purchaser in India of the goods,

*[Provided that the rules made under section 20 shall exempt all premises where the work is done by the members of one family with or without the assistance of not more than ten other employees, and all premises controlled by a co-operative society where not more than twenty workers are employed on the premises.] (*Proviso added by Act V of 1945*).

(3) If any person removes or attempts to remove or causes or attempts to cause to be removed for sale from such premises or sells or exposes or has in possession for sale any such piece-goods or any such cotton yarn *[or any such thread] which is not marked as required by sub-section (1) and sub-section (2), every such piece and every such bundle of yarn and all such thread, and every-

LEG. REF.

¹ Inserted by Act II of 1941.

² New Ss. 12 and 12-A, with their head-

ings inserted by *ibid*.

* Substituted and added by Act V of 1945.

thing used for the packing thereof, shall be forfeited to His Majesty and such person shall be punished with fine which may extend to one thousand rupees.

Power to require goods to show indication of origin.

12-A. (1) The Central Government may, by notification in the Official Gazette, require that goods of any class specified in the notification which are made or produced beyond the limits of British India and imported into British India, or which are made or produced within the limits of British India, shall, from such date as may be appointed by the notification not being less than three months from its issue, have applied to them an indication of the country or place in which they were made or produced.

(2) The notification may specify the manner in which such indication shall be applied, that is to say, whether to the goods themselves or in any other manner, and the times or occasions on which the presence of the indication shall be necessary, that is to say whether on importation only, or also at the time of sale, whether by wholesale or retail or both.

(3) No notification under this section shall be issued, unless application is made for its issue by persons or associations substantially representing the interests of dealers in or manufacturers, producers, or users of the goods concerned, or unless the Central Government is otherwise convinced that it is necessary in the public interest to issue the notification, nor without such inquiry as the Central Government may consider necessary.

(4) The provisions of section 23 of the General Clauses Act, 1897, shall apply to the issue of a notification under this section as they apply to the making of a rule or bye-law the making of which is subject to the condition of previous publication.

(5) A notification under this section shall not apply to goods made or produced beyond the limits of British India and imported into British India if in respect of those goods the Chief Customs Officer is satisfied at the time of importation that they are intended for exportation whether after transhipment in or transit through British India or otherwise.]

Supplemental Provisions.

13. In the case of goods brought into British India by sea, evidence of the port of shipment shall, in a prosecution for an offence against this Act or section 18 of the Sea Customs Act, 1878, as amended by this Act, be *prima facie* evidence of the place or country in which the goods were made or produced.

14. (1) On any such prosecution as is mentioned in the last foregoing section or on any prosecution for an offence against any of the sections of the Indian Penal Code, as amended by this Act, which relate to trade, property and other marks, the Court may order costs to be paid to the defendant by the prosecutor or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.

(2) Such costs shall, on application to the Court, be recoverable as if they were a fine.

15. No such prosecution as is mentioned in the last foregoing section shall

SEC. 13.—*Cf.* the Merchandise Marks Act, 1887 [50 and 51 Vict., c. 28, S. 10 (2)].

SEC. 14.—*Cf.* the Merchandise Marks Act, 1887 (50 and 51 Vict., c. 28, S. 14). Case-law as to power of appellate Court, to award costs, *see* 16 Bom. L.R. 78=24 I.C. 834. On any prosecution mentioned in S. 13, or for an offence under the relevant sections of the Penal Code (*e.g.*, Ss. 482, 486) costs should be awarded under S. 14, Mer-

chandise Marks Act and not under S. 546-A, Cr. P. Code, and these costs include advocate's fees. 187 I.C. 77=41 Cr.L.J. 392=1940 Rang. 33.

SEC. 15.—*Cf.* the Merchandise Marks Act, 1887 (50 and 51 Vict., c. 28, S. 15). The word "offence" in S. 15 means the offence charged; and the words "first discovery" mean "when the complainant first discovered the offence". *See* 32 C.W.N.

Limitation of prosecution.

whichever expiration first happens.

Authority of the Central Government to issue instructions as to administration of this Act.

(2) Instructions under sub-section (1) may provide, among other matters, for the limits of variation, as regards number, quantity, measure, gauge or weight, which are to be recognised by Criminal Courts as permissible in the case of any goods.

17. On the sale or in the contract for the sale of any goods to which a trade mark or mark or trade description has been applied, the seller shall be deemed to warrant that the mark is a genuine mark and not counterfeit or falsely used, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the seller and delivered at the time of the sale or contract to and accepted by the buyer.

LEG. REF.

¹ For notification containing such instructions, see Genl. Stat. R. and O., Vol. II and Bur. R. M., Vol. II.

699; 34 C.W.N. 339=1930 C. 274. See also 1939 N.L.J. 55. But see next case. The word "offence" in S. 15 does not mean the very first such offence. If such an interpretation of the section be good law a person infringing another's trade mark may merely do so once, clandestinely, sit quiet for three years and then make a public use of it without any fear of a criminal prosecution. 26 S.L.R. 241=139 I.C. 335=1932 S. 94. The word 'offence' means the offence in respect of which the prosecution is launched. The limitation prescribed by S. 15 is three years from the date of commission of the offence charged and one year from the date of discovery by the prosecutor of the offence charged, whichever is less. 1940 Rang. L. R. 244=41 Cr. L. J. 797=1940 Rang. 114. As to commencement of limitation under this section, see also 32 C.W.N. 699=114 I.C. 131=1928 C. 495. The prosecution for using false trade mark will be barred if not brought within three years from the date of the first offence of the series for the same trade mark. 10 S. L.R. 45=35 I.C. 651=17 Cr.L.J. 367. The period limited by S. 15 for prosecution under S. 14 begins from the date of the particular infringement alleged against the accused. S. 15 does not prevent a prosecution under S. 482, I. P. Code. 36 I. C. 168=17 Cr. L.J. 488. The words 'commission of the offence' mean commission of the offence in respect of which the prosecution is launched, i.e., the offence charged in the complaint. I.L.R. (1937) Bom. 183=38 Bom. L. R. 1164=1937 Bom. 1 (F.B.), overruling. 59 Bom. 551; 1939 N. L. J. 55. The language of S. 15 is perfectly plain and there

be commenced after the expiration of three years next after the commission of the offence, or one year after the first discovery thereof by the prosecutor, whichever expiration first happens.

16. (1) The Central Government may, by notification in the Official Gazette, issue instructions¹ for observance by Criminal Courts in giving effect to any of the provisions of this Act.

is nothing in the rest of the Act to control the natural meaning of the words. The starting point of limitation in all cases under S. 15 is the date of the offence charged. I. L. R. (1937) Bom. 183=38 Bom. L. R. 1164=1937 Bom. 1 (F. B.). Limitation for prosecution under S. 15 runs from the date of the offence with which the accused is charged. The fact that he had been manufacturing and selling the articles in question earlier, does not bar a prosecution for a latter manufacture and sale. 1939 N.L.J. 55. S. 15 provides that a prosecution for an offence under S. 486 of the Penal Code should be launched within three years from the date of the offence charged. There is nothing in the section to suggest that in a case of series of infringements the prosecution should be commenced within three years from the date of the first offence. 1931 M. 276=131 I.C. 848. See also 1930 Cal. 275; 1928 Cal. 495. The owner of a trade mark should not wait for several years while his trade mark is infringed continuously and then bring a criminal complaint in respect of some recent infringement. 36 I. C. 168=17 Cr. L. J. 488. If the goods of a manufacturer from the mark he has used are known by a particular name the adoption by a rival trader of any mark which would cause his goods to bear the same name in the market may be as much a violation of the rights of that rival as an actual copy of his device. In such cases dissimilarity of the rival mark is not a complete defence. 36 I.C. 168=17 Cr. L. J. 488. A trade mark applied by a shirt maker to his shirts may be an infringement of a similar mark applied by a manufacturer to his cloth. 36 I.C. 168=17 Cr.L. J. 488. On this section, see also 22 M. 488; 10 I.C. 787.

Sec. 17.—Cf. the Merchandise Marks Act, 1887 (50 and 51 Vict., c. 28, S. 17).

18. (1) Nothing in this Act shall exempt any person from any suit or other proceeding which might, but for anything in this Act, be brought against him.

(2) Nothing in this Act shall entitle any person to refuse to make a complete discovery or to answer any question or interrogatory in any suit or other proceeding, but such discovery or answer shall not be admissible in evidence against such person in any such prosecution as is mentioned in section 14.

(3) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in British India who in good faith acts in obedience to the instructions of such master, and on demand made by or on behalf of the prosecutor, has given full information as to his master and as to the instructions which he has received from his master.

¹19. For the purpose of section 12 of this Act and clause (f) of section 18 of the Sea Customs Act, 1878, as amended by this Act, the Central Government may, by notification in the Official Gazette, declare what classes of goods are included in the expression 'piece-goods, such as are ordinarily sold by length or by the piece.'

20. (1) The Central Government may make rules,² for the purposes of this Act, to provide, with respect to any goods which purport or are alleged to be of uniform number, quantity, measure, gauge or weight, for the number of samples to be selected and tested and for the selection of the samples.

³“(1-A) The Central Government may make rules providing for the manner in which for the purposes of section 12 cotton yarn and cotton thread shall be marked with the particulars required by that section, and for the exemption of certain premises used for the manufacture, bleaching, dyeing or finishing of cotton yarn or cotton thread from the provisions of that section.”. [*Substituted by Act V of 1945.*]

(2) With respect to any goods for the selection and testing of samples of which provision is not made in any rules for the time being in force under sub-section (1), the Court or officer of Customs, as the case may be, having occasion to ascertain the number, quantity, measure, gauge or weight of the goods, shall, by order in writing, determine the number of samples to be selected and tested and the manner in which the samples are to be selected.

(3) The average of the results of the testing in pursuance of rules under sub-section (1) or of an order under sub-section (2) shall be *prima facie* evidence of the number, quantity, measure, gauge or weight, as the case may be, of the goods.

(4) If a person having any claim to, or in relation to, any goods of which samples have been selected and tested in pursuance of rules under sub-section (1) or of an order under sub-section (2), desires that any further samples of the goods be selected and tested, they shall, on his written application and on the payment in advance by him to the Court or officer of Customs, as the case may be, of such sums for defraying the cost of the further selection and testing as the Court or officer may from time to time require, be selected and tested to such extent as may be permitted by rules to be made by the Central Government in this behalf or as, in the case of goods with respect to which provision is not made in such rules, the Court or officer of Customs may determine in the circumstances

LEG. REF.

¹See Notes below.

²For rules issued under these sections, see Genl. Stat. R. and O., Vol. II.

³Sub-S. (1-A) of S. 20 substituted by Act V of 1945.

SEC. 18.—*Cf.* the Merchandise Marks Act, 1887 (50 and 51 Vict., c. 28, S. 19).

SECS. 19 AND 22.—S. 19 and the heading to S. 19, namely: “Transitory Provision” were repealed by the Indian Merchandise Marks and Sea Customs Act, Amendment Act, 1891 (IX of 1891) and Ss. 19 to 22 here printed were added by the Indian Merchandise Marks and Sea Customs Acts, Amendment Act (IX of 1891), S. 4. See 10 C.W.N. 107.

to be reasonable, the samples being selected in manner prescribed under sub-section (1), or in sub-section (2), as the case may be.

(5) The average of the results of the testing referred to in sub-section (3) and of the further testing under sub-section (4) shall be conclusive proof of the number, quantity, measure, gauge or weight, as the case may be, of the goods.

(6) Rules under this section shall be made after previous publication.

21. An officer of the Government whose duty it is to take part in the enforcement of this Act shall not be compelled in any Court to say whence he got any information as to the commission of any offence against this Act.

Information as to commission of offence.

22. If any person, being within British India, abets the commission, without British India, of any act which, if committed in British India, would, under this Act, or under any section of that part of Chapter XVIII of the Indian Penal Code which relates to trade, property and other marks, be an offence, he may be tried for such abetment in any place in British India in which he may be found, and be punished therefor with the punishment to which he would be liable if he had himself committed in that place the act which he abetted.

Punishment of abetment in India of acts done out of India.

THE METAL TOKENS ACT (I OF 1889).¹

[1st February, 1889.

An Act for the Protection of Coinage and other purposes.

WHEREAS it is expedient to prohibit the making, or the possession for issue or the issue, by private persons, of pieces of metal for use as money;

AND WHEREAS it is also expedient to amend section 28 of the Indian Penal Code;

It is hereby enacted as follows:—

Title and extent. 1. (1) This Act may be called THE METAL TOKENS ACT, 1889.

(2) It extends to the whole of British India; ²[*]

(3) ²[* * * * *]

2. In this Act "issue" means to put a piece of metal into circulation for the first time for use as money in British India, such piece having been made in contravention of this Act or brought into British India by sea or by land in contravention of any notification for the time being in force under section 19 of the Sea Customs Act, 1878.

Definition.

Prohibition of making by private persons of pieces of metal to be used as money.

3. No piece of copper or bronze or of any other metal or mixed metal, which, whether stamped or unstamped, is intended to be used as money, shall be made except by the authority of the Central Government.

Penalty for unlawful making, issue or possession of such pieces.

4. (1) In either of the following cases, namely:—

LEG. REF.

¹For Statement of Objects and Reasons, see *Gazette of India*, 1888, Pt. V, p. 19; for Report of the Select Committee, see *ibid.*, 1889, Pt. IV, p. 3, and for Debates in Council, see *ibid.*, 1888, Pt. VI, pp. 40 and 81, and *ibid.*, 1889, Pt. VI, pp. 3 and 9.

This Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898),

in the Arakan Hill District by Regulation I of 1916, S. 2, Bur. Code.

It had been previously extended there by notification under S. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), see *Burma Gazette*, 1893, Pt. I, p. 154.

²The word "and" at the end of sub-S. (2) and sub-S. (3) were repealed by Act X of 1914, S. 3 and Sch. II.

(a) if any person makes in contravention of the last foregoing section, or issues or attempts to issue, any such piece as is mentioned in that section,

(b) if, after the expiration of three months from the commencement of this Act, any person has in his possession, custody or control any such piece as is mentioned in the last foregoing section, with intent to issue the piece, the person shall be punished,

(i) if he has not been previously convicted under this section, with imprisonment which may extend to one year, or with fine, or with both; or

(ii) if he has been previously convicted under this section, with imprisonment which may extend to three years, or with fine, or with both.

(2) If any person is convicted of an offence under sub-section (1), he shall, in addition to any other punishment to which he may be sentenced, forfeit all such pieces as aforesaid, and all instruments and materials for the making of such pieces, which may have been found in his possession, custody or control.

(3) If in the trial of any such offence the question arises whether any piece of metal or mixed metal was intended to be used or to be issued for use as money, the burden of proving that the piece was not intended to be so used or issued shall lie on the accused person.

Cognizance of offences under the last foregoing section.

5. (1) The offence of making, in contravention of section 3, any such piece as is mentioned in that section shall be a cognizable offence.

(2) Notwithstanding anything in the ¹Code of Criminal Procedure, 1882, no other offence punishable under section 4 shall be a cognizable offence, or beyond the limits of a presidency-town be taken cognizance of by any Magistrate, except a District Magistrate or Sub-Divisional Magistrate, without the previous sanction of the District Magistrate or Sub-Divisional Magistrate.

6. If at any time the Central Government sees fit, by notification under section 19 of the Sea Customs Act, 1878, to prohibit or restrict the bringing by sea or by land into British India of any such pieces of metal as are mentioned in section 3, ²[it] may by the notification³ direct that any person contravening the prohibition or restriction shall be liable to the punishment to which he would be liable if he were convicted under this Act of making such pieces in British India, instead of to the penalty mentioned in section 167 of the Sea Customs Act, 1878, and that the provisions of sub-section (3) of section 4 and sub-section (1) of section 5, or of either sub-section, in relation to the offence of making such pieces shall, notwithstanding anything in the Sea Customs Act, 1878, apply, so far as they can be made applicable, to the offence of contravening the prohibition or restriction notified under section 19 of that Act.

7. [Addition to section 98, Act X of 1882.] *Rep. by the Code of Criminal Procedure, 1898 (V of 1898).*

Prohibition of receipt by local authorities and railways as money of metal which is not coin.

8. (1) No piece of metal which is not coin as defined in the Indian Penal Code shall be received as money by or on behalf of any railway-administration or local authority.

(2) If any person on behalf of a railway-administration, or on behalf of a local authority, or on behalf of the lessee of the collection of any toll or other impost leviable by a railway-administration or local authority, receives as money any piece of metal which is not such coin as aforesaid, he shall be punished with fine which may extend to ten rupees:

LEG. REF.

¹ See now the Code of Criminal Procedure, 1898 (Act V of 1898).

² Substituted for 'he' by A.O., 1937.

³ For notification issued under this power, see Genl. R. and O.

9. [Amendment of section 28 of the Indian Penal Code.] Rep. by the Repealing Act (I of 1938), S. 2 and Sch.

THE MINES MATERNITY BENEFIT ACT (XIX OF 1941).

[Am. by Acts XVIII of 1943 and X of 1945.]

[26th November, 1941.]

An Act to regulate the employment of women in mines for a certain period before and after childbirth and to provide for payment of maternity benefit to them.

WHEREAS it is expedient to regulate the employment of women in mines for a certain period before and after childbirth and to provide for payment of maternity benefit to them; It is hereby enacted as follows:—

Short title, extent and commencement. 1. (1) This Act may be called THE MINES MATERNITY BENEFIT ACT, 1941.

(2) It extends to the whole of British India.

(3) It shall come into force on such date as the Central Government may by notification in the Official Gazette, appoint.

Definitions. 2. In this Act unless there is anything repugnant in the subject or context,—

(a) “child” includes a still-born child;

(b) “Chief Inspector”, “Inspector”, “employed”, “mine” and “owner” have the meanings assigned, respectively, to these expressions in section 3 of the Indian Mines Act, 1923;

(c) “manager” means the manager of the mine appointed in accordance with the provisions of the Indian Mines Act, 1923;

(d) “maternity benefit” means the payment referred to in section 5;

(e) “prescribed” means prescribed by rules made under this Act.

Prohibition of employment of, and work by, women during certain period. 3. (1) No owner or manager of a mine shall knowingly employ a woman and no woman shall engage in employment in any mine during the four weeks following the day on which she is delivered of a child.

[(2) No owner or manager of a mine shall employ any woman below ground in the mine—

(a) if he has reason to believe or if she has informed him that she is likely to be delivered of a child within ten weeks;

(b) if she has to the knowledge of the management been delivered of a child within the preceding twenty-six weeks;

(c) during the period of ten weeks following the twenty-six weeks referred to in clause (b)—

(i) for more than four hours in a day unless a *creche* is provided at the mine;

(ii) in any case, for more than four hours at any one time:

Provided that where the woman informs the management that the child of which she was delivered has died, the provisions of clause (c) shall not apply after the management has with due diligence verified the correctness of her statement.] (Added by Act X of 1945.)

4. (1) If any woman employed in a mine who is pregnant gives notice either orally or in writing in the prescribed form to the manager of the mine that she expects to be delivered of a child within one month from the date of such notice the manager shall permit her if she so desires to absent herself from work up to the day of her delivery and such absence shall be treated as a period of authorised absence on leave:

Right to obtain leave of absence in pregnancy and after delivery.

Provided that, ¹[except in the case of a woman employed below ground in the mine], the manager may, on undertaking to defray the cost of such examination, required the woman to be examined by a qualified medical practitioner or midwife, and, if the woman refuses to submit to such examination or is certified on such examination as not pregnant or not likely to be delivered of a child within one month, he may refuse such permission.

[(2) If any woman employed below ground in a mine gives notice either orally or in writing in the prescribed form to the manager of the mine that she expects to be delivered of a child within ten weeks from the date of such notice, the manager may, on undertaking to defray the cost of such examination, require the woman to be examined within three days by a qualified medical practitioner or midwife, and shall permit her if she so desires to absent herself from work in any capacity in the mine prior to the said examination, and unless he obtains a certificate that the woman is not pregnant or not likely to be delivered of a child within ten weeks or the woman refuses to submit to such examination, up to the day of her delivery, and such absence shall be treated as a period of authorized absence on leave.

(3) The examination referred to in the proviso to sub-section (1) or in sub-section (2) shall, if the woman so desires, be carried out by a woman.

(4) The absence of a woman in the period during which she is entitled to maternity benefit under this Act shall be treated as authorized absence on leave.] [Substituted by Act X of 1945.]

5. (1) Every woman, ¹[other than a woman to whom the provisions of sub-section (2) apply,] employed in a mine who has been continuously employed in that mine or in mines belonging to the owner of that mine for a period of not less than six months preceding the date of her delivery shall, if she complies with the conditions imposed by this Act, be entitled to receive, and the owner of the mine shall be liable to make her, in accordance with the provisions of this Act, a payment at the rate of ¹[twelve annas] a day for every day ²[* * * *] during the four weeks immediately preceding and including the day of her delivery and for each day of the four weeks following her delivery.

[(2) Every woman who has worked below ground in a mine or mines of the same owner for not less than ninety days in all during a period not exceeding six months immediately preceding the date on which clause (a) of sub-section (2) of section 3 becomes applicable to her case shall, if she complies with the other conditions imposed by this Act, be entitled to receive, and the owner of the mine shall be liable to make to her, in accordance with the provisions of this Act, a payment at the rate of six rupees a week for the ten weeks immediately preceding her delivery and for the six weeks following her delivery.] (Inserted by Act X of 1945.)

²[Provided that no such payment shall be made for any day on which she attends work and receives payment therefor during the four weeks preceding her delivery.] (Added by Act XVIII of 1943.)

Explanation.—Periods of casual absence as defined by rules made under section 15 or authorised absence on account of illness or leave shall count as employment in determining whether employment has been continuous.

6. (1) The Central Government may by rules made under section 15 provide that a woman entitled to maternity benefit under this Act shall, if at the time of her delivery she utilized the services of a qualified midwife or other trained person receive in addition to the maternity benefit due to her a bonus not exceeding in amount three rupees:

Provided that she shall not receive such bonus if at the place chosen by

LEG. REF.

²Omitted and Provisⁿ added by Act

¹Inserted and substituted by Act X of 1945.

XVIII of 1943.

her for her confinement she would have been entitled free of charge to the services of a qualified midwife or other trained person provided by the owner of the mine.

(2) Such rules may further provide for the determination by the Provincial Government of the amount of the bonus and of the qualifications which shall be possessed by qualified midwives and other trained persons for the purposes of this section.

7. A woman entitled to maternity benefit under this Act unless she has given the notice referred to in sub-section (1) ¹[or sub-section (2) as the case may be,] of section 4, shall on being delivered of a child give notice of her delivery in the prescribed manner to the manager before the expiry of seven days from the date of her delivery, and shall before the expiry of six months from such date furnish proof of the prescribed nature to the manager both of her delivery and of the date of her delivery:

Provided that a woman giving notice under section 4 or this section may therein nominate a person for the purposes of sub-section (2) of section 9.

8. (1) Where a woman entitled to maternity benefit has given the notice referred to in sub-section (1) of section 4 and has obtained permission to absent herself from work up to the date of her delivery, the manager shall either at once or within three days pay to her maternity benefit for four weeks in advance.

¹[(1-A) Where a woman entitled to maternity benefit has given the notice referred to in sub-section (2) of section 4, the manager shall within three days pay to her maternity benefit for ten weeks in advance, unless within the said three days as a result of the examination referred to in that sub-section he obtains a certificate that she is not pregnant or not likely to be delivered of a child within ten weeks or the woman refuses to submit to such examination.] (*Inserted by Act X of 1945.*)

(2) A woman entitled to maternity benefit who has been delivered of a child shall, on furnishing the proof referred to in section 7,—

(a) if she has received an advance payment under sub-section (1) ¹[or sub-section 1-A] be paid the balance of the maternity benefit due to her at the end of the fourth week from the date of her delivery or within three days of the furnishing of proof, whichever date is later;

(b) if she has received no such advance payment,—

(i) if the proof is furnished before the end of the fourth week from the date of delivery, be paid at once or within three days so much of the maternity benefit as is then due to her, and be paid the balance at the end of the said fourth week;

(ii) if the proof is furnished after the end of the fourth week from the date of delivery, be paid at once or within three days the whole amount of the maternity benefit due to her.

9. (1) If a woman entitled to maternity benefit who has received an advance under sub-section (1) ¹[or sub-section 1-A] of section 8 dies before being delivered of the child, the advance shall not be recoverable.

(2) If a woman entitled to maternity benefit having been delivered of a child dies before payment of the maternity benefit, or where an advance under sub-section (1) ¹[or sub-section 1-A] of section 8 has been made, of the balance of the maternity benefit due to her is made the amount due to her up to the date of her death shall, on the prescribed proof of the birth and date of the birth of the child and of the death and date of death of the woman being furnished at

any time before the expiry of six months from the date of delivery, be paid if the child is living to the person who undertakes the care of the child, and if the child is not living to the person nominated by her under the proviso to section 7 or if she has made no such nomination to the legal representative of the deceased woman.

10. (1) When a woman absents herself from work in accordance with ¹[sub-section (1) of section 3 or in circumstances under which in accordance with this Act the absence is to be treated as authorized absence on leave] it shall be unlawful for the manager to dismiss her during or on account of such absence, or to give notice of dismissal on such a day that the notice will expire during such absence.

(2) The dismissal of a woman at any time within six months before she is delivered of a child, if the woman but for such dismissal would have been entitled to maternity benefit under this Act, shall not have the effect of depriving her of that maternity benefit if the Chief Inspector is satisfied that her dismissal was without sufficient cause.

11. (1) Any woman claiming that maternity benefit to which she is entitled under this Act and any person claiming that a payment due under sub-section (2) of section 9 is improperly withheld may make a complaint to the Chief Inspector or any Inspector, ²[or any other officer authorized in this behalf by the Central Government].

(2) On receipt of such complaint or on his own motion without any such complaint being made, the Chief Inspector or Inspector ²[or other officer] may make inquiry or cause an inquiry to be made, and if satisfied that a payment has been wrongfully withheld may direct the payment to be made in accordance with his orders.

12. Any woman who does any work for which she receives payment in cash or kind after she has been permitted under sub-section (1) of section 4 to absent herself from work, or who engages in employment in any mine in contravention of ¹sub-section (1) of section 37], shall be punishable with fine which may extend to ten rupees, and, if she is entitled to maternity benefit under this Act, shall forfeit her right to any maternity benefit not already paid to her.

13. (1) Any owner or manager of a mine, who contravenes any provision of this Act for which no express penalty is provided, shall be punishable with fine which may extend to five hundred rupees.

(2) The Court imposing the fine may, if the contravention has resulted in depriving a woman of any maternity benefit due to her, order the whole or any part of the fine when paid to be applied in payment of compensation to the woman for any loss caused to her by the contravention of the provision on account of which the fine has been imposed, and an Appellate Court or the High Court in exercise of its powers of revision may also make such order.

14. (1) No prosecution under this Act shall be instituted except by or with the sanction of the Chief Inspector, ²[or of an officer authorized in this behalf by the Central Government].

Cognisance of cases.

(2) No Court inferior to that of a Magistrate of the first class shall try an offence punishable under this Act or any rule made thereunder.

(3) No Court shall take cognizance of an offence punishable under this

Act or any rule made thereunder, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed:

Provided that in computing the said period of six months any time spent in obtaining the sanction of the Chief Inspector required by sub-section (1) shall be excluded.

Power of Central Government to make rules. 15. (1) The Central Government may, subject to the condition of previous publication, by notification in the official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) require the maintenance of registers and records for the purposes of this Act and prescribe the form thereof;

(b) prescribe the form of the notices referred to in section 4 and section 7, and require mines to supply copies thereof to women workers;

(c) regulate the examination of women ¹[referred to in] section 4, and the grant of the certificates therein referred to;

(d) prescribe the nature of and the method of furnishing the proof referred to in section 7, section 8 and section 9;

(e) regulate the manner of applying for and paying maternity benefit;

(f) assign duties to, and regulate the powers of, the Chief Inspector and Inspectors ²[and the officers authorized by the Central Government referred to in section 11 and sub-section (1) of section 14], for the purposes of this Act.

(3) Any rule made under this section may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees.

16. The manager of every mine in which women are employed shall cause an abstract in the local Indian language of the provisions of this Act and of the rules made thereunder to be exhibited in the mine in such manner that they may come to the notice of every woman employed in the mine.

Abstract of this Act and the rules made thereunder to be exhibited in mines.

(2) For any contravention of the provisions of this section the manager shall be punishable with fine which may extend to one hundred rupees.

Power of Central Government to exempt mines from operation of Act. 17. The Central Government may, by notification in the Official Gazette, exempt any mine or class of mines from the operation of this Act.

Act binding on Crown.

18. The provisions of this Act shall be binding on the Crown.

THE INDIAN MINES ACT (IV OF 1923)³

Year.	No.	Short title.	Amendments.
1923	IV	The Indian Mines Act, 1923.	Amendment Act, 37 of 1925; 13 of 1928; 21 of 1931; 5 of 1935; 11 of 1936; 19 of 1937; 24 of 1940; and Ordinance XVII of 1945. Rep. in part, 12 of 1927.

[N.B.—Throughout this Act, except as otherwise provided, for 'Local Government' the words 'Central Government' have been substituted by the Government of India (Adaptation of Indian Laws) Order, 1937

LEG. REF.

¹ Substituted by Act X of 1945.

² Inserted by Act X of 1945.

³ For Statement of Objects and Reasons,

see "Gazette of India," 1922, Pt. V, p. 327; and for the Report of Joint Committee, see *ibid.*, 1923, Pt. V, p. 25.

[23rd February, 1923.]

An Act to amend and consolidate the law relating to the regulation and inspection of mines.

WHEREAS it is expedient to amend and consolidate the law relating to the regulation and inspection of mines; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement. 1. (1) This Act may be called THE INDIAN MINES ACT, 1923.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) It shall come into force on the first day of July, 1924.

2. 1[* * * * *]

Definitions. 3. In this Act, unless there is anything repugnant in the subject or context,—

(a) “agent”, when used in relation to a mine, means any person appointed or acting as the representative of the owner in respect of the management of the mine or of any part thereof, and as such superior to a manager under this Act;

(b) “Chief Inspector” means the Chief Inspector of Mines appointed under this Act;

(c) “child” means a person ²[who has not completed his fifteenth year];

³[(cc) “day” means a period of twenty-four hours beginning at midnight];

⁴[s(ccc) “District Magistrate” means in a Presidency-town, the person appointed by the Central Government to perform the duties of a District Magistrate under this Act in that town];

(d) a person is said to be “employed” in a mine who works under appointment by or with the knowledge of the manager, whether for wages or not, in any mining operation, or in cleaning or oiling any part of any machinery used in or about the mine, or in any other kind of work whatsoever incidental to or connected with, mining operations;

(e) “Inspector” means an Inspector of Mines appointed under this Act, and includes a District Magistrate when exercising any power or performing any duty of an Inspector which he is empowered by this Act to exercise or perform;

(f) “mine” means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes all works, machinery, tramways and sidings, whether above or below ground, in or adjacent to or belonging to a mine;

Provided that it shall not include any part of such premises on which a manufacturing process is being carried on unless such process is a process for coke making or the dressing of minerals;

(g) “owner,” when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof, but does not include a person who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine subject to any lease, grant or licence for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine; but any contractor for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability;

(h) “prescribed” means prescribed by regulations, rules or bye-laws;

LEG. REF.

¹Sec. 2 omitted by A.O., 1937.

²Substituted for words “under the age of 13 years” by Act V of 1935.

³Cl. (cc) inserted and old cl. (cc) renumbered as cl. (ccc) by *ibid.*

⁴Added by Act XXI of 1931.

(i) "qualified medical practitioner" means any person registered under the Medical Act, 1858, or any Act amending the same or under any Act of any Legislature in British India providing for the maintenance of a register of medical practitioners, and includes, in any area where no such last-mentioned Act is in force, any person declared by the Central Government, by notification in the Official Gazette, to be a qualified medical practitioner for the purposes of this Act;

(j) "regulations", "rules", and "bye-laws" mean respectively regulations, rules and bye-laws made under this Act;

¹[(jj) where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such sets is called a 'relay'];]

(k) "serious bodily injury" means any injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb, or the permanent loss of or injury to the sight or hearing, or the fracture of any limb or the enforced absence of the injured person from work for a period exceeding twenty days; and

(l) "week" means the period between midnight on Saturday night and midnight on the succeeding Saturday night.

CHAPTER II.

INSPECTORS.

4. (1) The Central Government may, by notification in the Official Gazette, appoint a duly qualified person to be Chief Inspector of Mines for the whole of British India, and duly qualified persons to be Inspectors of Mines subordinate to the Chief Inspector.

(2) No person shall be appointed to be Chief Inspector or an Inspector, or having been appointed shall continue to hold such office who is or becomes directly or indirectly interested in any mine or mining rights in India.

(3) The District Magistrate may exercise the powers and perform the duties of an Inspector subject to the general or special orders of the Central Government:

Provided that nothing in this sub-section shall be deemed to empower a District Magistrate to exercise any of the powers conferred by section 19 or section 32.

(4) The Chief Inspector and every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code.

5. (1) The Chief Inspector may, by order in writing, prohibit or restrict the exercise by any Inspector named, or any class of Inspectors specified, in the order of any power conferred on Inspectors by this Act, and shall, subject as aforesaid, declare the local area or areas within which, or the group or class of mines with respect to which, Inspectors shall exercise their respective powers.

(2) The Inspector shall give information to owners, agents and managers of mines, situate within the local area or areas or belonging to the group or class of mines, in respect of which he exercises powers under sub-section (1) as to all regulations and rules which concern them respectively and as to the places where copies of such regulations and rules may be obtained.

Powers of Inspectors of Mines. 6. The Chief Inspector and any Inspector may—

(a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act and of the regulations, rules and

bye-laws and of any orders made thereunder are observed in the case of any mine;

(b) with such assistants (if any) as he thinks fit, enter, inspect and examine any mine or any part thereof at any reasonable time by day or night, but not so as unreasonably to impede or obstruct the working of the mine;

(c) examine into, and make inquiry respecting, the state and condition of any mine or any part thereof, the ventilation of the mine, the sufficiency of the bye-laws for the time being in force relating to the mine, and all matters and things connected with or relating to the safety of the persons employed in the mine.

7. Any person in the service of the ¹[Crown] duly authorized by a special order in writing of the Chief Inspector or of an

Powers of special officer to enter, measure, etc. Inspector in this behalf may, for the purpose of surveying, levelling or measuring in any mine, after giving not less than three days' notice to the manager of such mine, enter the mine and may survey, level or measure the mine or any part thereof at any reasonable time by day or night, but not so as unreasonably to impede or obstruct the working of the mine.

8. Every owner, agent and manager of a mine shall afford the Chief Inspector and every Inspector and every person authorised under section 7 all reasonable facilities for making any entry, inspection, survey, measurement, examination or inquiry under this Act.

9. (1) All copies of, and extracts from, registers or other records appertaining to any mine, and all other information acquired by the Chief Inspector or an Inspector or by any one assisting him, in the course of the inspection of any mine under this Act or acquired by any person authorised under section 7 in the exercise of his duties thereunder, shall be regarded as confidential. ¹*[and shall not be disclosed to any person other than a Magistrate or an official superior or the owner, agent or manager of the mine concerned, unless the Chief Inspector or the Inspector considers disclosure necessary to ensure the safety of any person].

(2) If the Chief Inspector, or an Inspector or any other person referred to in sub-section (1) discloses ²[contrary to the provisions of sub-section (1)], any such information as aforesaid without the consent of the ³[Central Government], he shall be guilty of a breach of official trust, and shall be punishable ⁴[with imprisonment for a term which may extend to one year, or with fine, or with both].

(3) No Court shall proceed to the trial of any offence under this section, ⁵[except with the previous sanction of the Central Government].

CHAPTER III.

MINING BOARDS AND COMMITTEES.

10. (1) The Central Government may constitute ⁶[for any part of British India] or for any group or class of mines ⁷[* * *], a Mining Board consisting of—

LEG. REF.

¹ Substituted for 'Government' by A.O., 1937.

¹* Inserted by Act XXIX of 1937.

² Substituted for words 'to any one other than a Magistrate or an officer to whom he is subordinate' by *ibid.*

³ Substituted for "Governor-General in Council or of the Local Government" by A.O., 1937.

⁴ These words were substituted for the words "in the manner provided by sec. 4 of the Indian Official Secrets Act, 1889" by sec. 2 and Sch. I of the Repealing and Amending Act, 1925 (XXXVII of 1925).

⁵ Substituted by Act XXIX of 1937.

⁶ Substituted for 'for the province, etc.' by A.O., 1937.

⁷ Words 'in the Province' omitted by *ibid.*

(a) a person in the service of ¹[the Crown] not being the Chief Inspector or an Inspector, nominated by the Central Government to act as chairman;

(b) the Chief Inspector or an Inspector;

(c) ²[a person, not being the Chief Inspector or an Inspector, nominated by the ³(Central Government)];

(d) two persons nominated by owners of mines or their representatives in such manner as may be prescribed;

⁴[(e) two persons to represent the interest of miners, who shall be nominated in accordance with the following provisions:—

(i) if there are one or more registered trade unions having in the aggregate as members not less than one quarter of the miners, the said persons shall be nominated by such trade union or trade unions in such manner as may be prescribed;

(ii) if sub-clause (i) is not applicable and there are one or more registered trade unions having in the aggregate as members not less than 1,000 miners, one of the said persons shall be nominated by such trade union or trade unions in such manner as may be prescribed and the other by the Central Government;

(iii) if neither sub-clause (i) nor sub-clause (ii) is applicable, the said persons shall be nominated by the Central Government.

Explanation.—In this clause “miner” means a person employed, otherwise than in a position of supervision or management, in any of the mines for which the Mining Board is constituted.]

(2) The chairman shall appoint a person to act as secretary to the Board.

(3) The Central Government may give directions as to the payment of travelling expenses incurred by the secretary or any member of any such Mining Board in the performance of his duty as such secretary or member.

11. (1) Where under this Act any question relating to a mine is referred to a Committee, the Committee shall consist of—

(a) a chairman nominated by the Central Government or by such officer or authority as the Central Government may authorise in this behalf;

(b) a person nominated by the chairman and qualified by experience to dispose of the question referred to the Committee; and

(c) two persons of whom one shall be nominated by the owner, agent or manager of the mine concerned, and the other shall be nominated by the Central Government to represent the interests of the persons employed in the mine.

(2) No Inspector or person employed in or in the management of any mine concerned shall serve as chairman or member of a committee appointed under this section.

(3) Where an owner, agent or manager fails to exercise his power of nomination under clause (c) of sub-section (1), the Committee may, notwithstanding such failure, proceed to inquire into and dispose of the matter referred to it.

(4) The Committee shall hear and record such information as the Chief Inspector or the Inspector, or the owner, agent or manager of the mine concerned, may place before it, and shall intimate its decision to the Chief Inspector or the Inspector and to the owner, agent or manager of the mine, and shall report its decision to the Central Government.

LEG. REF.

¹ Substituted by Act XXIV of 1940.

² Substituted for old cl. (c) by Act V of 1935.

³ Substituted for “Local Government” by A.O., 1937.

⁴ Cl. (e) inserted by Act V of 1935.

(5) On receiving such report the Central Government shall pass orders in conformity therewith unless the Chief Inspector or the owner, agent or manager of the mine has lodged an objection to the decision of the Committee, in which case the Central Government may proceed to review such decision and to pass such orders in the matter as it may think fit. If an objection is lodged by the Chief Inspector, notice of the same shall forthwith be given to the owner, agent or manager of the mine.

(6) The Central Government may give directions as to the remuneration, if any, to be paid to the members of the Committee or any of them, and as to the payment of the expenses of the inquiry including such remuneration.

12. (1) Any Mining Board constituted under section 10 and any Committee constituted under section 11 may exercise such of the powers of an Inspector under this Act as it thinks necessary or expedient to exercise for the purpose of deciding or reporting upon any matter referred to it.

(2) Every Mining Board constituted under section 10 and every Committee appointed under section 11 shall have the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects; and every person required by any such Mining Board or Committee to furnish information before it shall be deemed to be legally bound to do so within the meaning of section 176 of the Indian Penal Code.

13. The Central Government may direct that the expenses of any inquiry conducted by a Mining Board constituted under section 10 or by a Committee appointed under section 11 shall be borne in whole or in part by the owner or agent of the mine concerned, and the amount so directed to be paid may, on application by the Chief Inspector or an Inspector to a Magistrate having jurisdiction at the place where the mine is situated or where such owner or agent is for the time being resident, be recovered by the distress and sale of any movable property within the limits of the Magistrate's jurisdiction belonging to such ¹[owner or agent].

CHAPTER IV.

MINING OPERATIONS AND MANAGEMENT OF MINES.

14. The owner, agent or manager of a mine shall, in the case of an existing mine within one month from the commencement of this Act, or, in the case of a new mine, within three months after the commencement of mining operations, give to the District Magistrate of the district in which the mine is situated notice in writing in such form and containing such particulars relating to the mine as may be prescribed.

15. (1) Save as may be otherwise prescribed, every mine shall be under one manager who shall have the prescribed qualifications and shall be responsible for the control, management and direction of the mine, and the owner or agent of every mine shall appoint himself or some other person, having such qualifications, to be such manager.

(2) If any mine is worked without there being a manager for the mine as required by sub-section (1), the owner and agent shall each be deemed to have contravened the provisions of this section.

LEG. REF.

¹ These words were substituted for the words "owner, agent or manager" by sec. 2 and Sch. I of the Repealing and Amending Act, 1925 (XXXVII of 1925).

SEC. 15 (2) : "MINE"—MEANING OF—SUB-
"AGE DUTIES CARRIED ON—IF AMOUNTS TO

WORKING OF MINE.—In addition to excavations, machinery, etc., works which are incidental to or connected with mining operations clearly fall within the definition of mine in sec. 3 (f) of the Act. Whether a particular kind of work comes within the mischief of the definition or not must always

16. (1) The owner, agent and manager of every mine shall be responsible that all operations carried on in connection therewith are conducted in accordance with the provisions of this Act and of the regulations, rules and bye-laws and of any orders made thereunder.

Duties and responsibilities of owners, agents and managers.

(2) In the event of any contravention of any such provisions by any person whomsoever, the owner, agent and manager of the mine shall each be deemed also to be guilty of such contravention unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing those provisions, to prevent such contravention:

Provided that the owner or agent shall not be so deemed if he proves--

(a) that he was not in the habit of taking, and did not in respect of the matter in question take, any part in the management of the mine; and

(b) that he had made all the financial and other provisions necessary to enable the manager to carry out his duties; and

(c) that the offence was committed without his knowledge, consent or connivance.

(3) Save as hereinbefore provided, shall not be a defence in any proceedings brought against an owner or agent of a mine under this section that a manager of the mine has been appointed in accordance with the provisions of this Act.

CHAPTER V.

PROVISIONS AS TO HEALTH AND SAFETY.

17. There shall be provided and maintained for every mine, latrine and urinal accommodation of such kind and on such scale, and such supply of water fit for drinking, as may be prescribed.

Conservancy.

18. At every mine in respect of which the Central Government may, by notification in the Official Gazette, declare this section to apply,¹ such supply of ambulances as stretchers, and of splints, bandages and other medical requirements, as may be prescribed, shall be kept ready at hand in a convenient place and in good and serviceable order.

Medical appliances.

19. (1) If, in any respect which is not provided against by any express provision of this Act or of the regulations, rules or bye-laws or of any orders made thereunder, it appears to the Chief Inspector or the Inspector that any mine, or any part thereof or any matter, thing or practice in or connected with the mine, or with control, management or direction thereof, is dangerous to human life or safety, or defective so as to threaten, or tend to, the bodily injury of any person, he may give notice in writing thereof to the owner, agent or manager of the mine, and shall state in the notice the particulars in which he considers the mine, or part thereof, or the matter, thing or practice, to be dangerous or defective and require the same to be remedied within such time as he may specify in the notice.

Powers of Inspectors when causes of danger not expressly provided against exist or when employment of persons is dangerous.

LEG. REF.

¹ The provisions of this section were applied to all coal mines and to mines other than coal mines at which more than 20 persons are employed in Bengal, see "Calcutta Gazette," 1925, Pt. I, p. 960; provisions similarly applied to Baluchistan, see Bal Local Rules and Orders, Pt. II, p. 244.

be a question of fact. Where at the time when the petitioners were alleged to have been carrying on mining work under the

management of a manager appointed without sanction, several persons were employed loading wagons and others were employed on the surface, and steam was up". Held, that the "mine was being worked" within the meaning of sec. 15 (2). That term is not confined to actual mining operations, that is to say, such operations as relate to the actual raising of coal. 61 Cal. 445=38 C.W. N. 418=148 I.C. 739=35 Cr.L.J. 742=59 C.L.J. 122=1934 Cal. 687.

ON APPEAL FROM THE DISTRICT COURT OF

AND

¹[(1-A) Without prejudice to the generality of the provisions contained in sub-section (1), the Chief Inspector or the Inspector may, in any area to which the Central Government may by notification in the Official Gazette declare that this sub-section applies, by order in writing addressed to the owner, agent or manager of a mine,—

²[* *] prohibit the extraction or reduction of pillars in any part of the mine if, in his opinion, such operation is likely to cause the crushing of pillars or the premature collapse of any part of the workings or otherwise endanger the mine, or if, in his opinion, adequate provision against the outbreak of fire has not been made by providing for the sealing off and isolation of the part of the mine in which such operation is contemplated and for restricting the area that might be affected by a fire; ²[* *]

[* * * * *]
and the provisions of sub-sections (3), (4), (5) and (6) shall apply to an order made under this sub-section as they apply to an order made under sub-section (2).]

(2) If the Chief Inspector or an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector is of opinion that there is urgent and immediate danger to the life or safety of any person employed in any mine or part thereof, he may, by an order in writing containing a statement of the grounds of his opinion, prohibit, until the danger is removed, the employment in or about the mine or part thereof of any person whose employment is not in his opinion reasonably necessary for the purpose of removing the danger.

(3) Where an order has been made under sub-section (2) by an Inspector, the owner, agent or manager of the mine may, within ten days after the receipt of the order, appeal against the same to the Chief Inspector who may conform, modify or cancel the order.

(4) The Chief Inspector or the Inspector making a requisition under sub-section (1) or an order under sub-section (2), and the Chief Inspector making an order (other than an order of cancellation) in appeal under sub-section (3), shall forthwith report the same to the Central Government and shall inform the owner, agent or manager of the mine that such report has been so made.

(5) If the owner, agent or manager of the mine objects to a requisition made under sub-section (1) or to an order made by the Chief Inspector under sub-section (2), or sub-section (3), he may, within twenty days after the receipt of the notice containing the requisition or of the order or after the date of the decision of the appeal, as the case may be, send his objection in writing, stating the grounds thereof, to the Central Government, which shall refer the same to a Committee.*

(6) Every requisition made under sub-section (1), or order made under sub-section (2), or sub-section (3), to which objection is made under sub-section (5) shall be complied with pending the receipt at the mine of the decision of the Committee:

Provided that the Committee may, on the application of the owner, agent or manager, suspend the operation of a requisition under sub-section (1) pending its decision on the objection.

Nothing in this section shall affect the powers of a Magistrate under section 144 of the Code of Criminal Procedure, 1898.

²[20. (1)] When any accident occurs in or about a mine causing loss of life or serious bodily injury, or when an accidental explosion, ignition, outbreak of fire or irruption of water occurs in or about a mine, the owner, agent or

Notice to be given of accidents,

LEG. REF.

* Inserted by Act XI of 1936 and *see also* (1) of sec. 20 and sub-secs. (2) and (3) added by Act V of 1935.

* Omitted by Act XXIV of 1940.

manager of the mine shall give such notice of the occurrence to such authorities, and in such form, and within such time, as may be prescribed.

¹[(2) The Central Government may, by notification in the Official Gazette, direct that accidents other than those specified in sub-section (1) which cause bodily injury resulting in the enforced absence from work of the person injured for a period exceeding 48 hours shall be entered in a register the prescribed form or shall be subject to the provisions of sub-section (1).]

(3) A copy of the entries in the register referred to in sub-section (2) shall be sent by the owner, agent, or manager of the mine, within fourteen days after the 30th day of June and the 31st day of December in each year, to the Chief Inspector.]

21. (1) When any accidental explosion, ignition, outbreak of fire or irruption of water or other accident has occurred in or about any mine, the Central Government, if it is of opinion that a formal inquiry into the causes of, and circumstances attending, the accident ought to be held, may appoint a competent person to hold such inquiry, and may also appoint any person or persons possessing legal or special knowledge to act as assessor or assessors in holding the inquiry.

(2) The person appointed to hold any such inquiry shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects; and every person required by such person as aforesaid to furnish any information shall be deemed to be legally bound to do so within the meaning of section 176 of the Indian Penal Code.

(3) Any person holding an inquiry under this section may exercise such of the powers of an Inspector under this Act as he may think it necessary or expedient to exercise for the purposes of the inquiry.

(4) The person holding an inquiry under this section shall make a report to the Central Government stating the causes of the accident and its circumstances, and adding any observations which he or any of the assessors may think fit to make.

22. The Central Government may cause any report submitted by a Committee under section 11 ²[and shall cause every report submitted] by a Court of inquiry under section 21, to be published at such time and in such manner as it may think fit.

CHAPTER VI.

HOURS AND LIMITATION OF EMPLOYMENT.

Weekly day of rest.

³[**22-A.** No person shall be allowed to work in a mine on more than six days in any one week.

22-B. (1) A person employed above ground in a mine shall not be allowed to work for more than fifty-four hours in any week or for more than ten hours in any day.

(2) The periods of work of any such person shall be so arranged that, along with his intervals for rest, they shall not in any day spread over more than twelve hours, and that he shall not work for more than six hours before he has had an interval for rest of at least one hour.

(3) Persons belonging to two or more relays shall not be allowed to do work of the same kind above ground at the same moment:

Provided that for the purposes of this sub-section person shall not be deemed to belong to separate relays by reason only of the fact that they receive their intervals for rest at different times.

LEG. REF.

¹ Sub-secs. (2) and (3) of sec. 20 added by Act V of 1935.

² Substituted for the word "or" by Act V of 1935.

³ Secs. 22-A to 22-D inserted by Act V of 1935.

Hours of work below **22-C.** (1) A person employed below ground in a mine shall not be allowed to work for more than nine hours in any day.

(2) Work of the same kind shall not be carried on below ground in any mine for a period spreading over more than nine hours in any day except by a system of relays so arranged that the periods of work for each relay are not spread over more than nine hours.

(3) No person employed in a mine shall be allowed to be in any part of the mine below ground except during the periods of work shown in respect of him in the register kept under sub-section (1) of section 28.

22-D. Where a worker works in a relay whose period of work extends over midnight, the ensuing day for him shall be deemed to be the period of twenty-four hours beginning at the end of the period of work fixed for the relay, and the hours he has worked after midnight shall be counted towards the previous day.]

Prohibition of employ- ¹[**23.** No person shall be allowed to work in a mine who has already been working in any other mine within the preceding twelve hours.]
ment of certain persons.

²[**23-A.** *Repealed by Act V of 1935*].

23-B. (1) The manager of every mine shall cause to be posted outside the office of the mine a notice in the prescribed form stating the time of the commencement and of the end of work at the mine and, if it is proposed to work by a system of ³[relays], the time of the commencement and of the end of work for each ³[relay]. ³[The notice shall also state the time of the commencement and of the end of the intervals for rest fixed for persons employed above ground]. A copy of each such notice shall be sent to the Chief Inspector, if he so requires.

(2) In the case of a mine at which mining operations commence after the 14th day of April, 1930, the notice referred to in sub-section (1) shall be posted not less than seven days before the commencement of work.

(3) Where it is proposed to make any alteration in the time fixed for the commencement or for the end of work in the mine generally or for any ³[relay or in the rest intervals fixed for persons employed above ground], an amended notice in the prescribed form shall be posted outside the office of the mine not less than seven days before the change is made, and a copy of such notice shall be sent to the Chief Inspector not less than seven days before such change ³[* * *].]

³[(4) No person shall be allowed to work in a mine otherwise than in accordance with the notice required by sub-section (1).]

24. Nothing in ⁴[section 22-A, section 22-B, section 22-C, section 23, or sub-section (4) of section 23-B] shall apply to persons supervising staff who may by rules be defined to be persons holding positions of supervision or management or employed in a confidential capacity.

LEG. REF.

¹ Substituted and added by Act V of 1935.

² Secs. 23-A and 23-B added by Act XIII of 1928.

³ (i) In sec. 23-B, sub-sec. (1) for the word "shifts" the word "relays" and for the word "shift" the word "relay" have been substituted by Act V of 1935. (ii) After the word "relay" as so substituted new sentence within brackets has been in-

serted by *ibid.* (iii) In sub-sec. (3) for the word "shift" the words "relay or in the rest intervals fixed for persons employed above ground" have been substituted and all the words after the words "before such change" have been omitted by *ibid.*; (iv) after sub-sec. (3) sub-sec. (4) has been inserted by *ibid.*

⁴ Substituted by *ibid.*

25. In case of an emergency involving serious risk to the safety of the mine or of persons employed therein, the manager may, subject to the provisions of section 19, permit persons to be employed in contravention of * [section 22-A, section 22-B, section 22-C, section 23, or sub-section (4) of section 23-B] on such work as may be necessary to protect the safety of the mine or of the persons employed therein:

Provided that, where such occasion arises, a record of the fact shall immediately be made by the manager and shall be placed before the Chief Inspector or the Inspector at his next inspection of the mine.

Children.

26. No child shall be employed in a mine, or be allowed to be present in any part of a mine which is below ground.

Young persons not to be allowed underground without certificates of fitness.

¹[26-A. No person who has not completed his seventeenth year shall be allowed to be present in any part of a mine which is below ground, unless—

(a) a certificate of fitness in the prescribed form and granted to him by a qualified medical practitioner is in the custody of the manager of the mine, and

(b) he carries while at work a token giving a reference to such certificate.]

27. (1) If any question arises between the Chief Inspector or the Inspector and the manager of any mine as to whether any person is a child, ²[or has not completed his seventeenth year], the question shall, in the absence of a certificate as to the age of such person granted in the prescribed manner, be referred by the Chief Inspector or the Inspector for decision to a qualified medical practitioner.

(2) Every certificate as to the age of a person which has been granted in the prescribed manner and any certificate granted by a qualified medical practitioner on a reference under sub-section (1) shall, for the purposes of this Act, be conclusive evidence as to the age of the person to whom it relates.

³[28. (1) For every mine there shall be kept in the prescribed form and place a register of all persons employed in the mine showing, in respect of each such person,—

(a) the nature of his employment,

(b) the periods of work fixed for him,

(c) the intervals for rest, if any, to which he is entitled,

(d) the days of rest to which he is entitled, and

(e) where work is carried on by a system of relays, the relay to which he belongs.

(2) The entries in the register prescribed by sub-section (1) shall be such that workers working in accordance therewith would not be working in contravention of any of the provisions of this Chapter.

(3) No person shall be employed in a mine until the particulars required by sub-section (1) have been recorded in the register in respect of such person and no person shall be employed except during the periods of work shown in respect of him in the register.

(4) For every mine to which the Central Government may, by general or special order, declare this sub-section to be applicable, there shall be kept in the prescribed form and place a register which shall show at any moment the name of every person then working below ground in the mine.]

LEG. REF.

* Substituted by Act V of 1935.

¹ Sec. 26-A inserted by Act V of 1935.

² Inserted by *ibid.*

³ New sec. 28 substituted for old section by *ibid.*

CHAPTER VII.

REGULATIONS, RULES AND BYE-LAWS.

29. The Central Government may, by notification in the Official Gazette, make regulations consistent with this Act for all or any of the following purposes, namely:—

(a) for prescribing the qualifications to be required by a person for appointment as Chief Inspector or Inspector;

(b) for prescribing and regulating the duties and powers of the Chief Inspector and of Inspectors in regard to the inspection of mines under this Act;

(c) for prescribing the duties of owners, agents and managers of mines and of persons acting under them;

(d) for prescribing the qualifications of managers of mines and of persons acting under them;

(e) for regulating the manner of ascertaining, by examination or otherwise, the qualifications of managers of mines and persons acting under them, and the granting and renewal of certificates of competency;

(f) for fixing the fees, if any, to be paid in respect of such examinations and of the grant and renewal of such certificates;

(g) for determining the circumstances in which and the conditions subject to which it shall be lawful for more mines than one to be under a single manager, or for any mine or mines to be under a manager not having the prescribed qualifications;

(h) for providing for the making of enquiries into charges of misconduct or incompetency on the part of managers of mines and persons acting under them and for the suspension and cancellation of certificates of competency;

(i) for regulating, subject to the provisions of the Indian Explosives Act, 1884, and of any rules made thereunder, the storage and use of explosives;

(j) for prohibiting, restricting or regulating the employment in mines or in any class of mines of women either below ground or on particular kinds of labour which are attended by danger to the life, safety or health of such women;

(k) for providing for the safety of the persons employed in a mine, their means of entrance thereto and exit therefrom, the number of shafts or outlets to be furnished, and the fencing of shafts, pits, outlets, pathways and sub-sidences;

²[(kk) for prohibiting the employment in a mine either as manager or in any other specified capacity of any persons except persons paid by the owner of the mine and directly answerable to the owner or manager of the mine;]

(l) for providing for the safety of the roads and working places in mines, including the sitting and maintenance of pillars and the maintenance of sufficient barriers between mine and mine;

(m) for providing, ³[and regulating] for the ventilation of mines and the action to be taken in respect of dust and noxious gases;

(n) for providing for the care, and the regulation of the use, of all machinery and plant and of all electrical apparatus used for signalling purposes;

(o) for requiring and regulating the use of safety lamps in mines;

(p) ⁴[for providing against explosions or ignitions or irruptions of or accumulations of water in mines and against danger arising therefrom, and for prohibiting, restricting or regulating the extraction of minerals in circumstances likely to result in or to aggravate irruptions of water or ignitions in mines;]

LEG. REF.

¹ For the Indian Coal Mines Regulations, 1926, see Gazette of India, 1926, Pt. I, p. 965; and for the Indian Metalliferous Re-

gulations, 1926, see *ibid.*, p. 1004.

² Cl. (kk) inserted by Act XXIV of 1940.

³ Inserted by Act XI of 1936.

⁴ Substituted for old cl. (p) by *ibid.*

(q) for prescribing the notices of accidents and dangerous occurrences, and the notices, reports and returns of mineral output, persons employed and other matters provided for by regulations, to be furnished by owners, agents and managers of mines, and for prescribing the forms of such notices, returns and reports, the persons and authorities to whom they are to be furnished, the particulars to be contained in them, and the time within which they are to be submitted;

(r) for prescribing the plans to be kept by owners, agents and managers of mines and the manner and places in which such plans are to be kept for purposes of record;

(s) for regulating the procedure on the occurrence of accidents or accidental explosions or ignitions in or about mines;

(t) for prescribing the form of, and the particulars to be contained in, the notice to be given by the owner, agent or manager of a mine under section 14; and

(u) for prescribing the notice to be given by the owner, agent or manager of a mine before mining operations are commenced at or extended to any point within fifty yards of any railway subject to the provisions of the Indian Railways Act, 1890, or of any public work or classes of public works which the Central Government may, by general or special order, specify in this behalf.

30. The Central Government may, ¹[* * *]

Power of Central Gov-
ernment to make rules.

by notification in the Official Gazette, make rules consistent with this Act for all or any of the following purposes, namely:—

(a) for providing for the appointment of chairmen and members of Mining Boards, and for regulating the procedure of such Boards;

²[(aa) for prescribing the form of the register referred to in sub-section (2) of section 20;]

(b) for providing for the appointment of Courts of inquiry under section 21, for regulating the procedure and powers of such Courts, for the payment of travelling allowance to the members, and for the recovery of the expenses of such Courts from the manager, owner or agent of the mine concerned;

[(bb) for requiring the maintenance in mines wherein any women are ordinarily employed of suitable rooms to be reserved for the use of children under the age of six years belonging to such women, and for prescribing, either generally or with particular reference to the number of women ordinarily employed in the mine, the number and standards of such rooms, and the nature and extent of the supervision to be provided therein"] (*Inserted by Ordinance XVIII of 1945*).

(c) for prescribing the scale of latrine and urinal accommodation to be provided at mines, the provision to be made for the supply of drinking-water, the supply and maintenance of medical appliances and comforts, ³[* * *], and the training of men in ambulance work:

⁴[(ee) for prescribing the forms of notices required under section 23-B, and for requiring such notices to be posted also in specified vernaculars;]

(d) for defining the persons who shall, for the purpose of section 24, be deemed to be persons holding positions of supervision or management or employed in a confidential capacity;

(e) for prohibiting the employment in mines of persons or any class of persons who have not been certified by a qualified medical practitioner ⁵[to have

LEG. REF.

¹ The words 'subject to the control of the Governor-General in Council' omitted by A. O., 1937.

² Cl. (aa) added by Act V of 1935.

³ The words 'the formation and training of rescue brigades' omitted by Act XI of 1936.

⁴ Cl. (cc) added by Act XIII of 1928.

⁵ Substituted by Act V of 1935.

completed their fifteenth year], and for prescribing the manner and the circumstances in which such certificates may be granted and revoked;

¹ [(ee) for prescribing the form of the certificates of witness required by section 26-A and the circumstances in which such certificates may be granted and revoked;]

(f) for prescribing the form of "[registers] required by section 28;

(g) for prescribing abstracts of this Act ³[and of the regulations and rules] and the vernacular in which the abstracts and "[* * *] by-laws shall be posted as required by sections 32 and 33;

(h) for requiring the fencing of any mine or part of a mine whether the same is being worked or not, where such fencing is necessary for the protection of the public;

(i) for the protection from injury, in respect of any mine when the workings are discontinued, of property vested in His Majesty or any local authority or railway company as defined in the Indian Railways Act, 1890;

(j) for requiring notices, returns and reports in connection with any matters dealt with by rules to be furnished by owners, agents and managers of mines, and for prescribing the forms of such notices, returns and reports, the persons and authorities to whom they are to be furnished, the particulars to be contained in them, and the times within which they are to be submitted; and

(k) generally to provide for any matter not provided for by this Act or the regulations, provision for which is required in order to give effect to this Act.

Power of Central Government to require rescue stations to be established.

⁵30-A. The Central Government may, by notification in the Official Gazette, make ⁶[rules] under this section—

⁵[(a) requiring the establishment of central rescue stations for groups of specified mines or for all mines in a specified area, and prescribing how and by whom such stations shall be established;

(b) providing for the management of central rescue stations, and regulating the constitution, powers and functions of, and the conduct of business by, the authorities (which shall include representatives of the owners and managers of, and of the miners employed in, the mines or groups of mines concerned) charged with such management;

(c) prescribing the position, equipment, control, maintenance and functions of central rescue stations;

(d) providing for the levy and collection of a duty of excise (at a rate not exceeding six pies per ton) on coke and coal produced in and despatched from mines specified under clause (a) in any group or included under clause (a) in any specified area, the utilisation of the proceeds thereof for the creation of a central rescue station fund for such group or area and the administration of such funds;

(e) providing for the formation, training, composition, and duties of rescue brigades; and

(f) providing generally for the conduct of rescue work in mines.]

31. (1) The power to make regulations and rules conferred by sections 29

⁷[30 and 30-A] is subject to the condition of the regulations and rules being made after previous publication.

Prior publication of regulations and rules.

LEG. REF.

¹ Inserted by Act V of 1935.

² Substituted by *ibid.*

³ These words were inserted by sec. 2 and Sch. I of the Repealing and Amending Act, 1925 (XXXVII of 1925).

⁴ The words "the regulations, rules and"

were omitted by *ibid.*

⁵ Sec. 30-A inserted by Act XI of 1936; and for cls. (a) to (d) thereof the present cls. (a) to (f) have been substituted by Act XXIX of 1937.

⁶ Substituted for 'regulations' by *ibid.*

⁷ Substituted for 'and 30' by *ibid.*

(2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897, as that after which a draft of regulations or rules proposed to be made will be taken under consideration, shall not be less than three months from the date on which the draft of the proposed regulations or rules is published for general information.

(3) Before the draft of any regulation ¹[* *] is published under this section it shall be referred ¹[* *] to every Mining Board constituted in British India, ²[which is, in the opinion of the Central Government concerned with the subject dealt with by the regulation ¹[* *] and the regulation ¹[* *] shall not be so published until each such Board has had a reasonable opportunity of reporting as to the expediency of making the same and as to the suitability of its provisions.

³[(3-A) No rule shall be made unless the draft thereof has been referred to every Mining Board constituted ⁴[in the part of British India affected by the rule], and unless each such Board has had a reasonable opportunity of reporting as to the expediency of making the same and as to the suitability of its provisions.]

(4) Regulations and rules shall be published in the Official Gazette ⁵[* * *], and, on such publication, shall have effect as if enacted in this Act.

[(5) The provisions of sub-sections (1), (2) and (3-A) shall not apply to the first occasion on which rules referred to in clause (bb) of section 30 are made.] (*Gazette of India*—Extraordinary, 26th May, 1944, pp. 463-464, Ord. XVIII of 1945).

⁶[31-A. Notwithstanding anything contained in sub-sections (1), (2) and

Power to make regulations without previous publication.

(3) of section 31, regulations under clause (i) and clauses (k) to (s) inclusive of section 29 may be made without previous publication and without previous reference to Mining Boards, if the Central Government is satisfied that for the prevention of apprehended danger or the speedy remedy of conditions likely to cause danger it is necessary in making such regulations to dispense with the delay that would result from such publication and reference:

Provided that any regulations so made shall not remain in force for more than two years from the making thereof.]

32. (1) The owner, agent or manager of a mine may, and shall, if called upon to do so by the Chief Inspector or Inspector,

Bye-laws.

frame and submit to the Chief Inspector or Inspector a draft of such bye-laws, not being inconsistent with this Act or any regulations or rules for the time being in force, for the control and guidance of the persons acting in the management of, or employed in, the mine as such owner, agent or manager may deem necessary to prevent accidents and provide for the safety, convenience and discipline of the persons employed in the mine.

(2) If any such owner, agent or manager—

(a) fails to submit within two months a draft of bye-laws after being called upon to do so by the Chief Inspector or Inspector, or

(b) submits a draft of bye-laws which is not in the opinion of the Chief Inspector or Inspector sufficient,

the Chief Inspector or Inspector may—

(i) propose a draft of such bye-laws as appear to him to be sufficient, or

LEG. REF.

¹ In sub-sec. (3) of sec. 31 the words 'or rule', in both places where they occur, the words "in the case of a regulation", and the words and in the case of a rule to every Mining Board constituted in the province" have been omitted by Act XIII of 1928.

² Added by Act V of 1935.

³ Sec. 31, cl. (3-A) added by Act XIII of 1928.

⁴ Substituted for 'in the Province for which it is proposed to make the rule' by A.O., 1937.

⁵ The words 'and the local official Gazette respectively' omitted by *ibid.*

⁶ Sec. 31-A inserted by Act XI of 1936.

(ii) propose such amendments in any draft submitted to him by the owner, agent or manager as will, in his opinion, render it sufficient, and shall send such draft bye-laws or draft amendments to the owner, agent or manager, as the case may be, for consideration.

(3) If within a period of two months from the date on which any draft bye-laws or draft amendments are sent by the Chief Inspector or Inspector to the owner, agent or manager under the provisions of sub-section (2), the Chief Inspector or Inspector and the owner, agent or manager are unable to agree as to the terms of the bye-laws to be made under sub-section (1), the Chief Inspector or Inspector shall refer the draft bye-laws for settlement to the Mining Board or, where there is no Mining Board, to such officer or authority as the Central Government may, by general or special order, appoint in this behalf.

(4) (a) When such draft bye-laws have been agreed to by the owner, agent or manager and the Chief Inspector or Inspector, or, when they are unable to agree, have been settled by the Mining Board or such officer or authority as aforesaid, a copy of the draft bye-laws shall be sent by the Chief Inspector or Inspector to the Central Government for approval.

(b) The Central Government may make such modifications of the draft bye-laws as it thinks fit.

(c) Before the Central Government approves the draft bye-laws, whether with or without modifications, there shall be published, in such manner as the Central Government may think best adapted for informing the persons affected, notice of the proposal to make the bye-laws and of the place where copies of the draft bye-laws may be obtained, and of the time (which shall not be less than thirty days) within which any objections with reference to the draft bye-laws, made by or on behalf of persons affected, should be sent to the Central Government.

(d) Every objection shall be in writing and shall state—

(i) the specific grounds of objection, and

(ii) the omissions, additions or modifications asked for.

(e) The Central Government shall consider any objection made within the required time by or on behalf of persons appearing to it to be affected, and may approve the bye-laws either in the form in which they were published or after making such amendments thereto as it thinks fit.

(5) The bye-laws, when so approved by the Central Government, shall have effect as if enacted in this Act, and the owner, agent or manager of the mine shall cause a copy of the bye-laws, in English and in such vernacular or vernaculars as may be prescribed, to be posted up in some conspicuous place at or near the mine, where the bye-laws may be conveniently read or seen by the persons employed; and, as often as the same become defaced, obliterated or destroyed, shall cause them to be renewed with all reasonable despatch.

(6) The Central Government may, by order in writing, rescind, in whole or in part, any bye-law so made, and thereupon such bye-law shall cease to have effect accordingly.

33. There shall be kept posted up at or near every mine, in English and

Posting up of extracts
from Act, regulations, etc.

in such vernacular or vernaculars as may be prescribed, the prescribed abstracts of the Act and of the regulations and rules.

CHAPTER VIII.

PENALTIES AND PROCEDURE.

34. (1) Whoever obstructs the Chief Inspector, an Inspector or any person authorised under section 7 in the discharge

Obstruction.

of his duties under this Act, or refuses or wilfully neglects to afford the Chief Inspector, an Inspector or such person any reasonable facility for making any entry, inspection, examination or inquiry authorised by or under this Act in relation to any mine, shall be punishable

with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(2) Whoever refuses to produce on the demand of the Chief Inspector or Inspector any registers or other documents kept in pursuance of this Act, or prevents or attempts to prevent or does anything which he has reason to believe to be likely to prevent, any person from appearing before or being examined by an inspecting officer acting in pursuance of his duties under this Act, shall be punishable with fine which may extend to three hundred rupees.

Falsification of records. 35. Whoever—
etc.

(a) counterfeits, or knowingly makes a false statement in, any certificate, or any official copy of a certificate, granted under this Act, or

(b) knowingly uses as true any such counterfeit or false certificate, or

(c) makes or produces or uses any false declaration, statement or evidence knowing the same to be false, for the purpose of obtaining for himself or for any other person a certificate, or the renewal of a certificate, under this Act, or any employment in a mine, or

(d) falsifies any plan or register or record the maintenance of which is required by or under this Act, or

(e) makes, gives or delivers any plan, return, notice, record or report containing a statement, entry or detail which is not to the best of his knowledge or belief true,

shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

36. Any person who, without reasonable excuse the burden of proving which shall lie upon him, omits to make or furnish in the prescribed form or manner or at or within the prescribed time any plan, return, notice, register, record or report required by or under this Act to be made or furnished shall be punishable with fine which may extend to two hundred rupees.

Contravention of provisions regarding employment of labour. 37. Whoever, save as permitted by section 25, contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made thereunder prohibiting, restricting or regulating the employment or presence of persons in or about a mine shall be punishable with fine which may extend to five hundred rupees.

Notice of accidents. 38. ¹[(1)] Whoever, in contravention of the provisions ¹[of sub-section (1)] of section 20, fails to give notice of any accidental occurrence shall, if the occurrence results in serious bodily injury, be punishable with fine which may extend to five hundred rupees or, if the occurrence results in loss of life, be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees, or with both.

¹[(2) Whoever in contravention of a direction made by the Central Government under sub-section (2) of section 20 fails to record in the prescribed register or to give notice of any accidental occurrence shall be punishable with fine which may extend to five hundred rupees.]

Disobedience of orders. 39. Whoever contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made thereunder for the contravention of which no penalty is hereinbefore provided shall be punishable with fine which may extend to one thousand rupees, and, in the case of a continuing contravention, with a further fine which

LEG. REF.

¹ (—) Sec. 38 has been re-numbered as sub-sec. (1) and in the said section so re-numbered, after the word "provisions" the words "of sub-sec. (1)" have been inserted by Act V of 1935; (4) to the section so re-numbered sub-sec. (2) has been newly in-

serted by *ibid*.

Sec. 35.—This section prescribes punishments for not preparing a plan, and it is very unlikely that in such circumstances an incorrect plan would be submitted. 64 O. L.J. 309—A.I.R. 1936 Cal. 727.

may extend to one hundred rupees for every day on which the offender is proved to have persisted in the contravention after the date of the first conviction.

40. (1) Notwithstanding anything hereinbefore contained, whoever contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made thereunder shall be punishable, if such contravention results in loss of life, with imprisonment which may extend to one year, or with fine which may extend to two thousand rupees, or with both; or, if such contravention results in serious bodily injury, with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both; or, if such contravention otherwise causes injury or danger to workers or other persons in or about the mine, with imprisonment which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

(2) Where a person having been convicted under this section is again convicted thereunder, he shall be punishable with double the punishment provided by sub-section (1):

(3) Any Court imposing, or confirming in appeal, revision or otherwise, a sentence of fine passed under this section may, when passing judgment, order the whole or any part of the fine recovered to be paid as compensation to the person injured, or, in the case of his death, to his legal representative:

Provided that, if the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal has been presented, before the decision of the appeal

41. No prosecution shall be instituted against any owner, agent or manager for any offence under this Act except at the instance of the Chief Inspector or of the District Magistrate or of an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector.

42. No Court shall take cognizance of any offence under this Act unless complaint thereof has been made within six months of the date on which the offence is alleged to have been committed.

43. No Court inferior to that of a Presidency Magistrate or Magistrate of the first class shall try any offence under this Act which is alleged to have been committed by any owner, agent or manager of a mine or any offence which is by this Act made punishable with imprisonment.

44. (1) If the Court trying any case instituted at the instance of the Chief Inspector or of the District Magistrate or of an Inspector under this Act is of opinion that the case is one which should, in lieu of a prosecution, be referred to a Mining Board or a Committee, it may stay the criminal proceedings, and report the matter to the

Decision of question whether a mine is under this Act. mine within the meaning of this Act, the Central Government may decide the question, and a certificate signed by a Secretary to the Central Government shall be conclusive on the point.

46. (1) The Central Government may, by notification in the Official Gazette, exempt¹ ²[either absolutely or subject to any

Power to exempt from operation of Act. specified conditions] any local area or any mine or group or class of mines or any part of a mine or any class of persons from the operation of all or any specified provisions of this Act:

Provided that no local area or mine or group or class of mines shall be exempted from the provisions of section 26 unless it is also exempted from the operation of all the other provisions of this Act.

³[(2) * 47. The Central Government ⁴[* * *] may reverse or modify any order passed under this Act ⁵[* * * * *].

Power to alter or rescind orders.

Application of Act to Crown mines.

48. This Act shall apply to mines belonging to the Crown.

49. No suit, prosecution or other legal proceeding whatever shall lie against any person for anything which is in good faith done or intended to be done under this Act.

50. [Repeals.] Repealed by the Repealing Act, 1927 (XII of 1927), sec. 2 and Sch.

THE SCHEDULE.—[Enactments repealed.] Repealed by the Repealing Act, 1927 (XII of 1927), sec. 2 and Sch.

THE MOTOR VEHICLES ACT (IV OF 1939).

[Amended by Acts XL of 1939, XXVI of 1940, XX of 1942, I of 1943, VI of 1945 and Ordinance XXIII of 1942.]

N.B.—Amending Act XL of 1939 came into force on 29th Sep. 1939; but sections 2 and 3 of that Act shall be deemed to have taken effect on the 1st day of July, 1939 (see Act XL of 1939).

[16th February, 1939.

In Act to consolidate and amend the law relating to motor vehicles.

WHEREAS it is expedient to consolidate and amend the law relating to motor vehicles in British India; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called THE MOTOR VEHICLES ACT, 1939.

(2) It extends to the whole of British India.

LEG. REF.

¹ For exemption of mines and groups of mines, see Gazette of India, 1926, Pt. I, p. 1402; *ibid.*, 1927, Pt. I, p. 1090; *ibid.*, 1928, Pt. I, p. 336.

² Inserted by Act V of 1935.

³ Sub-sec. (2) of S. 46 omitted by A.O., 1937.

⁴ The words 'and every Local Government' omitted by *ibid.*

⁵ The words 'by any authority, etc.," omitted by *ibid.*

which it may be introduced. (*Statement of Objects and Reasons*).

JURISDICTION OF CIVIL COURT—REJECTION BY COLLECTOR OF APPLICATION FOR REFUND OF MOTOR TAX—INTERFERENCE.—While the Civil Court can only go into the question whether the Collector has disposed of an application for refund of motor vehicles tax under the Motor Vehicles Act, *bona fide* on the materials placed before him, the Collector's rejection of an application without applying his mind to the reasonableness or unreasonableness of the time taken in surrendering the licence is a matter which the Civil Court can go into. 57 L.W. 464=A.I.R. 1944 Mad. 675 (1)=(1944) 2 M.L.J. 102.

SEC. 1: "EXTENT".—Some provinces are not in favour of introducing compulsory insurance immediately. It is therefore proposed to allow five years as the period in

(3) It shall come into force on the 1st day of July, 1939; but ¹[section 38 and Chapter IV shall not have effect until the 1st day of April, 1940, or such earlier date as the Provincial Government may, by notification in the Official Gazette, appoint, and] Chapter VIII shall not have effect until the 1st day of July, ²[1946].

Definitions.

2. (Cf. Eng. Act, S. 121.) In this Act, unless there is anything repugnant in the subject or context,—

(1) “axle weight” means in relation to an axle of a vehicle the total weight transmitted by the several wheels attached to that axle to the surface whereon the vehicle rests;

(2) “certificate of registration” means the certificate issued by a competent authority to the effect that a motor vehicle has been duly registered in accordance with the provisions of Chapter III;

(3) (Cf. S. 61, Eng. Act, 1930.) “contract carriage” means a motor vehicle which carries a passenger or passengers for hire or reward under a contract expressed or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum and from one point to another without stopping to pick up or set down along the line of route passengers not included in the contract; and includes a motor cab notwithstanding that the passengers may pay separate fares;

Explanation.—“Contract carriage” does not include a motor vehicle, possession of which has been temporarily transferred in accordance with an express agreement of hire for use as a private vehicle and which is used in accordance with the terms of such agreement;

(4) “delivery van” means any goods vehicle the registered laden weight of which does not exceed 5,000 pounds avoirdupois;

(5) (Cf. Eng. Act, 1930, S. 121.) “driver” includes; where a separate person acts as steersman of a motor vehicle, that person as well as any other person engaged in the driving of the vehicle;

(6) “fares” includes sums payable for a season ticket or in respect of the hire of a contract carriage;

(7) “goods” includes live-stock, and any thing (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle;

(8) “goods vehicle” means any motor vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers;

(9) “heavy transport vehicle” means a transport vehicle the registered axle weight of which exceeds 10,600 pounds avoirdupois, or the registered laden weight of which exceeds 14,500 pounds avoirdupois;

(10) “invalid carriage” means a motor vehicle the unladen weight of which does not exceed five hundred weights, specially designed and constructed, and not merely adapted, for the use of a person suffering from some physical defect or disability, and used solely by or for such a person;

(11) “licence” means the document issued by a competent authority authorising the person specified therein to drive a motor vehicle or a motor vehicle of any specified class or description;

LEG. REF.

¹ Inserted by Act XL of 1939.

² Substituted for the figures “1943” by Act I of 1946.

SEC. 2: DEFINITIONS.—“The alterations made by the Select Committee in the various definitions are aimed generally at attaining greater clarity. We have inserted a new

definition, that of ‘fares,’ and have removed an unnecessary definition of ‘Regional Transport Authority’. The alteration of the definition of ‘heavy transport vehicle’ has the effect of raising the limit of weight at which a transport vehicle passes from the category of light transport vehicles to that of ‘heavy transport vehicles.’ (Select Com. Rep.).

(12) "licensing authority" means an authority empowered to grant licences, appointed by the Provincial Government by rule made under section 21;

(13) "light transport vehicle" means any public service vehicle other than a motor cab, or any goods vehicle other than a heavy transport vehicle or a delivery van;

(14) "locomotive" means a motor vehicle which is itself not constructed to carry any load (other than equipment used for the purpose of propulsion), the unladen weight of which exceeds 16,000 pounds avoirdupois; but does not include a road-roller;

(15) "motor cab" means any motor vehicle constructed, adapted or used to carry not more than six passengers excluding the driver, for hire or reward;

(16) "motor car" means any motor vehicle other than a transport vehicle, locomotive, road-roller, tractor, motor cycle or invalid carriage;

(17) "motor cycle" means a motor vehicle, other than an invalid carriage, with less than four wheels, the unladen weight of which, inclusive of any side-car attached to the vehicle, does not exceed 900 pounds avoirdupois;

(18) "motor vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or used solely upon the premises of the owner;

(19) "owner" means, where the person in possession of a motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire purchase agreement, the person in possession of the vehicle under that agreement;

(20) "permit" means the document issued by a Provincial or Regional Transport Authority authorising the use of a transport vehicle as a contract carriage, or stage carriage, or authorising the owner as a private carrier or public carrier to use such vehicle;

(21) "prescribed" means prescribed by rules made under this Act;

(22) "private carrier" means an owner of a transport vehicle other than a public carrier who uses that vehicle solely for the carriage of goods which are his property or the carriage of which is necessary for the purposes of his business not being a business of providing transport, or who uses the vehicle for any of the purposes specified in sub-section (2) of section 42;

SEC. 2, CL. (16).—*See* 25 C.W.N. 21=33 C. L.J. 19=61 I.C. 641.

CL. (18): DEFINITIONS AND DESCRIPTIVE TERMS.—USE OF THE TERM "MOTOR VEHICLES".—A motor car or vehicle is an automobile; and an automobile may be defined as a "wheeled vehicle, propelled by steam, electricity, or gasoline, and used for the transportation of persons or merchandise. The Courts, without making clear distinctions, have generally used the terms automobile, motor vehicle, motor-car, and in the earlier cases, horseless carriage, as being synonymous with each other. Except where special provision is made to the contrary, a motor cycle is considered as falling within statutes which use such terms and the same is generally true of a traction engine. Questions frequently arise as to whether statutes regulating the use of various classes of vehicles and not directly referring to automobiles are broad enough to apply to these machines, which, in many instances, were

unknown at the time of the passage of the law. The better view seems to be that an automobile is to be classed as a vehicle, and it may properly be considered as being a vehicle for hire under the terms of ordinances prohibiting the standing of such vehicle in the streets elsewhere than at public hack stands. Whether an automobile falls within the meaning of the word "carriage" depends somewhat on the nature of the statute in which it is used. (*See* 25 C.W.N. 21=61 I.C. 641). In a penal statute it may not be so included, while in a statute which should receive a liberal construction it will be so included. An automobile is a "carriage" within the broad meaning of that word, but it has been held not to be a carriage within the meaning of a law requiring municipalities to keep their highways reasonably safe and convenient for travellers, with their horses, teams, and carriages. (*See* 36 I.C. 877—a case under a taxing Act).

(23) "public carrier" means an owner of a transport vehicle who transports or undertakes to transport goods, or any class of goods, for another person at any time and in any public place for hire or reward, whether in pursuance of the terms of a contract or agreement or otherwise, and includes any person, body, association or company engaged in the business of carrying the goods of persons associated with that person, body, association or company for the purpose of having their goods transported;

(24) (*Cf.* Madras Traffic Control Act) "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;

(25) (*Cf.* English Act, 1930, S. 121) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor cab, contract carriage, and stage carriage;

(26) "registered axle weight" means in respect of any vehicle the axle weight certified and registered by the registering authority as permissible for that vehicle;

(27) "registered laden weight" means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle;

(28) "registering authority" means an authority empowered to register motor vehicles under Chapter III;

(29) "stage carriage" means a motor vehicle carrying or adapted to carry more than six persons excluding the driver which carries passengers for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;

(30) "tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion) the unladen weight of which does not exceed 16,000 pounds avoirdupois; but excludes a road-roller;

(31) (*See* Sch. IX) "traffic signs" includes all signals, warning sign posts, direction posts, or other devices for the information, guidance or direction of drivers of motor vehicles;

(32) "trailer" means any vehicle other than a side-car drawn or intended to be drawn by a motor vehicle;

(33) "transport vehicle" means a public service vehicle, a goods vehicle, a locomotive or a tractor other than a locomotive or tractor used solely for agricultural purposes;

(34) "unladen weight" means the weight of a vehicle or trailer including all equipment ordinarily used with the vehicle or trailer when working, but excluding the weight of a driver or attendant; and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative part or body;

(35) "weight" means the total weight transmitted for the time being by the wheels of a vehicle to the surface on which the vehicle rests.

SEC. 2 (24): 'PUBLIC PLACE'—TEST.—The mere fact that a place would be styled as a public place for the purposes of the Gambling Act and the Penal Code, does not necessarily mean that it is a public place as defined in sec. 2, Motor Vehicles Act. To make it a public place under the Motor Vehicles Act, it must be a road, street, way or a place over which the public have a right to pass or to which the public are granted access. On the two sides of the motor stand of the petitioners there were houses while the city wall ran along the third side. The fourth side, however, was open and looked

towards a public street. The land was privately owned and had been leased by the petitioners. Through the portion leased by them ran a deep city drain which could only be crossed by means of a bridge and it was over the bridge that the lorries of the petitioners were parked. Thus to all intents and purposes the petitioners were keeping their lorries in an enclosed place except that apparently there was no gate at the bridge. *Held*, that the place was not a public place within the meaning of sec. 2, Motor Vehicles Act. A.I.R. 1938 Lah. 817.

CHAPTER II.

LICENSING OF DRIVERS OF MOTOR VEHICLES.

3. (Cf. English Act, S. 4.) (1) No person shall drive a motor vehicle in any public place unless he holds an effective licence

Necessity for driver to be licensed. Issued to himself authorising him to drive the vehicle; and no person shall so drive a motor vehicle as a paid

employee or shall so drive a public service vehicle unless his licence specifically entitles him so to do.

(2) A Provincial Government may prescribe the conditions subject to which sub-section (1) shall not apply to a person receiving instruction in driving a motor vehicle.

[(3) Nothing contained in sub-section (1) shall for a period of twelve months after the commencement of this Act invalidate a licence to drive a motor vehicle issued by a competent authority under the provisions of the Indian Motor Vehicles Act, 1914.—This sub-section is omitted by Act XX of 1942.]

Age limit in connection with driving of motor vehicles. 4. (Cf. English Act, S. 9.) (1) No person under the age of eighteen years shall drive a motor vehicle in any public place.

(2) Subject to the provisions of section 14, no person under the age of twenty years shall drive a transport vehicle in any public place.

[(3) Nothing contained in sub-section (1) or sub-section (2) shall prevent any person who, before the commencement of this Act, possessed a licence to drive a motor vehicle from obtaining a licence to drive a motor vehicle of the same class.—This sub-section is omitted by Act XX of 1942.]

Responsibility of owners of motor vehicles for contraventions of sections 3 and 4.

5. No owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle.

SEC. 3.—“This section makes a distinction between professional and private drivers. Some provinces already have the distinction and others have an implied distinction in that drivers who intend to work as chauffeurs have photographs on their licences.” *Statement of Objects and Reasons*. 1

SELECT COMMITTEE REPORT.—“The amendment in sub-cl. (1) is merely a drafting amendment, and the revision of sub-cl. (2) merely clarifies the intention. The added sub-cl. (3) makes explicit provision for the continuance for one year of licences issued under the superseded Act of 1914. It is then intended that all such licences shall be replaced by licences issued under the new Act, in the manner and in the form provided by the Act.”

Where a person whose licence for driving a car has expired, does not apply for a renewal of his licence until some days afterwards, he must be held to be guilty of the offence of contravening sec. 3 (1), if he drives the car after the expiry and before the renewal of his licence. The subsequent application for and grant of the licence cannot have the effect of cancelling the offence committed by him before he obtained a renewal. 54 L.W. 730=1942 Mad. 196=(1941) 2 M.L.J. 1040.

R. 24 (b) of the Burma Motor Vehicles Rules does not treat the conductor of a bus as a person in charge of it though in practice he attends to the passengers. In the case of overloading or carrying passengers

on the footboard, the person to be prosecuted, would seem to be the owner or person in charge of the vehicle, and not the conductor. 1941 Rang.L.R. 587. There is no provision in the Motor Vehicles Rules or in the Act which authorises a head-constable to demand the name and address of a person who has committed an offence under R. 7 (1). 197 I.C. 136=A.I.R. 1941 Lah. 422.

SEC. 4.—“Although most provinces agree to the 21-year minimum age limit for drivers of transport vehicles and have such provision in their existing rules, one or two others see no necessity for this restriction. Sub-cl. (3) will therefore enable them to allow drivers under 21 to drive transport vehicles, particularly delivery vans, within the province only.” *(Statement of Objects and Reasons)*.

REPORT OF SELECT COMMITTEE.—“We have reduced the minimum age qualifying a person to drive a locomotive tractor or transport vehicle from 21 years to 20 years. We have eliminated the provision allowing Provincial Governments to modify the requirements of sub-cl. (2), and we have provided that any person who possessed a licence under the pre-existing law should not by reason of the change in the law be deprived of his licence.”

SEC. 5.—This section deals with the responsibility of owners of motor vehicles for contravention of the rules as to the necessity of driving licence (sec. 3) and age limit for

driver (sec. 4). The Select Committee "have eliminated the provision that the owner of a vehicle may be presumed to have consented to the illegal use of his car." (*Select Committee Report*.)

RESPONSIBILITY OF OWNER FOR DRIVER'S ACTS.—The question often arises as to the responsibility of the owner of an automobile for injuries occasioned by the machine while in the hands of his servants. Cases of this character must be decided by applying to the particular facts in each case the established rules as to the responsibility of a master for the acts of his servant. The general test of the master's liability is whether there was authority expressed or implied for doing the act in question. If it is done in the course of, and within the scope of, his employment, the master will be liable for the act, but a master is not liable for every wrong which the servant may commit during the continuance of the employment, and liability can occur only when that which is done is within the real or apparent scope of the master's business. The driver of an automobile, employed by the owner, is the servant and agent of the latter, and his acts in operating an automobile within the lines of his employment are the acts of a servant for which his employer is responsible. Whether a driver, at the time of an accident, was acting within the scope of his employment generally involves an inquiry into the contract of employment and the relation of his acts at the time of accident to the service he actually performed pursuant to his employment. The owner of an automobile is not liable to one who is injured, by the negligence of his chauffeur while operating the machine without his knowledge or permission, and for a purpose other than that for which he was employed, as where the driver is on an errand personal to himself, or is making a travel for his own purposes; and if a chauffeur takes out his master's automobile in violation of instructions that it must not be taken out without the express orders of himself or his wife, the owner may be relieved from liability in the event of the occurrence of an accident. It is usually held that a chauffeur may act on directions to take out the machine, given by a member of his employer's immediate family and household whose authority to give him orders would naturally be presumed. A statute regulating the speed and operation of motor vehicles may, however, expressly make the owner liable for any violation of the Act. Where a motor bus owner allowed his driver to drive his omnibus without a licence and, when charged, pleaded that the expiry of the licence was without his knowledge, *held*, that he was guilty. A man cannot entrust his car to another person and plead that he presumed that he was licensed. He must assure himself that he is licensed. 105 I.C. 674 (1)=1927 M. 1080=53 M.L.J. 757 (1)=51 M. 187. The word "allow" does not mean "does not prevent". The word "ordinary" involves permission,

express or implied from the circumstances. Where the owner of a motor car was charged for having "allowed" his car to be taken by his driver into British India without a licence, *held*, that, in the absence of evidence that the car had ever been used in that way before or that the owner knew it would be used in that way on the occasion in question, the owner was not liable. 34 Bom.L.R. 897=139 I.C. 270=1932 B. 474. Where particular intent or state of mind is not of the essence of an offence, a master can be made criminally liable for his servant's acts if an act is expressly prohibited, but not otherwise; and he cannot be so made liable if the act provides for liability for permitting and causing a certain thing unless it can be shown that the act was done with the master's knowledge and assent, express or implied. Where a motor bus is driven by a person who has no licence, without the knowledge of the owner, the owner cannot be convicted. Nor can he be convicted on the ground that his licensed driver had given the unlicensed driver permission to drive. (1924 C. 985, Rel. on; 38 C. 415 and 45 C. 430, Dist.) 110 I.C. 326=47 C.L.J. 460=29 Cr.L.J. 694=1928 C. 410. On this subject, *see also* 7 Pat.L.T. 542=1926 P. 446. (As to owner's liability in case of contravention of rules, *see* 45 C. 430=42 I.C. 601=26 C.L.J. 37. As to the liability of owner who was not present and who had prohibited driving at excessive speed, *see* 51 C. 948=82 I.C. 137=1924 C. 985).

RESPONSIBILITY OF OWNER FOR CHILD'S ACTS.—In several cases the courts have been called upon to decide the question whether children of the owner of an automobile are servants within the meaning of the rules making a master responsible for the acts of his servants. It has been decided that the young son of the owner may be found to be the agent of his father in operating the latter's automobile, where it was purchased mainly at his solicitation, with the understanding that he was to learn to run it for the benefit of the family; and when the son of the owner of an automobile with his father's permission uses the machine while a member of his father's family, to take on a pleasure ride guests or other members of the family, the son is considered to be acting as the servant of the owner, and the father may be held liable in damages for an accident occasioned by the son's negligence. If the son disobeys his father's express commands, his actions in using his father's automobile may be beyond the scope of his authority, and accordingly the owner may not be held responsible for injuries occasioned by the son's negligent management of the car. It has been decided that in the case of a daughter, accustomed to drive her father's automobile whenever she so desires, asking permission when the father is at home, but sometimes taking it without permission when he is away from home, she can-

not be considered as being in her father's employ at a time when she is driving for her own pleasure and negligently injures a person in the highway.

FATHER PLACING MOTOR-CYCLE IN COMPLETE CONTROL OF MINOR SON IN VIOLATION OF STATUTE.—In the case of *Hopkins v. Droppers*, (195 N.W. 738), an American Supreme Court held a father liable who had placed a motor-cycle under complete control of 15 year old son and permitted him to drive the motor-cycle on a public highway in violation of the rules. In the course of the opinion the Court said: "But it is claimed by the defendant's counsel that the statute imposes no liability upon any one except the operator of the machine and that the penalties for violation are imposed on him alone and that the minor alone is responsible for breaches of the criminal law. It is probably true that under the terms of the statute the adult defendant would not be liable in a criminal action for any of the acts stated in the complaint. But this is beside the point. The real question is whether under such a state of facts he has incurred any 'civil liability' * * * The Court concludes: 'There remains to be considered the question what is the rule of liability when a father places under the complete control of his son a car or motor-cycle knowing its use by him is forbidden by statute as a criminal act. This is a new problem and the precedents are few in number. In *Wilson v. Brauer*, 97 N.J. Law 482, it appeared that the owner of an automobile authorized a beginner, who had no driver's permit and knew nothing of the operation of the car, to run it upon the streets of a city for the purpose of learning. By reason of his inexperience, injury was caused to a pedestrian. It was held that the owner was liable and that such liability rested, not upon his ownership, but upon the combined negligence of the owner and that of the driver. These cases do not stand on any theory that motor machines are dangerous instrumentalities, or of agency, but are based on the ground that if a father knows that his minor child under his control is committing a tort or violating a statute, and makes no effort to restrain him, he will be regarded as authorizing or consenting to the act and held civilly liable for the consequences if that act is the proximate cause of injury to others. These cases apply the principle that a father might be held responsible for injury caused by the negligent acts of his sons committed with his consent. (50 Am. Rep. 381). From the averments in this case it appears, among other things, that the defendant father brought and placed in the complete control of his son, whom he knew or ought to have known was an inexperienced driver, for his free use in a crowded city, a machine which, if carelessly managed might cause serious injury to others, and that by so doing he knowingly countenanced and encouraged his minor son to violate a statute of the state; and that

these acts and the negligence of the son were the proximate cause of the injury complained of. The general object of these statutes are clear. These statutes amount to a legislative declaration that a minor is unfit to drive motor machines on the public street's unless accompanied by an adult, and a violation of the statute is negligence. When the father authorized this violation of law, he failed in that duty which every good citizen owes to the public. He failed to observe for the safety of other persons that degree of care which the circumstances justly demanded. Although the motor-cycle was not in itself a dangerous instrumentality, it was a machine of such a nature that when negligently driven it might menace the safety of other persons. This is a well-known fact and one which in the exercise of ordinary care the father could reasonably anticipate. If it is argued the parent in this case could hardly foresee or anticipate the injury complained of. This argument is met by repeated decisions of Courts. 'It is not required that the 'specific' injury or 'such' an injury as is complained of was or ought to have been specifically anticipated as the natural and probable consequences of the wrongful act. It is sufficient if the facts and circumstances are such that the consequences attributable to the wrongful conduct charged were within the field of reasonable anticipation; that such consequences might be the natural and probable results thereof, though they may not have been specifically contemplated or anticipated by the person so causing them'. (*Chicago Legal News*.)

AUTOMOBILES.—THE FAMILY PURPOSE DOCTRINE.—The following extracts from a recent American Law Journal may also be read in this connection:—"Courts have in all recent cases uniformly upheld the family purpose doctrine either by actual decision or by dictum. The doctrine places liability on the owner of an automobile, which is purchased and maintained for the pleasure of his, or her family for negligent injuries inflicted by the vehicle while it is being used by some member with his consent, express or implied, on the theory that it is the owner's business to furnish pleasure for the family. The Court has based its decisions mainly on the principal and agent, and master and servant theory. It is preferable rather to support the doctrine on the relationship of master and servant, rather than on that of principal and agent, since a principal is liable only for torts (expressly or impliedly) authorized, while a master is liable for all torts committed by the servant, while engaged within the scope of the master's employment. (Salmond on Torts, p. 93.) However, the status of master and servant does not exist, unless one of the family is employed in the owner's business. It cannot be seriously contended that it is the father's business or employment to furnish his family with an automobile for their convenience and pleasure, because it is not

6. (1) No person shall, while he holds any licence for the time being

looked upon as a necessity. It can hardly be said that it is the father's business to furnish his son such pleasure as driving at a reckless speed over a dangerous road, or while intoxicated. A case contrary to the doctrine explodes this idea with this sly bit of sarcastic humor, "if son took his best girl riding, *prima facie* it was father's little outing by proxy".

The conclusion, therefore, must be reached that the owner is simply making a gift of the use of the automobile to one of his family, and that a bailor and bailee relation only exists. It is a well-known principle of law that the negligence of the bailee cannot be attributed to the bailor. Certainly this was the law before the automobile became a widely used source of locomotion. The automobile has not been regarded as an inherently dangerous instrument, so as to cause the owner to be liable as an insurer, since it plays such an integral part in our daily economic life. The automobile, being a lawful means of travel, is not a nuisance *per se*. There is the ground of public policy. This ground, it is admitted, should be availed of only where no other logical theory presents itself on which to rest liability, and weighty reasons exist for its utilization. The frequent accidents, which occur on account of the negligent operation of a parent's car by a member of his family, who is likely to be financially irresponsible, has been given a considerable amount of thought in coming to a decision on this point. Practically, an uncollectible judgment is an empty form, and constitutes a valueless remedy for the evil. While an automobile is not dangerous *per se*, its potential danger in the hands of a careless driver, especially a member of the family who has permission to use the car at his own pleasure, should have an important bearing on the result. Likewise the family purpose doctrine puts the financial responsibility of the owner behind the car, and relieves the injured party from the difficult task of meeting the owner's claim that at the time of the accident the car was not being used for his pleasure or business. It also protects the injured person as fully as if the owner were driving the car himself, thus achieving justice in his case. For these reasons it seems that the advantages to be gained completely outweigh any disadvantages that might accrue from its adoption. And public policy has been used in other branches of the law".

RESPONSIBILITY FOR ACTS OF DRIVER OF LOANED AUTOMOBILE.—Although the general rule is well established that a master may lend a servant, with his consent, to another person for services in the business of the latter, and that while he is engaged in the business of the borrower and subject to his directions and control, he is considered as being a servant of the new master, who accordingly becomes liable for his negligence, nevertheless the courts have refused to apply this rule to cases in which an auto-

mobile and driver have been temporarily loaned by the owner and employer to another. This is due to the fact that the operation of an automobile can be trusted safely only to an expert, and it is of importance that the control and management of the machine should not be abandoned to the hirer. Accordingly it has been decided that when the owner of an automobile lends it, with a licensed driver in charge, under an agreement for a specified amount for the use of the car with the driver for a definite period, although the chauffeur is to be under the general directions of the hirer as to route and kindred matters, the owner is liable for an injury to a third person caused by the negligence of the chauffeur while operating the car for the borrower. In like manner, a person who has hired an automobile as a delivery wagon, together with a driver, is not responsible for injuries occasioned to a third person from a defect in the machine, especially when the hirer of the car had no right to make repairs. When an automobile is loaned without a chauffeur the foregoing rules are not applied, and the owner ordinarily is not responsible for the negligence of the chauffeur of the borrower during the time it is loaned, but the person to whom the machine has been loaned assumes responsibility for accidents occurring through its negligent use while it is in his possession and the owner is not liable. (*Ame. Bul. Case Law.*)

AUTOMOBILES AS INHERENTLY DANGEROUS MACHINES—LIMITATION ON THE OBLIGATIONS OF THE OWNER.—An automobile is not inherently a dangerous machine, and the rules requiring extraordinary care of dangerous instrumentalities do not apply to such a means of conveyance. Therefore the owner is not responsible for injuries which may be sustained by strangers from its careless and wrongful use while in the possession of another who is using it without his consent. The owner of an automobile may keep it at a public garage, where it is possible for his chauffeur or others to obtain it without his authority, and in the event of their doing so he is not accountable to a person who may be run over by it in consequence of the negligence of the driver, for it is not enough to show that the accident would not have occurred without the facilities afforded by the owner of the motor vehicle, or that the owner made it possible for another person to take out the machine without permission and operate it at pleasure. A servant has no implied authority to engage a stranger to do work on behalf of his master so as to render the master liable for the stranger's acts or defaults except in a case of necessity. Where a driver who was in charge of a bus allowed a third person who did not have a licence to drive the bus without the knowledge of the owner, the owner could not be convicted and his licence could not be cancelled. 47 C.L.J. 460=1928 C. 410.

Restrictions on the holding of licences.

in force, hold any other licence except a licence issued in accordance with the provisions of section 14, or a document authorising, in accordance with the rules made under section 92, the person specified therein to drive a motor vehicle.

(2) No holder of a licence shall permit it to be used by any other person.

(3) Nothing in this section shall prevent a licensing authority having the jurisdiction referred to in sub-section (1) of section 7 from adding to the classes of vehicle which the licence authorises the holder to drive.

7. (1) Any person who is not disqualified under section 4 for driving a motor vehicle and who is not for the time being disqualified for holding or obtaining a licence may

Grant of licence. apply to the licensing authority having jurisdiction in the area in which he ordinarily resides or carries on business or, if the application is for a licence to drive as a paid employee, in which the employer resides or carries on business, for the issue to him of a licence.

(2) Every application under sub-section (1) shall be in Form A as set forth in the First Schedule, shall be signed by, or bear the thumb impression of, the applicant in two places, and shall contain the information required by the form.

(3) Where the application is for a licence to drive as a paid employee or to drive a transport vehicle, or where in any other case the licensing authority for reasons to be stated in writing so requires, the application shall be accompanied by a medical certificate in Form C, as set forth in the First Schedule, signed by a registered medical practitioner.

(4) Every application for a licence to drive as a paid employee and every application for a licence to drive a transport vehicle shall be accompanied by three clear copies of a recent photograph of the applicant.

(5) If, from the application or from the medical certificate referred to in sub-section (3), it appears that the applicant is suffering from any disease or disability specified in the Second Schedule or any other disease or disability which is likely to cause the driving by him of a motor vehicle of the class which

SEC. 6: SELECT COMMITTEE REPORT.—

"The change in sub-clause (1) is consequential on the omission of original sub-clause (3) of clause 4. We have added to sub-clause (2) a provision allowing a Court to presume that a licence used by a person other than the holder of the licence was so used with the consent of the holder, because we think that without this provision this very prevalent improper practice cannot be successfully checked. The new sub-clause (3) explicitly saves the power to add further classes of vehicle to those specified in an existing licence."

SEC. 7, CL. (1): SELECT COMMITTEE REPORT.—"The insertion made is to facilitate the obtaining of a licence by a person employed in a place far from his ordinary residence. It seems appropriate that he should be able to apply to the licensing authority of the locality in which his employment lies."

CL. (2).—We have omitted the word "left." (Select Committee Report.)

CL. (3).—The consensus of opinion of Provincial Governments is that medical certificates should be obligatory for all drivers other than owner drivers, and even from the latter the licensing authority should be empowered to demand a medical

certificate if he is not satisfied as to the applicant's general appearance of fitness. (Statement of Objects and Reasons.) "We think a licensing authority which exacts a medical certificate should state its reasons for the demand." (Select Committee Report.)

CL. (4).—The consensus of opinion of Provincial Governments is that photographs should be submitted by these two classes of applicants. (Statement of Objects and Reasons.) "By substituting 'transport vehicle' for 'public service vehicle' we have extended the scope of the provisions of this sub-clause to vehicles used for the carriage of goods. The other change made is self-explanatory." (Select Committee Report.)

CL. (5).—"The diseases and disabilities which disqualify a person for obtaining a licence are set forth in the Second Schedule. We have accordingly substituted a reference to this Schedule for the reference to Form C. We have also provided that a person confronted with the danger of being held disqualified on the grounds mentioned in that Schedule should have a right to appeal to a Medical Board before he is actually refused a licence." (Select Committee Report.)

he would be authorised by the licence applied for to drive to be a source of danger to the public or to the passengers, the licensing authority shall refuse to issue the licence:

Provided that—

(a) a licence limited to driving an invalid carriage may be issued to the applicant, if the licensing authority is satisfied that he is fit to drive such a carriage,

(b) the applicant may, except where he suffers from a disease or disability specified in the Second Schedule, claim to be subjected to a test of his fitness or ability to drive a motor vehicle of a particular construction or design, and, if he passes such test to the satisfaction of the licensing authority and is not otherwise disqualified, the licensing authority shall grant him a licence to drive such motor vehicle as the licensing authority may specify in the licence.

(6) No licence shall be issued to any applicant unless he passes to the satisfaction of the licensing authority the test of competence to drive specified in the Third Schedule, [or

(b) where the application is made within twelve months from the commencement of this Act, he satisfies the licensing authority that he was at the commencement of this Act the holder of a current licence granted under the provisions of the Indian Motor Vehicles Act, 1914, entitling him to drive a vehicle of the class or description which he would be entitled to drive under the licence applied for:] (*Portions within brackets omitted by Act XX of 1942.*)

Provided that, where the application is for a licence to drive a motor cycle or a motor car, the licensing authority shall exempt the applicant from Part I of the test specified in the Third Schedule if the licensing authority is satisfied that the applicant has previously held a licence to drive and has had not less than twelve months' recent experience of driving a motor cycle or a motor car, as the case may be:

Provided further that where the application is for a licence to drive a motor vehicle (not being a transport vehicle) otherwise than as a paid employee, the licensing authority may exempt the applicant from ¹[* *] the test specified in the Third Schedule if the applicant possesses a driving certificate issued by an automobile association recognised in this behalf by the Provincial Government.

(7) The test of competence to drive shall be carried out in a vehicle of the type to which the application refers, and, for the purposes of Part I of the test,—

(a) a person who passes the test in driving a motor car or a motor cab or a delivery van shall be deemed to have passed the test for all of these vehicles;

(b) a person who passes the test in driving a light transport vehicle shall be deemed also to have passed the test in driving the vehicles referred to in clause (a); and

LEG. REF.

¹ Omitted by Act XX of 1942.

CL. (6).—“Since the intention is that licences should be valid throughout British India, all applicants for new licences should pass the test specified in the Third Schedule in driving the class of vehicle specified in the application. An exception is made of existing licences under the Indian Motor Vehicles Act, 1914, as it would be impracticable to insist on their passing the driving test. The proviso will meet the case of applicants particularly from overseas who have previously held licences granted in their own countries. (*Statement of Objects and Reasons.*) “The change made in cl. (b) is for the purpose of avoiding hardship in cases

where a licence issued under the 1914 Act might have expired for lack of renewal. It would be unreasonable that an applicant in such a case should have to undergo a test. We have slightly amplified the condition to be satisfied by an applicant for a motor car licence before he can be exempted from the test: and we have made a provision similar to that contained in the Madras Motor Vehicle Rules for the acceptance of certificates given by recognised automobile associations.” (*Select Committee Report.*)

CL. (7).—“The change made in sub-clause (a) ensures that the test for driving a heavy transport vehicle will cover locomotives and tractors”. (*Select Committee Report.*)

(c) a person who passes the test in driving a heavy transport vehicle shall be deemed also to have passed the test in driving any motor vehicle other than a motor cycle.

(8) When an application has been duly made to the appropriate licensing authority and the applicant has satisfied such authority of his physical fitness and of his competence to drive and has paid to the authority a fee of five rupees, the licensing authority shall grant the applicant a licence unless the applicant is disqualified under section 4 for driving a motor vehicle or is for the time being disqualified for holding or obtaining a licence:

Provided that '[* * *] a licensing authority may issue a licence to drive a motor cycle or a motor car notwithstanding that it is not the appropriate licensing authority, if the licensing authority is satisfied that there is good reason for the applicant's inability to apply to the appropriate licensing authority.

8. (1) Every licence, except a licence issued under section 14, shall be in Form D as set forth in the First Schedule and shall have affixed thereto one of the signatures or thumb impressions given on the form of application for the licence and, in the case of a licence to drive as a paid employee or to drive a transport vehicle, one of the photographs referred to in sub-section (4) of section 7.

(2) A licence shall specify whether the holder is entitled to drive as a paid employee and whether he is entitled to drive a public service vehicle and shall further be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:—

- (a) motor cycle,
- (b) motor car,
- (c) motor cab,
- (d) delivery van,
- (e) light transport vehicle,
- (f) heavy transport vehicle,
- (g) locomotive,
- (h) tractor,
- (i) road-roller,
- (j) invalid carriage, or
- (k) motor vehicle of a specified description.

9. (1) Subject to any rules made by a Provincial Government under sub-section (3), a licence issued under the foregoing sections shall be effective throughout British India.

LEG. REF.

1 Omitted by Act XX of 1942.

CL. (8).—"We have omitted the reference to residence in the last two lines of the clause preceding the proviso. The change made in clause 7 (1) would necessitate an alteration in any case, but the words are unnecessary since an application cannot be duly made except to the licensing authority specified in clause 7 (1). The other changes are consequential on the omission: the appropriate authority being the authority specified in clause 7 (1)". (*Report of Select Committee*.)

SEC. 8, CL. (1).—"The words omitted in the first line are superfluous in view of the definition of "licence". The second change is consequential on the change made in clause 7 (4)". (*Select Committee Report*.)

CL. (2).—"The necessity for these various classes of licence is apparent. (j)

covers the rare case of a man with some physical disability, e.g., only one leg, who may be permitted to drive a very light car or one specially adapted for him. (*Statement of Objects and Reasons*.) "We have included road-rollers as a separate class instead of leaving them to be covered by the expression "motor vehicle of a specified description". (*Select Committee Report*.)

SEC. 9, CL. (1).—"There are varying opinions as to how far licences should have all-India validity. One or two provinces are in favour of extending all-India validity to all licences including those to drive public service vehicles. On the other hand, one province would not extend all-India validity to a licence to drive a goods vehicle. One or two would like power to impose special restrictions in special areas. The majority however feel that drivers of public service vehicles should be under stricter supervision in view of their responsibility for the safety of the public. It is therefore pro-

(2) Subject, in the case of international driving permits issued in pursuance of the International Convention relative to motor traffic concluded at Paris on the 24th day of April, 1926, or of any Convention modifying the same, to any rules made by the Central Government under section 92 and subject in any other case to the provisions of sub-section (4), a licence to drive a motor vehicle issued by a competent authority in any Indian State or in the French or Portuguese Settlements bounded by India shall, if the holder is ordinarily resident in the State or Settlement in which the licence was issued, be valid throughout British India as if it were a licence issued under this Act:

Provided that such holder is not disqualified under any of the provisions of this Act for holding or obtaining a licence in British India.

(3) A Provincial Government may, by rules made under section 21,—

(a) provide that a specification entitling the holder of a licence to drive a public service vehicle shall be made in the licence only by or under the authority of the Regional Transport Authority constituted under Chapter IV,

(b) regulate the submission of applications for such licences to the said authority, or

(c) require as a condition of its validity in a province that a licence entitling the holder to drive a public service vehicle shall be counter-signed by a prescribed authority in the province.

(4) If the Central Government is satisfied that licences issued in British India under this Act are not effective in any Indian State or French or Portuguese Settlement bounded by India or are effective subject to unreasonable conditions or that like conditions and requirements to those imposed by this Act are not imposed in a reasonable degree upon the issue of licences in any State or Settlement as aforesaid, the Central Government shall, by notification in the official Gazette, declare that licences generally or any particular class of licence issued in any such State or Settlement shall not be valid in British India.

10. A licence issued under the foregoing sections shall, subject to the provisions contained in this Act as to the cancellation of

Currency of licences.

licences and the disqualification of holders of licences for holding or obtaining licences, be effective without renewal for a period of twelve months only from the date of issue or last renewal.

posed that licences to drive public service vehicles should by provincial rules only be valid in the province when endorsed to that effect, and that, in view of the stringency of the specified test for drivers, all-India validity should be extended to all other forms of licences". (*Statement of Objects and Reasons.*)

CL. (2).—The position in respect of the validity of licences issued in States is chaotic. Most provinces have rules extending validity to licences issued in States specified in a schedule to the rules but these have not been uniformly amended and frequently differ in consequence. It is proposed therefore that licences issued by States to *bona fide* residents should generally be valid. (*Statement of Objects and Reasons.*)

CL. (3).—The general opinion is that while the licensing authority should judge as to a person's competence and physical fitness to drive, the transport authority in the discharge of its special responsibility for the control of public service vehicles should have the final say as to the persons by whom such vehicles should be driven. There is however some difference of opinion

in this matter, and it is therefore left to the rule-making powers of Provincial Governments. (*Statement of Objects and Reasons.*)

SELECT COMMITTEE REPORT.—"We have recast this clause in order to secure that there shall be reciprocity in connection with the recognition in British India of licences issued outside it. For this purpose we have provided that the privilege of having its licences recognised as valid in British India may be withdrawn from any State or Territory if it is found that the recognition is not mutual, or that the issue of licences in that State or Territory is not adequately controlled. In consequence of these changes the references in sub-clauses (2) and (3) to controlling rules to be made by the Provincial Government, and to prescribed conditions have been removed. The other small changes of wording and arrangement made in sub-clause (3) are drafting changes only".

SEC. 10: SELECT COMMITTEE REPORT.—"The added words make it clear that a renewal of a licence operates only for twelve months."

11. (1) Any licensing authority may on application made to it renew a licence issued under the provisions of this Act.

(2) An application for the renewal of a licence shall be made in Form B as set forth in the First Schedule and shall contain the declaration required by that form: provided that where the applicant does not or is unable to subscribe to the said declaration the provisions of sub-section (5) of section 7 shall apply.

(3) The fee payable for the renewal of a licence shall be three rupees, if the application for renewal is made previous to, or not more than fifteen days subsequent to, the date on which the licence is due to expire and shall be five rupees in any other case, unless the licensing authority is satisfied that the holder was prevented by good cause from applying for the renewal of the licence within fifteen days after its expiry.

(4) When the authority renewing the licence is not the authority which issued the licence, it shall intimate the fact of renewal to the authority which issued the licence.

12. Notwithstanding anything contained in the foregoing sections, a licensing authority may at any time revoke a licence issued by it, or may require, as a condition of continuing to hold such licence, the holder thereof to furnish a fresh medical certificate in Form C as set forth in the

Revocation of licence on grounds of disease or disability.

First Schedule signed as required by sub-section (3) of section 7, if the licensing authority has reasonable grounds to believe that the holder of the licence is, by virtue of any disease or disability, unfit to drive a motor vehicle.

13. (1) Where the licensing authority refuses to issue or revokes or refuses to renew any licence, it shall do so by an order communicated to the applicant or the holder, as the case may be, giving the reasons in writing for such refusal or revocation.

Orders refusing or revoking licences and appeals therefrom.

(2) Any person aggrieved by the refusal of a licensing authority to grant or renew a licence or by the revocation of a licence may, within thirty days of the service on him of the order of such refusal or revocation, appeal to the prescribed authority, who shall decide the appeal after giving the licensing authority an opportunity of being heard, and the decision of the appellate authority shall be binding on the licensing authority.

SEC. 11.—“A uniform renewal fee is necessary. Provision is made for the renewal at ordinary rates of an expired licence by a person who, for example, has been ill for a sustained period or out of India on long leave and so genuinely unable to renew his licence in time”. (*Statement of Objects and Reasons*.)

CL. (1): REPORT OF SELECT COMMITTEE.—“The added words are intended to secure that licences under the superseded law will not be renewed, but will be replaced by licences issued under the new Act”.

CL. (3).—We have allowed a more generous period of grace after the expiry of a licence. (*Select Committee Report*.)

Sec. 11 (3) has nothing whatever to do with the effectiveness of the licence. It merely enables a licensee to obtain his licence at a lower rate, if he applies within fifteen days of the expiration of his old licence. Accused, a motor driver, had a driving licence which expired on 2nd February, 1941. On 17th February, 1941, his licence was examined and was found to have expired. On the same day, however, he got a renewal of his licence with effect from

2nd February, 1941. On 13th June, 1941, a complaint was filed against him under sec. 11 (3) read with sec. 112 of the Act and convicted. *Held*, that, though the accused could not claim renewal except for one year from the date of application, the licensing authority having issued him a renewal as from 2nd February, 1941, there was an effective licence on the date of the alleged offence and hence he was not guilty. 201 I.C. 770=15 R.B. 121=43 Cr.L.J. 778=44 Bom.L.R. 449=A.I.R. 1942 Bom. 216.

SEC. 12.—The change made by the Select Committee is merely a drafting improvement. (*Select Committee Report*.)

SEC. 13.—Sub-clause (2) provides the necessary check upon irregular or arbitrary use of power by licensing authorities. (*Statement of Objects and Reasons*.)

SELECT COMMITTEE REPORT.—“We have inserted a period of limitation for the making of an appeal. We have also removed the reference to District Magistrates and Presidency Magistrates as appellate authorities, and have provided that the appellate authority should be determined by the Provincial Government”.

(3) The order of a licensing authority shall, unless the appellate authority, conditionally or unconditionally, directs otherwise, be in force pending the disposal of an appeal under sub-section (2).

14. (1) The authority specified in Part A of the Fourth Schedule may grant licences, valid throughout British India, to persons who have completed their eighteenth year to drive motor vehicles which are the property ¹[or for the time being under the exclusive control] of the Central Government.

Licences to drive motor vehicles, the property of the Central Government.

(2) A licence issued under this section shall specify the class or classes of vehicle which the holder is entitled to drive and the period for which he is so entitled.

(3) A licence issued under this section shall not entitle the holder to drive any motor vehicle except a motor vehicle which is the property ¹[or for the time being under the exclusive control] of the Central Government.

(4) The authority issuing any licence under this section shall at the request of any Provincial Government furnish such information respecting any person to whom a licence is issued as that Government may at any time require.

Power of licensing authority to disqualify for holding a licence.

15. (1) If a licensing authority is satisfied after giving him an opportunity of being heard that any person,—

(a) is a habitual criminal or a habitual drunkard, or

(b) is using or has used a motor vehicle in the commission of a cognisable offence, or

(c) has by his previous conduct as driver of a motor vehicle shown that his driving is likely to be attended with danger to the public, it may, for reasons to be recorded in writing, make an order disqualifying that person for a specified period for holding or obtaining a licence.

(2) Upon the issue of any such order a person affected, if he is the holder of a licence, shall forthwith surrender his licence to the licensing authority making the order, if the licence has not already been surrendered, and the licensing authority shall—

(a) if the licence is a licence issued under this Act, keep it until the disqualification has expired or has been removed, or

(b) if it is not a licence issued under this Act, endorse the disqualification upon it and send it to the licensing authority by which it was issued.

(3) Any person aggrieved by an order made by a licensing authority under this section may, within thirty days of the receipt of the order, appeal to the prescribed authority, and such appellate authority shall give notice to the licensing authority and hear either party if so required by that party and may make such inquiry into the matter as it thinks fit. An order made by any such appellate authority shall be final.

LEG. REF.

¹ Inserted by Act XX of 1942.

SEC. 14.—The intention of this is to continue and regularise the present arrangement under which Army and Air Force drivers are licensed by Army and Air Force authorities. This is done at present by a long-standing agreement with Provincial Governments, who have tacitly accepted the arrangement or formally granted exemption under sec. 13 of the existing Act of 1914. The holders of these licences will however be subject to the ordinary law (including punishment by Courts, suspension and endorsement of licence) and in addition will

not be enabled by the licences to drive any vehicle other than one owned by the Central Government. (*Statement of Objects and Reasons.*)

SEC. 15.—This repeats, in a form amplified to meet present requirements, the provision in sec. 18 (1) of the old Act of 1914. (*Statement of Objects and Reasons.*)

SELECT COMMITTEE REPORT.—“The clause has been recast, so as to state specifically the reasons for which a disqualification under this section may be ordered, and the power of disqualification has been given to the licensing authority instead of to the Provincial Government. A right of appeal against any such order is also given”.

16. (1) A Regional Transport Authority constituted under Chapter IV

Power of Regional
Transport Authority to
disqualify.

may for reasons to be recorded in writing and subject to any prescribed conditions declare any person disqualified, for a specified period, for holding or obtaining a license to drive a public service vehicle in the province.

(2) Any person aggrieved by an order of a Regional Transport Authority made under sub-section (1) may within thirty days of the receipt of intimation of such order appeal against the order to the prescribed authority.

17. (Cf. Eng. Act, Ss. 6 and 7.) (1) Where a person is convicted of an

Power of Court to dis-
qualify.

offence under this Act, or of an offence in the commission of which a motor vehicle was used, the Court by which such person is convicted may, subject to the

provisions of this section, in addition to imposing any other punishment authorised by law, declare the person so convicted to be disqualified, for such period as the Court may specify, for holding any licence or for holding a licence to drive a particular class or description of vehicle.

(2) A Court shall not order the disqualification of an offender convicted for the first or second time of an offence punishable under section 115.

SEC. 16.—“Transport authorities are responsible for seeing that public service vehicles are run in the best interests of and to the safety of the travelling public. It seems only reasonable therefore that they should have a deciding word as to the persons by whom public service vehicles are driven”. (*Statement of Objects and Reasons*.)

REPORT OF SELECT COMMITTEE.—“We have provided that reasons are to be stated for a disqualification made under this clause, and that the disqualification shall be for a specified period only. We have also provided for an appeal”. The practice of issuing summons under sec. 16 of the charging the accused merely with an offence under that section without indicating the nature of the charge against him, should be condemned. Where such a summons was issued to the accused and the case itself was taken up before the date fixed and the accused was not granted time to produce his defence, his conviction is not legal and is liable to be set aside. I.L.R. (1940) Lah. 678=A.I.R. 1941 Lah. 114. On this section. *see also* 1941 Lah. 422; 1941 Rang.L.R. 587.

SEC. 17.—“Some Provincial Governments have made rules under sec. 18 (1-A) of the Indian Motor Vehicles Act, 1914, delegating to licensing authorities power to suspend or cancel licences. Since disqualification is a severe punishment it is considered more satisfactory to leave its infliction to the decision of the Court, after a proper trial. The offences themselves, however, are grouped in two categories: those for which disqualification should be obligatory, and those for which disqualification may be left to the discretion of the Court”. (*Statement of Objects and Reasons*.)

SELECT COMMITTEE REPORT.—“The words omitted from sub-clause (1) we consider to be unnecessary, and to be dangerously wide. The verbal change in sub-clauses (2) and (3) is for clarity only. We have omitted

sub-clause (4). We consider that it would be unfair thus to penalize the driver of an uninsured vehicle in many cases, as the primary responsibility for insuring the vehicle rests on the owner. We have also omitted sub-clause (9) which applied the provisions of this clause to abettors of certain offences. By our amendment of sub-clause (10) we have deprived the Appellate Court of power to make an order of disqualification which the lower Court did not see fit to make”.

DEGREE OF CARE REQUIRED OF OPERATORS.—Although automobiles are comparatively new in use, there is nothing novel in the principles of law to be applied with respect to travel in them on the highways. The general principles applicable to the use of all vehicles upon public highways apply to automobiles and may be summarised in the statement that a driver must use that degree of care and caution which an ordinarily careful and prudent person would exercise under the same circumstances. The right of the driver of a horse and that of the driver of a motor vehicle to use the highway are equal, and each is equally restricted in the exercise of his rights by the corresponding rights of the other. Each is required to regulate his own use by the observance of ordinary care and caution to avoid receiving injury, or inflicting injury upon the other. The degree of care required in the use and operation of an automobile upon the streets of a city depends not only upon the condition of the streets, but also upon the dangerous character of the machine or vehicle, and its liability to do injury to others lawfully using such streets. The more dangerous its character, the greater is the degree of care and caution required in its use and operation. The duty of care which an operator of an automobile is bound to exercise is commensurate with the risk of injury to other vehicles and pedestrians.

trians on the road; and this risk of injury is considered to be as great as, if not greater than, the risk of injury to vehicles and pedestrians travelling on and across streets upon which street cars are operated by electric power.

In the application of these principles conditions frequently arise under which conduct amounting to reasonable care in the case of a light and slow moving wagon does not amount to proper and necessary care in the operation of a heavy and rapidly moving automobile. All operators of motor vehicles in addition to exercising reasonable care and caution for the safety of others who have the right to use the highways must do whatever the rules and statute require whenever the conditions therein referred to arise; and a failure to comply with regulations imposed by law or ordinance may, in itself, constitute negligence and render the operator liable for consequential damages. Nevertheless, if the driver of an automobile complies with all the requirements of a statute regulating the operation of motor vehicles, he may yet be liable for the failure to exercise ordinary care to avoid injury to another traveller on the highway.

ANTICIPATION OF PRESENCE OF OTHERS.—

It is part of the duty of an operator of a motor vehicle to keep his machine always under control so as to avoid collisions with pedestrians and other persons using the highway. He has no right to assume that the road is clear, but under all circumstances and at all times he must be vigilant and must anticipate and expect the presence of others. Accordingly, the fact that he did not know that any one was on the highway is no excuse for conduct which would have amounted to recklessness if he had known that another vehicle or person was approaching. Drivers of motor vehicles must be specially watchful in anticipation of the presence of others at places where other vehicles are constantly passing, and where men, women, and children are liable to be crossing, such as corners, at the intersection of streets, or near street cars from which passengers may have alighted or may be about to alight, or in other similar places or situations where people are likely to fail to observe an approaching automobile. It will be the duty of the driver of an automobile, when he has occasion to turn the corner of a street, to slow down the machine in anticipation of the presence of persons in the highway at the street crossing. The duty to anticipate the presence of others applies to private lanes which are open to the public use, and reasonable care must be taken in operating an automobile in such a lane, as not to injure even a person who, as a mere licensee, may be driving a horse and carriage through the lane as a short cut between two highways.

PRESUMPTION THAT OTHERS WILL EXERCISE DUE CARE.—The duty of care between persons using the highway is mutual, and each person may assume that others travelling on the highway will comply with this

obligation. Hence a pedestrian has a right to assume that the driver of an automobile will exercise proper caution in approaching crossings, and that he will not turn a sharp corner and run without warning against a person travelling on foot. In like manner a person operating an automobile has the right to act upon the assumption that every person whom he meets will also exercise ordinary care and caution according to the circumstances, and will not negligently or recklessly expose himself to danger, but rather make an attempt to avoid it; but when an operator of a motor vehicle has had time to realize, or by the exercise of a proper care and watchfulness should realize that a person whom he meets is in a somewhat helpless condition or apparently unable to avoid the approaching machine, he must exercise increased exertion to avoid a collision. A person cannot always rely upon another to use his utmost effort to escape from a place of danger, and if the driver of an automobile sees another in danger of being run down, he should not rely on the other's alertness in getting out of the way, but he must slacken speed and if necessary stop.

DUTY OF PEDESTRIANS.—It is the duty of a pedestrian, travelling in public streets of the city, reasonably to exercise for his personal safety the faculties with which he is endowed by nature, for self-protection, and a person is not entitled to walk the streets with closed eyes and inattentive mind.

DUTY AS TO RIDERS ON BICYCLES.—A person operating an automobile and one riding a bicycle owe to each other the duty to use reasonable care to avoid collision. A bicycle rider must be vigilant under all circumstances and keep a proper lookout for automobiles.

DUTY AS TO FRIGHTENED HORSES.—Whenever a person operating an automobile knows, or in exercise of ordinary care should know, that his machine is frightening the horse of an approaching team and that his further progress will increase the peril of the persons in the carriage, it is his duty, apart from the provisions of any statute, to take such steps for their safety as ordinary prudence may suggest, including the moderation of his pace, or, when necessary, the stopping of automobile especially when he has received a signal requesting him to stop. (See sec. 86). As a matter of prudence and ordinary caution, at the indication of a horse becoming alarmed the person in charge of a motor vehicle must go as far as practicable to the side of the road and remain stationary until the horse has passed. It is the duty of the driver of an automobile to stop it when a horse or other animal becomes frightened, or shows that it is about to become frightened, by the approach of the motor vehicle, and the failure to stop upon the signal as required by statute is usually regarded as negligence. However, it is sometimes considered necessary that a signal be actually made in order to establish

(3) A Court shall order the disqualification of an offender convicted of an offence punishable under section 117, and such disqualification shall be for a period of not less than six months.

(4) A Court shall order the disqualification of an offender convicted of an offence against the provisions of clause (c) of sub-section (1) of section 87 or of section 89, and such disqualification shall be for a period of not less than one month.

(5) A Court shall unless for special reasons to be recorded in writing it thinks fit to order otherwise, order the disqualification of an offender—

(a) who having been convicted of an offence punishable under section 116 is again convicted of an offence punishable under that section,

(b) who is convicted of an offence punishable under section 120, or

(c) who is convicted of an offence punishable under section 123:

Provided that the period of disqualification shall not exceed, in the cases referred to in clauses (a) and (b), two years, or, in the case referred to in clause (c), one year.

(6) A Court ordering the disqualification of an offender convicted of an offence punishable under section 116 may direct that the offender shall, whether he has previously passed the test of competence to drive specified in the Third Schedule or not, remain disqualified until he has subsequent to the making of the order of disqualification passed that test to the satisfaction of the licensing authority.

(7) The Court to which an appeal lies from any conviction of an offence of the nature specified in sub-section (1) may set aside or vary any order of disqualification made by the Court below, and the Court to which appeals ordinarily lie from any Court may set aside or vary any order of disqualification made by that Court, notwithstanding that no appeal lies against the conviction in connection with which such order was made.

18. (1) A person in respect of whom any disqualification order is made shall be debarred to the extent and for the period specified in such order from holding or obtaining a licence and the licence, if any, held by such person at the date of the order shall cease to be effective during such period.

a case of negligence. The degree of care required in the use of motor cycles appears to be intermediate between that required in the use of automobiles and of bicycles. The operator of a motor cycle upon the streets of a city is not required to anticipate that a horse will be frightened at his cycle, although it is his duty to stop the machine when he discovers that the horse is frightened by it and likely to get beyond control. Where the accused had been driving cars regularly for about 13 years and had obtained a large number of good certificates from a variety of masters, and where he had never before had a conviction for bad driving, *held*, that the verdict that he was unfit to hold a licence because he was not a good driver was ridiculous in view of his record and must be cancelled. 88 I.C. 998=23 A. L.J. 790=26 Cr.L.J. 1254=A.I.R. 1925 All. 798. The general rule is that the fine imposed on an accused person should not be excessive, having regard to his pecuniary means. The best way to stop dangerous driving by persons, who earn their livelihood by driving motor vehicles, is for the Court, on conviction of the offender, to exercise its powers under which such Court "shall cause

particulars of the conviction to be endorsed" on any licence held by the accused, and may (1) cancel or suspend that licence, or even (2) declare the accused disqualified for obtaining a licence either permanently or for such period as it thinks fit. The exercise of that power will have a very deterrent effect, especially in the case of persons who earn their livelihood by driving motor vehicles. 26 Cr.L.J. 1536=27 Bom.L.R. 1056=A.I.R. 1925 Bom. 526.

APPEAL—ORDER OF DISQUALIFICATION—IF PUNISHMENT.—An order of disqualification for holding a driving licence which is passed on conviction under secs. 78, 86 and 116 of the Motor Vehicles Act in addition to sentences of fine amounting to Rs. 45 in all, cannot be regarded as a punishment. The punishment which has to be specified under sec. 367 (2), Cr. P. Code, cannot include an order of disqualification for holding a licence. Hence no appeal lies in such a case. 57 L.W. 469=(1944) 2 M.L.J. 152.

SEC. 18.—The change made in sub-clause (2) by the Select Committee transfers to the Appellate Court the power to stay an order of disqualification pending appeal. In sub-clause (3) we have removed the reference

(2) The operation of a disqualification order made under section 17 shall not be suspended or postponed while an appeal is pending against such order or against the conviction as a result of which such order is made, unless the appellate Court so directs.

(3) Any person in respect of whom any disqualification order has been made may at any time after the expiry of six months from the date of the order apply to the Court or other authority by which the order was made, to remove the disqualification; and the Court or authority, as the case may be, may, having regard to all the circumstances, either remove or vary the order of disqualification:

Provided that where an application has been made under this section a second application thereunder shall not be entertained before the expiry of a further period of three months.

19. (Cf. Eng. Act, S. 8.) (1) The Court or authority making an order

Endorsements.

of disqualification shall endorse or cause to be endorsed upon the licence, if any, held by the person disqualified particulars of the order of disqualification and of any conviction of an offence in respect of which an order of disqualification is made; and particulars of any removal or variation of an order of disqualification made under sub-section (3) of section 18 shall be similarly so endorsed

(2) A Court by which any person is convicted of an offence specified in the Fifth Schedule shall, whether or not an order of disqualification is made in respect of such conviction, endorse or cause to be endorsed particulars of such conviction on any licence held by the person convicted.

(3) Any person accused of an offence specified in the Fifth Schedule shall when attending the Court bring with him his licence if it is in his possession.

20. (Cf. Eng. Act, S. 8.) (1) An endorsement on any licence shall be

Transfer of endorsement and issue of licence free from endorsement.

transferred to any new or duplicate licence obtained by the holder thereof until the holder becomes entitled under the provisions of this section to have a licence issued to him free from endorsement.

(2) Where a licence is required to be endorsed and the licence is at the time not in the possession of the Court or authority by which the endorsement is to be made then—

(a) if the person in respect of whom the endorsement is to be made is at the time the holder of a licence, he shall produce the licence to the Court or

to conduct of the person disqualified subsequent to the order of disqualification, leaving the decision to be based on general circumstances of which such conduct might be one. (*Select Committee Report*). "In order to secure a reasonable measure of uniformity in respect of the endorsement of licences, the offences in respect of which the Courts shall be bound to endorse licences are specified in the Fifth Schedule. Licences will therefore invariably be endorsed by the Courts for these offences and by the Courts or other competent authority in respect of any period of disqualification. The offences specified in the Schedule will be those in respect of which endorsement is necessary. Other offences not specified will be of a technical nature and, although no specific provision is made, the intention is that they should not be endorsed." (*Statements of Objects and Reasons*).

SEC. 20.—"In order to secure uniformity in respect of the issue of a clean licence after three years' clean driving, in conformity with the views expressed by the major-

ity of Provincial Governments, it is proposed that in the Schedules specifying offences convictions in respect of which are to be endorsed on licences, shall be divided into two parts—Part A will contain the more serious offences, endorsements in respect of which should never be expunged and must be repeated on any new licence issued, and Part B will specify the offences the endorsements in respect of which can be expunged after three years' clean period of driving. Thus, in the event of any person being prosecuted for an offence under this Act, his licence will furnish a record of all previous convictions of a serious nature as well as recent convictions of a less serious nature, and upon demand by the prosecution for the disqualification of the holder the Courts may normally be expected to disqualify a habitual offender. The power of licensing authorities to disqualify will therefore not be as necessary as it is held to be at present." (*Statements of Objects and Reasons*).

SELECT COMMITTEE REPORT.—"The change made in sub-clause (3) liberalises the provi-

authority within five days, or such longer time as the Court or authority may fix, or

(h) if, not being then the holder of a licence, he subsequently obtains a licence, he shall within five days after obtaining the licence produce it to the Court or authority;

and if the licence is not produced within the time specified it shall on the expiration of such time be of no effect until it is produced for the purpose of endorsement.

(3) A person whose licence has been endorsed shall, if during a continuous period of three years since the last endorsement was made no further order of endorsement has been made against him, be entitled, on surrendering his licence and on payment of a fee of five rupees, to receive a new licence free from all endorsements. If the endorsement was only in respect of exceeding a speed limit, he shall be entitled to have a clean licence issued on the expiration of one year from the date of the order:

Provided that in reckoning the said period of three years and one year, respectively, any period during which the said person was disqualified for holding or obtaining a licence shall be excluded.

(4) When a licence is endorsed by or an order of endorsement is made by any Court, the Court shall send particulars of the endorsement or order, as the case may be, to the licensing authority by which the licence was last renewed and to the licensing authority which granted the licence.

(5) Where the holder of a licence is disqualified by the order of any Court for holding or obtaining a licence, the Court shall take possession of the licence and forward it to the licensing authority by which it was granted or last renewed and that authority shall keep the licence until the disqualification has expired or has been removed and the person entitled to the licence has made a demand in writing for its return to him:

Provided that, if the disqualification is limited to the driving of a motor vehicle of a particular class or description, the Court shall endorse the licence to this effect and shall send a copy of the order of disqualification to the licensing authority by which the licence was granted and shall return the licence to the holder.

(6) Where on an appeal against any conviction or order of a Court which has been endorsed on a licence, the appellate Court varies or sets aside the conviction or order, the appellate Court shall inform the licensing authority by which the licence was last renewed and the licensing authority which granted the licence, and shall amend or cause to be amended the endorsement of such conviction or order.

21. (1) A Provincial Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the appointment, jurisdiction, control and functions of licensing authorities and other prescribed authorities;

[(b) the conduct and hearing of appeals that may be preferred under this Chapter, the fees to be paid in respect of such appeals and the refund of such fees:

Provided that no fee so fixed shall exceed two rupees;] (Substituted by Act XX of 1942);

sions of the sub-clause, and follows the provisions of the English law. The changes made in sub-clauses (4) and (6) are little more than formal, and are self-explanatory."—*(Select Committee Report)*.

SEC. 21: SELECT COMMITTEE REPORT.—
"The change made in Cl. (d) of sub-Cl. (2) removes the power, which we considered unnecessary in view of the provisions contain-

ed in sec. 7 (5), to make rules for periodical medical examination of drivers of public service vehicles and replaces it by a power to make rules for the medical examination of drivers generally. The other changes made are aimed at making explicit provision for certain additional matters requiring to be prescribed."

(c) the issue of duplicate licences to replace licences lost, destroyed or mutilated, the replacement of photographs which have become obsolete, and the issue of temporary licences to persons receiving instruction in driving, and the fees to be charged therefor;

(d) the conditions subject to which a Regional Transport Authority may disqualify a person for holding a licence to drive a public service vehicle;

(e) the medical examination and testing of applicants for licences and of drivers and the fees to be charged therefor;

[(f) the exemption of prescribed persons, or prescribed classes of persons from payment of all or any of any portion of the fees payable under this Chapter;] (Substituted by Act XX of 1942;)

(g) the granting by registered medical practitioners of the certificates referred to in sub-section (3) of section 7;

(h) the communication of particulars of licences granted by one licensing authority to other licensing authorities;

(i) the control of schools or establishments for the instruction of drivers of motor vehicles and the acceptance of driving certificates issued by such schools or establishments as qualifying the holder for exemption from Part I of the test specified in the Third Schedule;

(j) the exemptions of drivers of road-rollers from all or any of the provisions of this Chapter or of the rules made thereunder; and

(k) any other matter which is to be or may be prescribed.

CHAPTER III.

REGISTRATION OF MOTOR VEHICLES.

22. (1) No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner.

(2) Nothing in this section shall apply to a motor vehicle while being driven within the limits of jurisdiction of one registering authority to or from the appropriate place of registration for the purpose of being registered under section 23, 25 or 39 or to a motor vehicle exempted from the provisions of this Chapter while in the possession of a dealer in motor vehicles.

SEC. 22.—*Cf. Indian Motor Vehicles Act, 1914, sec. 10. Sub-Cl. (2) usually appears at present in provincial rules. (Statement of Objects and Reasons.)*

REPORT OF SELECT COMMITTEE.—“The change made in sub-Cl. (1) has the effect of bringing within the scope of this clause vehicles used for the carriage of passengers or goods in such areas as privately owned mill areas, tea gardens, and mine areas to which we think it is desirable that the provisions regarding registration should extend. The change made in sub-Cl. (2) is intended to make it impossible for a person residing upcountry to drive an unregistered car for long distances from a port.”

LICENCING OF MOTOR VEHICLES.—The identification of automobiles by a system of licensing and the requirement that each machine must carry a registration number conspicuously displayed is one of the precautions taken to reduce the danger of injury to pedestrians and other travellers from the careless management of automobiles, and

to furnish a means of ascertaining the identity of persons violating the laws and ordinances regulating the speed and the operation of machines upon the highways. Registration laws applying to motor vehicles generally include almost all kinds of vehicles propelled by mechanical power. Motor cycles are also generally included. The legislature has enacted rules requiring every automobile to be registered and to display a registration number in such a manner that it may be plainly visible, and prohibits the operation of an automobile in a street or other public place unless it complies with such regulations. The licence which is issued at the time of registration of a machine is sometimes to the operator, and in other instances to the owner of the machine, and occasionally to both. The business of operating a motor vehicle is one which the legislature regulates in all its details. As an incident to the enforcement of a system of registering and licensing motor vehicles the state or municipality exacts a fixed fee upon

23. ¹[(1)] Subject to the provisions of section 25 and section 39, every

Registration where to be
made.

owner of a motor vehicle shall cause the vehicle to be registered by a registering authority in the province in which he has the residence or place of business where

the vehicle is normally kept.

LEG. REF.

Omitted by Act XX of 1942.

the issuing of each licence and such charges are usually treated as reasonable licence fees and not as taxes.

THE PROPER WAY OF PROTECTING AN ENTRY IN THE REGISTER OF MOTOR VEHICLES would be either that the Register itself should be produced by a proper officer or a duly authenticated copy of the material part of the Register placed before the Court. A mere statement by the Commissioner of Police made in answer to a letter written by the Corporation, without his being called or the Register produced, cannot be accepted in proof of the ownership of a car. 36 C.W. N. 1147. It is *ultra vires* of the local Government to fix a time limit in the registration certificate and to make a corresponding change in the Schedule D as no power was given by sec. 11 of the Indian Motor Vehicles Act to make rules for that purpose. R. 6 of the Bombay Motor Vehicle Rules as amended is invalid and inoperative. 46 B. 646=24 Bom.L.R. 50=23 Cr.L.J. 169=1922 B. 42. See also 1933 Bom. 460. R. 7 framed by the Bombay Government under sec. 11, Motor Vehicles Act, is not *ultra vires* as the words "incidental to registration" in sec. 11 are wide enough to cover renewal of certificates. 146 I.C. 6=35 Bom.L.R. 1027=1933 B. 460 (F.B.). See also 1922 B. 42.

INJURY TO UNREGISTERED AUTOMOBILE OR OCCUPANT.—There has been considerable discussion in the cases as to the liability for injuries to persons riding on the highway in an automobile which has not been registered as required by law, and some close distinctions have been sought to be drawn. It is, of course, a general principle of law that a person who does an unlawful act is not thereby necessarily put outside the protection of the law, and merely because he is a law-breaker he is not barred of redress for an injury which he may sustain, nor liable for an injury suffered by another. To put him beyond the pale of the law for the purposes of a recovery by or against him the unlawful act must have a connection with the injury suffered. Notwithstanding this salutary principle it has been laid down by some Courts that where the statutes prohibit the use of unregistered automobiles on the highways, a person riding in such an automobile is a trespasser on the highway and the only duty owing to him by persons lawfully on the highway is not wantonly or wilfully to injure him.

The rule which in effect renders an unlicensed automobile and its occupants outlaws on the highways can hardly be said to have the support of reason, and where the statute requires the registration of automo-

biles merely on pain of a penalty for a violation, the rules have been held not to apply. (*Ame. Rul. Case-law.*)

REGULATIONS AS TO NON-RESIDENTS.—The highways, whether urban or rural, are primarily intended for the use of the public; and the absolute dominion over them is lodged in the legislature although the control of the roads and streets is commonly delegated to the local municipalities within which they are located. Nevertheless their use remains in the public at large, subject only to such limitations as the municipalities are authorised by law to impose. The local authorities generally have power to lay a licence tax upon automobiles of residents of the municipality and upon persons residing outside of the corporate limits who employ their machines in furtherance of business or occupations carried on within the city limits; but they do not have the right to levy such tax on motor vehicles of non-residents whose business or pleasure casually carries them into or through the city, since this might result in compelling the owners of automobiles to obtain licences not only from the authorities of the place where their business had its headquarters, but also from every neighbouring town into which their casual engagements might call them. (*Ame. Rul. Case-law.*)

SECS. 22 & 42.—If a lorry is permitted to be driven on a particular day without registration and permit contrary to the provisions of secs. 22 (1) and 42 (1) of the Motor Vehicles Act, the owner cannot be charged for a number of separate offences, although it is seen at different places on the same day. The offence is using the lorry on the particular day and it is only one offence. 43 Cr.L.J. 673=44 P.L.R. 101=A.I.R. 1942 Lah. 125.

SECS. 23, 28 AND 29.—The increasing interprovincial circulation of vehicles makes it very desirable that registration shall have all-India validity. The object of these sections therefore is that a certificate of registration as such when once taken out shall be valid in perpetuity throughout British India, and shall remain as a history of the vehicle during the vehicle's life. But if the vehicle is transferred from one province to another for a period greater than twelve months, the owner will have to apply in the new province for the allotment of a fresh distinguishing mark (registered number) which will be entered in the certificate of registration. The documents and record of registration will then be transferred to the new province. This will necessitate amendment of some Provincial Taxation Acts, but it is felt that the disadvantages of linking registration to taxation outweigh the ad-

¹[(2) A motor vehicle already registered under any enactment in force in British India at the commencement of this Act shall be deemed to be registered under this Act until the 1st day of April, 1941, and on the application of the owner before that date shall be registered under this Act without payment of any registration fee.

(3) A Provincial Government may, by rules made under section 41, provide that within a prescribed period certificates of registration of any prescribed class of transport vehicles deemed to be registered under this Act by virtue of sub-section (2) shall be presented to a prescribed authority for the entry therein of all or any of the particulars specified in section 37.] (Sub-sections (2) and (3) omitted by Act XX of 1942).

24. (1) An application by or on behalf of the owner of a motor vehicle for registration shall be in Form E as set forth in the First Schedule, shall contain the information required by that form, and shall be accompanied by the prescribed fee.

(2) The registering authority shall issue to the owner of a motor vehicle registered by it a certificate of registration in Form G as set forth in the First Schedule and shall enter in a record to be kept by it particulars of such certificate.

(3) The registering authority shall assign to the vehicle, for display thereon in the prescribed manner, a distinguishing mark (in this Act referred to as the registration mark) consisting of one of the groups of letters allotted to the province by the Sixth Schedule followed by a number containing not more than four figures.

25. (1) Notwithstanding anything contained in section 23, the owner of a motor vehicle may apply to any registering authority to have the vehicle temporarily registered in the prescribed manner and for the issue in the prescribed manner of a temporary certificate of registration and a temporary registration mark.

(2) A registration made under this section shall be valid only for a period not exceeding one month, and shall not be renewable.

26. The registering authority may before proceeding to register a motor vehicle require the person applying for registration of the vehicle to produce the vehicle either before itself or such authority as the Provincial Government may by order appoint in order that the registering authority may satisfy itself that

LEG. REF.

¹ Omitted by Act XX of 1942.

antages. (*Statement of Objects and Reasons.*)

SEC. 23: SELECT COMMITTEE REPORT.—“We have re-arranged this clause by converting the proviso into a separate sub-clause. We have provided that a registration already in existence shall for a limited period be deemed to be a registration made under the new law, and have given to owners a right during that period to have it converted into a registration under the new law without payment of a registration fee. As the new law requires certain particulars to be carried exhibited on a vehicle, and to be entered in certificates of registration, we have provided by the new sub-cl. (3) a means by which, if necessary, this object can be secured even before a new registration is accomplished.”

SEC. 24.—“The range of vehicles is extending farther and farther beyond provincial boundaries and the desirability of uniform distinguishing marks is becoming more evident”. (*Statement of Objects and Reasons.*)

SEC. 25.—The amendment by the Select Committee in cl. (2) simplifies the wording without making any material change in the effect of the clause. (*Select Committee Report.*)

SECS. 26 AND 27.—These provisions already appear in provincial rules. (*Statement of Objects and Reasons.*)

SEC. 26.—The object of the change is to enable the authority referred to be appointed more expeditiously than would be the case if the authority were to be prescribed by rules the making of which is subject to previous publication. (*Select Committee Report.*)

the particulars contained in the application are true and that the vehicle complies with the requirements of Chapter V and of the rules made thereunder.

27. The registering authority may refuse to register any motor vehicle if the vehicle is mechanically defective or fails to comply with the requirements of Chapter V or of the rules made thereunder, or if the applicant fails to furnish particulars of any previous registration of the vehicle, and it shall furnish the applicant whose vehicle is refused registration with the reasons in such writing for refusal.

28. (1) Subject to the provisions of section 29, a motor vehicle registered in accordance with this Chapter in any province ¹[* * * * *] shall not require to be registered elsewhere in British India and a certificate of registration issued or in force under this Act in respect of such vehicle shall be effective throughout British India: [* * * * *]²

(2) Subject, in the case of international motor vehicle certificates issued in pursuance of the International Convention relative to motor traffic concluded at Paris on the 24th day of April, 1926 ¹[or any convention modifying the same], to any rules made by the Central Government under section 92, and subject in any other case to the provisions of ²[* * *] section 23 and sub-section (3) and sub-section (4) of this section, a motor vehicle registered by a competent authority in any Indian State or in the French or Portuguese Settlements bounded by India shall not require to be registered in British India:

Provided that there is in force in respect of the vehicle a certificate conforming to and containing substantially the same particulars as the certificate of registration in Form G as set forth in the First Schedule issued by such competent authority in respect of such vehicle.

(3) A certificate complying with the requirements of the proviso to sub-section (2) shall be effective throughout British India as if it were a certificate of registration issued under this Act.

(4) Sub-section (2) shall not apply to any motor vehicle previously registered in British India, if the certificate of registration of the vehicle in British India is for the time being suspended or cancelled for any reason other than that of permanent removal of the vehicle from British India.

(5) If at any time the Central Government is satisfied that motor vehicles registered in British India under this Act are not permitted to be driven in any Indian State or French or Portuguese Settlement without fresh registration in such State or Settlement, or are permitted to be driven only subject to unreasonable conditions or that like conditions and requirements to those imposed under this Act (including the specification of the particulars required by Form G as set forth in the First Schedule) are not imposed in a reasonable degree upon the issue and for the continued effectiveness of certificates of registration in any State or Settlement as aforesaid, the Central Government shall, by notification in the Official Gazette, declare that certificates of registration generally or in

LEG. REF.

¹ Omitted and inserted by Act XX of 1942.

² Omitted by Act VI of 1945.

SEC. 27: SELECT COMMITTEE REPORT.—“We have provided later in sec. 35 for an appeal against a refusal to register under this section. Accordingly we provide here that the reasons for any such refusal shall be recorded.”

SEC. 28: SELECT COMMITTEE REPORT.—“In Cl. (1) minor changes have been made in the drafting, and we have omitted the reference to liability to provincial taxation as unneces-

sary and possibly misleading. We have added a proviso affording the Provincial Government a means of securing when it thinks necessary a record of the particulars regarding transport vehicles which are required under sec. 37 (old 36). Cls. (2) and (3) have been recast in order to provide that the recognition of a registration effected in a State of Foreign Settlement shall, as has already been provided in sec. 9 in the case of licencees, be conditional on reciprocal treatment in such States or Settlements of a registration effected in British India, and on the existence of adequate measures for the control of registration.”

respect of any particular class of motor vehicle issued in any such State or Settlement shall not be effective in British India.

29. (1) When a motor vehicle registered in one province has been kept in another province for a period exceeding twelve months, the owner of the vehicle shall apply to the registering authority, within whose jurisdiction the vehicle then is, for the assignment of a new registration mark and shall present the certificate of registration to that registering authority.

(2) The registering authority, to which application is made under sub-section (1), shall assign the vehicle, a registration mark in accordance with the Sixth Schedule to be carried thenceforth on the vehicle and shall enter the mark upon the certificate of registration before returning it to the applicant and shall, in communication with the registering authority by whom the vehicle was previously registered, arrange for the transfer of the registration of the vehicle from the records of that registering authority to its own records.

(3) A Provincial Government may make rules under section 41 requiring the owner of a motor vehicle not registered within the province, which is brought into or is for the time being in the province, to furnish to a prescribed authority in the province such information with respect to the motor vehicle and its registration as may be prescribed.

30. (1) If the owner of a motor vehicle ceases to reside or have his place of business at the address recorded in the certificate of registration of the vehicle, he shall, within thirty days of any such change of address, intimate his new address to the registering authority by which the certificate of registration was issued, or, if the new address is within the jurisdiction of another registering authority, to that other registering authority, and shall at the same time forward the certificate of registration to the registering authority in order that the new address may be entered therein.

(2) A registering authority other than the original registering authority making any such entry shall communicate the altered address to the original registering authority.

(3) Nothing in sub-section (1) shall apply where the change of the address recorded in the certificate of registration is due to a temporary absence not intended to exceed six months in duration or where the motor vehicle is neither used nor removed from the address recorded in the certificate of registration.

31. (1) Within thirty days of the transfer of ownership of any motor vehicle registered under this Chapter, the transferee shall report the transfer to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that registering authority together with the prescribed fee in order that particulars of the transfer of ownership may be entered therein.

(2) A registering authority other than the original registering authority

SEC. 29.—A minor drafting change has been made by the Select Committee. (*Select Committee Report.*)

SECS. 30 AND 32.—“These reproduce the substance of what already appears in provincial rules, but to facilitate matters for the vehicle owner they enable him to report a change of address or of ownership, or alteration in the vehicle to a registering authority who is convenient for the purpose.” (*Statement of Objects and Reasons.*)

SEC. 30: SELECT COMMITTEE REPORT.—In Cl. (1) we have extended the time-limit

given for compliance with the provisions of the clause. The change made in Cl. (2) and repeated in the similar secs. 31 (2), 32 (2), 33 (3), 34 (2) is merely a simplification of the wording, made possible by the insertion of the explanatory Cl. (7) in sec. 34.

SEC. 31.—In cl. (1) the Select Committee had extended the time-limit for compliance with the provisions of the section.

SECS. 31 AND 34.—As to necessity for fresh registration on change of ownership of vehicle, see 45 C.W.N. 111.

making any such entry shall communicate the transfer of ownership to the original registering authority.

32. (1) If a motor vehicle is so altered that the particulars contained in the certificate of registration are no longer accurate, the owner of the vehicle shall, within fourteen days of the making of any such alteration, report the alteration to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that authority together with the prescribed fee in order that particulars of the alteration may be entered therein:

Alteration in motor vehicle.
Provided that it shall not be necessary to report any change in the unladen weight of the motor vehicle consequent on the addition or removal of fittings or accessories, if such change does not exceed two per cent. of the weight entered in the certificate of registration.

(2) A registering authority other than the original registering authority making any such entry shall communicate the details of the entry to the original registering authority.

33. (1) A registering authority or other prescribed authority, which has reason to believe that any motor vehicle within its jurisdiction is in such a condition that its use in a public place would constitute a danger to the public, or that it fails to comply with the requirements of Chapter V or of the rules made thereunder, may, after giving the owner an opportunity of making any representation he may wish to make, for reasons to be recorded in writing suspend the certificate of registration of the vehicle until the defects are remedied to its satisfaction.

Suspension of registration.
(2) An authority other than a registering authority shall, when making a suspension order under sub-section (1), intimate in writing the fact of suspension and the reasons therefor to the registering authority within whose jurisdiction the vehicle is at the time of the suspension.

(3) Where the registration of a motor vehicle has been suspended under sub-section (1) for a continuous period of not less than one month, the registering authority, within whose jurisdiction the vehicle was when the registration was suspended, shall, if it is not the original registering authority, inform that authority of the suspension; and when the suspension has continued without interruption for a period of not less than six months, the registering authority, within whose jurisdiction the vehicle was when the registration was suspended, may, if it is the original registering authority, cancel the registration, and, if it is not the original registering authority, shall forward the certificate of registration to that authority which may cancel it forthwith.

(4) The owner of a motor vehicle shall, on the demand of a registering authority or other prescribed authority which has suspended the certificate of registration of the vehicle under this section, surrender the certificate of registration and any token or card issued to authorise the use of the vehicle in a public place.

(5) A certificate of registration and any token or card surrendered under sub-section (4) shall be returned to the owner when the order suspending registration has been rescinded and not before.

Sec. 32.—The proviso added to cl. (1) makes a provision to be found in certain Provincial rules. The changes in Cl. (2) are formal only. (*Select Committee Report.*)

Sec. 33.—This appears in substance in provincial rules, but additional provision is included requiring that if a defective vehicle is not repaired within a reasonable period its registration shall be cancelled. (*Statement of Objects and Reasons.*)

CL. (1): SELECT COMMITTEE REPORT.—“We have provided for the recording of reasons, as an appeal is now given against an order of suspension.”

CL. (3).—“We have altered the wording so as to make the original registering authority in every case the authority which may make an order of suspension”. (*Select Committee Report.*)

34. (1) If a motor vehicle has been destroyed or has been rendered permanently incapable of use, the owner shall, within fourteen days or as soon as may be, report the fact to the registering authority within whose jurisdiction he resides and shall forward to that authority the certificate of registration of the vehicle together with any token or card issued to authorise the use of the vehicle in a public place.

(2) The registering authority shall, if it is the original registering authority, cancel the registration and the certificate of registration, or, if it is not, shall forward the report and the certificate of registration to the original registering authority and that authority shall cancel the registration and the certificate of registration.

(3) Any registering authority may order the examination of a motor vehicle within its jurisdiction by such authority as the Provincial Government may by order appoint and, if upon such examination and after giving the owner an opportunity to make any representation he may wish to make it is satisfied that the vehicle is in such a condition that its use in a public place would constitute a danger to the public and that it is beyond reasonable repair, may cancel the registration of the vehicle.

(4) If a registering authority is satisfied that a motor vehicle has been permanently removed out of British India, the registering authority shall cancel the registration.

(5) A registering authority cancelling the registration of a motor vehicle under section 33 or under this section shall communicate the fact in writing to the owner of the vehicle and the owner of the vehicle shall forthwith surrender to that authority the certificate of registration of the vehicle and any token or card issued to authorise the use of the vehicle in a public place.

(6) A registering authority making an order of cancellation under this section shall, if it is the original registering authority, cancel the certificate of registration and the entry relating to the vehicle in its records, and, if it is not the original registering authority, forward the certificate of registration to that authority, and that authority shall cancel the certificate of registration and the entry relating to the motor vehicle in its records.

(7) The expression "original registering authority" in this section and in sections 30, 31, 32 and 33 means the registering authority in whose records the registration of the vehicle is recorded.

35. (1) Any owner of a motor vehicle aggrieved by an order of refusal under section 27 to register a motor vehicle or under sub-section (1) of section 38 to issue a certificate of fitness or by an order of suspension or cancellation made under section 33 or 34 or by an order of cancellation under sub-section (3) of section 38 may, within thirty days of the date on which he has received notice of such order, appeal against the order to the prescribed authority.

(2) The appellate authority shall give notice of the appeal to the original authority and after giving opportunity to the original authority and the appellant

SEC. 34: SELECT COMMITTEE REPORT.—
"The provision relating to cancellation of registration on permanent removal of the vehicle from British India has been removed from Cl. (1) and reproduced as a separate clause. The period allowed for report to the registering authority under cl. (1) has been extended. In cl. (3) we have provided for the appointment of the examining authority by order of the Provincial Government instead of by rule made after previous publication, and have provided that an owner shall have an opportunity of being heard. In

cl. (4) the change made ensures that all orders of suspension or cancellation shall be communicated in writing to owners of vehicle. Cl. (5) follows the principle followed in our revision of sec. 33 (3)". See 45 C.W.N. 111.

SEC. 35.—"We have made cl. (6) of sec. 34 into a separate clause, and have elaborated it so as to provide for an appeal against any order of suspension or cancellation, and also against an order refusing under sec. 27 to register a vehicle". (*Select Committee Report.*)

to be heard either personally or by pleader in the appeal pass such orders as it thinks fit:

Provided that orders of the original authority shall remain in force pending the disposal of the appeal unless the appellate authority otherwise directs.

36. (1) [* * *] A registering authority shall refuse to register any transport vehicle other than a motor cab, unless the application for registration is accompanied by a document in Form F as set forth in the First Schedule signed by the maker of the vehicle or an assembler duly authorised by the maker in this behalf stating the greatest laden weight and greatest axle weights for which the vehicle is and the several axles are designed: [* * *]¹

(2) Where a transport vehicle or chassis, as the case may be, has affixed to it a metal plate, bearing the stamp of the maker or assembler and identified as appertaining to the particular vehicle or chassis to which it is attached, which contains the particulars specified in sub-section (1), that plate may at the discretion of a registering authority be deemed to be the document referred to in sub-section (1).

37. (1) A registering authority, when registering a transport vehicle other than a motor cab shall enter in the record of registration and shall also enter in the certificate of registration of the vehicle the following particulars, namely:—

- (a) the unladen weight of the vehicle;
 - (b) the number, nature and size of the tyres attached to each wheel;
 - (c) the registered laden weight of the vehicle and the registered axle weights pertaining to the several axles thereof fixed in accordance with sub-section (2) with reference to the particulars of the tyres entered in the certificate of registration; and
 - (d) if the vehicle is used or adapted to be used for the carriage of passengers solely or in addition to goods, the number of passengers for whom accommodation is provided;
- and the owner of the vehicle shall have the said particulars exhibited in the prescribed manner on the vehicle.

(2) Notwithstanding any statement contained in the document referred to in sub-section (1) of section 36 as supplied by the maker or assembler of a transport vehicle, the registered weight to be recorded by the registering authority for any axle shall not exceed the permissible weight for that axle calculated in accordance with the Seventh Schedule, nor shall the registered laden weight of the vehicle exceed the sum of the several axle weights as so determined:

Provided that where it appears to a Provincial Government that heavier weights than those specified in the Seventh Schedule may be permitted in a particular locality for vehicles of a particular type, the Provincial Government may by notification in the Official Gazette direct that the provisions of this sub-section shall apply with such modifications as may be specified in the notification.

LEG. REF.

¹ Omitted by Act XX of 1942.

SECS. 36 AND 37.—“In order to check overloading the maximum permissible weight and axle weights must be specified in the registration certificate. The registering authority has no means of determining these and it is proposed therefore to require the manufacturer to certify in respect of every chassis. To guard against the possibility of the certified weight being incorrectly specified, it is proposed that the legal weight on any axle shall be governed by the size of the pneumatic tyres attached to the wheels

of that axle in accordance with scheduled permissible loads on tyres of different sizes”. (*Statement of Objects and Reasons.*)

SEC. 36: SELECT COMMITTEE REPORT.—“In addition to the minor formal amendments, we have by an added proviso to cl. (1) excluded from the operation of the section transport vehicles already registered, owing to the practical difficulty that might be experienced in complying with the requirements contained in the section. We have omitted cls. (2) and (3) dealing with the import of cars and have accordingly omitted the reference to Customs Collector in cl. (4).”

(3) When by reason of an alteration in the number, nature or size of tyres attached to the vehicle the registered laden weight or any registered axle weight recorded in the certificate of registration no longer accords with the laden weight or the axle weight as determined in accordance with sub-section (2), the provisions of section 32 shall apply, and the registering authority shall enter in the certificate of registration a revised registered laden weight and registered axle weights.

38. (1) Subject to the provisions of section 39, a transport vehicle shall not be deemed to be validly registered for the purposes of section 22, unless it carries a certificate of fitness in Form H as set forth in the First Schedule, issued by the prescribed authority, to the effect that the vehicle complies for the time being with all the requirements of Chapter V and the rules made thereunder. Where the prescribed authority refuses to issue such certificate it shall supply the owner of the vehicle with its reasons in writing for such refusal.

(2) Subject to the provisions of sub-section (3), a certificate of fitness shall remain effective for three years, unless a shorter period, not being in any case less than six months, is specified in the certificate by the prescribed authority.

(3) The issuing authority or other prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made thereunder; and on such cancellation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under Chapter IV shall be deemed to be suspended until a new certificate of fitness has been obtained.

[(4) Notwithstanding anything contained in sub-section (1), a Provincial Government may, until the expiry of one year from the commencement of this Act, by rules made under section 41, dispense with the necessity for a certificate of fitness in the case of all or any transport vehicles in respect of which certificates of registration and permits had already been issued before the commencement of this Act.] (Sub-section (4) omitted by Act XX of 1942.)

39. (1) The authority specified in Part B of the Fourth Schedule may

SEC. 37 (3) is intended to meet the case of an owner who registers his vehicle for a specified laden weight on one set of tyres, and then puts on smaller tyres which have a lower carrying capacity. If the gross load on the smaller tyres exceeded the maximum load calculated in accordance with the provisions of the Tenth Schedule an offence of overloading would arise. (*Statement of Objects and Reasons.*)

SEC. 38.—A registration is not to be renewed annually, it is necessary to provide that transport vehicles shall be brought up periodically, or as required, for mechanical inspection. It is proposed to do this by attaching to the registration certificate a certificate of fitness which will specify the date by which the vehicle has to be re-examined. One real advantage to be derived from these certificates is that the inspection will take place as and when due, and there will be no necessity for any disorganisation of passenger service due to all vehicles being called up for examination at a particular time. (*Statement of Objects and Reasons.*)

CL. (1): REPORT OF SELECT COMMITTEE.—“We have introduced a reference by way of

a saving clause to sec. 39. We have added provision for communication in writing of the reasons for a refusal to grant a certificate of fitness.

CL. (2) has been revised so as to secure that while a certificate issued in respect of a new vehicle shall remain effective for three years, any other certificate shall require annual renewal. (*Select Committee Report.*)

SECS. 38 AND 42.—The accused was the owner of a Motor Vehicle which was registered as a motor car, but it had the shape and appearance of a van, and it was found that it was used for carrying goods, viz., for the transport of radio sets in which the accused was dealing to the houses of the purchasers of the sets. The accused had not obtained a certificate of fitness as required by sec. 38 (1) or a special permit as required by sec. 42 (1) *Held*, that the accused was guilty under secs. 38 (1) and 42 (1) of the Act and liable to conviction under the same. A.I.R. 1943 Mad. 720=(1943) 2 M.L.J. 197.

SEC. 39.—This provides for the continuance of the existing arrangements under

Registration of vehicles.
the property of the Central
Government.

register any motor vehicle which is the property ¹[or for the time being under the exclusive control] of the Central Government; and any vehicle so registered shall not, so long as it remains the property ¹[or under the exclusive control] of the Central Government, require to be registered otherwise under this Act.

(2) A transport vehicle registered under this section shall carry a certificate of fitness in Form H as set forth in the First Schedule issued by the authority referred to in sub-section (1).

(3) An authority registering a vehicle under sub-section (1) shall assign a registration mark in accordance with the provisions contained in the Fourth Schedule and shall issue a certificate in respect of the vehicle that the vehicle has been registered under this section.

(4) If a vehicle registered under this section ceases to be the property [or under the exclusive control]¹ of the Central Government, the provisions of section 23 shall thereupon apply.

(5) The authority registering a vehicle under sub-section (1) shall furnish to any Provincial Government all such information regarding the general nature, over all dimensions, and axle weights of the vehicle as the Provincial Government may at any time require.

Application of Chapter III
to trailers.

40. (1) The registration mark assigned to a trailer shall be displayed in the prescribed manner on the side of the vehicle.

(2) No person shall drive a motor vehicle to which a trailer is or trailers are attached unless the registration mark of the motor vehicle so driven is displayed in the prescribed manner on the trailer or on the last trailer in the train, as the case may be.

41. (1) A Provincial Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the conduct and hearing of appeals that may be preferred under this Chapter; ²[the fees to be paid in respect of such appeals and the refund of such fees];

(b) the appointment, functions and jurisdiction of registering and other prescribed authorities;

(c) the issue of certificates of registration and duplicate certificates of registration to replace certificates lost, destroyed or mutilated;

(d) the temporary registration of motor vehicles, and the issue of temporary certificates of registration and marks;

(e) the manner in which registration marks and the particulars referred to in sub-section (1) of section 37, and other prescribed particulars shall be exhibited;

(f) the fees to be charged for the issue or alteration of certificates of registration, for certificates of fitness, for registration marks, and for the examination or inspection of motor vehicles, and the refund of such fees;

LEG. REF.

¹ Inserted by Act XX of 1942.

² Added and inserted by Act XX of 1942.

which Defence Department vehicles are exempt from the ordinary procedure of registration. (*Statement of Objects and Reasons*).

SELECT COMMITTEE REPORT.—“We are of opinion that transport vehicles registered under the special provision of this clause should not be exempt from the requirement to carry a certificate of fitness, and have

provided accordingly both here and in the Fourth Schedule”.

SEC. 41: REPORT OF SELECT COMMITTEE.—“We have made one correction in a reference in cl. (d) of sub-cl. (2), and have inserted two minor additions in cls. (d) and (e). We have added a clause giving power to exempt road-rollers from the provisions of Chapter, and to exempt delivery vans from the requirements of clause 38 regarding the carrying of certificates of fitness”. (*Select Committee Report*.)

¹[(ff) the exemption of prescribed persons or prescribed classes of persons from payment of all or any portion of the fees payable under this Chapter];

(g) the forms, other than those set forth in the First Schedule, to be used for the purposes of this Chapter;

(h) the communication between registering authorities of particulars of certificates of registration and by owners of vehicles registered outside the province of particulars of such vehicles and of their registration;

(i) the particulars to be furnished by the owner of any motor vehicle to the registering authority, upon the transfer of possession of the motor vehicle under the terms of a hiring agreement;

(j) the extension of the validity of certificates of fitness pending consideration of applications for their renewal;

(k) the exemption from the provisions of this Chapter, and the conditions and fees for exemption, of motor vehicles in the possession of dealers;

(l) the exemption of road-rollers ¹[graders and other vehicles designed and used solely for the construction, repair and cleansing of roads] from all or any of the provisions of the Chapter and the rules made thereunder, and the conditions governing such exemption; and the exemption of delivery vans from the provisions of section 38 and the conditions governing such exemption; and

(m) any other matter which is to be or may be prescribed.

CHAPTER IV.

CONTROL OF TRANSPORT VEHICLES.

42. (1) No owner of a transport vehicle shall use or permit the use of the vehicle in any public place, save in accordance

Necessity for permits. with the conditions of a permit granted or countersigned by a Regional or Provincial Transport Authority authorising the use of the vehicle in that place in the manner in which the vehicle is being used:

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage:

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods vehicle either when carrying passengers or not:

LEG. REF.

¹Added and inserted by Act XX of 1942.

SECS. 42, 52 AND 53.—The *bona fide* private carrier should not be required to justify his application in the face of opposition by other providers of transport although the private carrier will, in other respects, e.g., weight and speed limits, and safety regulations, be under the same obligation as the public carrier. All provinces, save one, have agreed that a differentiation between the two classes is necessary and that a private carrier should have a permit for identification on the road and to show that the vehicle is being rightly used. One province would make no distinction but the Bill follows the English practice in which this distinction is made. In England a private carrier's permit is easily obtained because the granting of the permit is not open to opposition by providers of public transport.

SEC. 42: GENERAL.—This Chapter legislates specifically for the control of transport vehicles, i.e., vehicles carrying passengers for hire or reward, or goods whether for hire or reward or otherwise. Such vehicles are divided into four classes, namely:—

(a) Stage carriages, i.e., motor buses on

regular or quasi regular services;

(b) contract carriages, i.e., taxis and other motor cabs, and buses used for special occasions;

(c) private carriers (of goods); and

(d) public carriers (of goods).

The general scheme is that the control of these separate classes of vehicles should be in the hands of transport authorities constituted for specified areas within the provinces; and that for the purpose of co-ordination, hearing appeals, e.c., there should also be constituted a transport authority for the province. The constitution of these bodies is a matter upon which the Provincial Governments have particularly been consulted.

All motor transport vehicles must be covered by a permit issued by the transport authority of an area, and the effectiveness of every permit will depend on the observance by the holder of recognised general conditions such as the satisfactory maintenance of the vehicle, the observance of prescribed speed limits, and the avoidance of overloading the vehicle or overworking the drivers". (*Statement of Objects and Reasons.*)

Provided further that a public carrier's permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) In determining, for the purposes of this Chapter, whether a transport vehicle is or is not used for the carriage of goods for hire or reward,—

(a) the delivery or collection by or on behalf of the owner of goods sold, used or let on hire or hire-purchase in the course of any trade or business carried on by him other than the trade or business of providing transport,

(b) the delivery or collection by or on behalf of the owner of goods which have been or which are to be subjected to a process or treatment in the course of trade or business carried on by him, or

(c) the carriage of goods in a transport vehicle by a manufacturer of or agent or dealer in such goods whilst the vehicle is being used for demonstration purposes

shall not be deemed to constitute a carrying of the goods for hire or reward; but the carriage in a transport vehicle of goods by a person not being a dealer in such goods who has acquired temporary ownership of the goods for the purpose of transporting them to another place and there relinquishing ownership shall be deemed to constitute a carrying of the goods for hire or reward.

(3) Sub-section (1) shall not apply—

(a) to any transport vehicle owned by or on behalf of the Central Government or a Provincial Government other than a vehicle used in connection with the business of an Indian State Railway;

(b) to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleansing, road watering or conservancy purposes;

(c) to any transport vehicle used solely for public, fire brigade or ambulance purposes;

(d) to any transport vehicle used solely for the conveyance of corpses;

(e) to any transport vehicle used for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety;

SEC. 42 (4).—This sub-clause will enable Provincial Governments to deal with the private bus, control over which they may deem desirable. (*Statement of Objects and Reasons*.)

SUB-CL. (1) AND CLS. (a) AND (b) OF SUB-CLAUSE (2).—The alterations are formal. The new clause inserted in sub-cl. (2) is a provision contained in the English Road Traffic Act, 1933, which we consider desirable. In sub-cl (3) we have added two new classes of vehicle to those exempted from the provisions of sub-cl. (1), namely, vehicles used for certain public purposes, and vehicles used for State purposes by the Governments of Indian States or the Foreign Settlements. Certain minor changes of a formal or consequential nature, are also made in the sub-clause". (*Select Committee Report*.) See 55 L.W. 754=1943 Mad. 41 =(1942) 2 M.L.J. 577 (as to the meaning of the term "using" the car and "permitting the use" of the car).

VEHICLE REGISTERED AS CAR BUT HAVING SHAPE AND APPEARANCE OF VAN—USE BY OWNER FOR TRANSPORT OF GOODS—FAILURE TO OBTAIN CERTIFICATE OF FITNESS AND SPECIAL PERMIT—OFFENCE.—See (1943) 2

M.L.J. 197.

SECS. 42 AND 48.—An agent of manager of the owner cannot be considered to be the owner within the meaning of that term occurring in sec. 42 (1) and 48 (d). I.L.R. (1943) Nag. 64. See also 1942 N.L.J. 308 =1943 Nag. 22.

SECS. 42 AND 123.—There is no rule under the Motor Vehicles Act placing upon the driver or the conductor the duty of seeing that goods are not carried in a vehicle contrary to the conditions of its permit, but it is the duty of the conductor under R. 218 of the Rules to exercise supervision over the loading of the vehicle with passengers, luggage and goods. Secs. 42 (1) and 123 of the Act are controlled by the rules under the Act which separately lay down the responsibilities of the driver and the conductor. The driver of a vehicle cannot therefore be convicted under Secs. 42 (1) and 123 (1) for carrying goods contrary to the conditions of the permit, for contravention of a rule from the due observance of which he has been statutorily exempted and responsibility solely rests upon the conductor. 56 L.W. 110 =A.L.B. 1943 Mad. 347=(1943) 3 M.L.J. 176.

(f) to any transport vehicle used for any other public purpose prescribed in this behalf;

(g) to any transport vehicle owned by, and used solely for the purposes of, any educational institution which is recognised by the Provincial Government or whose managing committee is a society registered under the Societies Registration Act, 1860;

(h) subject to any prescribed conditions, to any transport vehicle owned by the Government of any Indian State or French or Portuguese Settlement bounded by India used for Government purposes unconnected with any commercial enterprise; or

(i) to any trailer used for any purpose other than the carriage of goods for hire or reward when drawn by a motor vehicle constructed for the carriage of not more than six passengers excluding the driver.

(4) Subject to the provisions of sub-section (3), sub-section (1) shall, if the Provincial Government by rule made under section 68 so prescribes, apply to any motor vehicle adapted to carry more than nine passengers excluding the driver.

Power to Provincial Government to control road transport.

43. (1) A Provincial Government, having regard to—

SEC. 43: SELECT COMMITTEE REPORT.—

"This new clause vests in the Provincial Government certain powers of co-ordinating road and rail transport. In the provisions of the Bill relating to Transport Authorities we have revised the references to transport generally by using such expressions as "road transport" and "road passenger transport", indicating thereby that these Authorities will, in considering the relevant factors which are to be weighed by them, confine themselves to the interests of road traffic. We consider that under existing conditions, the Provincial Government itself is the authority in the best position to weigh against each other the conflicting interests of rail traffic and road traffic. The clause contains the considerations to which in our opinion regard should be had, and the powers which we think should be exercisable".

The following extracts from Disney's Carriage by Railway may be read in this connection.

THE RAILWAY COMPANIES' NEW ROAD TRANSPORT POWERS—ORIGIN OF THESE POWERS IN ENGLAND.—"No railway company has ever been expressly prohibited by any Act of Parliament from engaging in road transport in the fullest sense of the term. But no railway company has ever been in the same position as an ordinary limited company. A limited company which requires no compulsory powers can avail itself of the Companies Act, to arrogate to itself by its Memorandum of Association power which embraces every form of activity on the face of the globe. But you cannot build a railway without acquiring land compulsorily and therefore a railway company cannot come into existence without a special Act of Parliament. In granting

compulsory powers, Parliament always stands on its dignity and the public interest, and no Act of Parliament authorising a company to make a railway has ever empowered that company to do more than carry on the railway as an effective enterprise. It is and always has been for the Courts to determine what objects the company may lawfully pursue in furtherance of that—its main—purpose. In arriving at this determination the Courts have always held that the objects a railway company may lawfully pursue, and the powers they lawfully use in furtherance of these objects, must either be expressly conferred or derived by reasonable implication from its provisions. In other words, any operations in which at railway company may engage, must be either expressly authorised or impliedly authorised as incidental to the main purpose for which the company was created. From the first the railway companies were fettered by the difficulty of proving that it could be incidental to the main purpose for which a railway company was created to engage in road transport in the full sense of the term. It was, however, soon found that the railway companies could not be confined to the metals. Goods must be brought to the point where the railway journey begins and must be taken from the point at which the journey terminates; for the world at large does not live at Ry. Stats. It was, therefore, recognised at an early stage in the history of railways that it was appropriate to the railway companies that they should bring the goods to the point where the railway journey begins, and that they should on the completion of the journey distribute what they had carried by rail to the various consignees on the road. Collection and delivery services were mentioned and recognised in a very

early English statute the Regulation of Railways Act, 1873, and the Railway Commissioners were empowered by that enactment to decide what was a reasonable sum to be paid to any railway company therefor. By 1888 a large collection and delivery traffic had grown up, and in the Rates and Charges Order of that year "the collection or delivery of merchandise outside the terminal station" is enumerated among the services for which a railway company may undertake and charge for. The Railways Act, 1921, carried the matter still further; for sec. 49 of that Act not only authorised a railway company to make reasonable charges for collection and delivery, but imposed a general obligation to collect and deliver at any place such merchandise as is for the time being ordinarily collected and delivered by the company at that place—Quite apart from this very important and substantial service of collection and delivery, many of the old railway companies in England (which are now amalgamated or absorbed in the four great companies) had from time to time acquired by special Acts of Parliament certain very limited powers of engaging in road transport, *i.e.*, to convey passengers and their luggage (but not goods) to or from any of the Company's railways by road vehicles mechanical or horse-drawn. Apart from these limited powers, which were not of much use, and without any statutory authority, in the beginning of 1928, the Great Western Railway fleet of omnibuses, 287 in number, ran a mileage of 3,814,013 miles and conveyed over 8 million passengers. This was done openly for many years, and the services were advertised in the company's time tables; and though it would have been difficult for the company to establish that what they were doing was legal, no one did in fact apply for an injunction to restrain them. By 1928 the English Railway Companies found themselves seriously threatened by competition in the shape of mechanically propelled long-distance road transport. The invention of the motor car had gradually resulted in one of those commercial revolutions which Cobden—the only English statesman who began life as a commercial traveller—declared to be more important than the political revolutions chronicled by history. Great road transport companies had been built up, and the business of carrying goods for long distances and over wide areas by heavy lorries had been developed on an extensive scale. Motor omnibuses and motor coaches carried passengers on inviting terms from one end of the country to another. The railway monopoly, if it ever existed, had become a thing of the past. In fact, the railway companies were faced with the gravest of human misfortunes, a steady withdrawal of custom. They accordingly represented to Parliament that as a result of this new and growing competition they were suffering materially in their financial resources. They pointed out that the new traffic bade fair to become as extensive and

as highly organised and capitalised as railway traffic itself; that whereas the railway companies were subject to public control at every turn, this formidable new rival of theirs was subject to little, if any; and that whereas the road transport undertaker had his track provided for him, the railway companies not only had to provide their own, but had to pay rates on it when provided, and then to contribute to the maintenance of the competitive tract. The railway companies further pointed out that the whole system of railway rates, charges and fares had been fundamentally changed since the war. The consequence is that for the future, if a railway company is rendered less prosperous by having its traffic taken away from it, it will be not only the shareholder as in the past, but all the users of railways, passengers as well as traders, who will suffer. Thus the prosperity of the railway companies are also matters of public concern. Such were the reasons which induced Parliament to pass the Four Railway (Road Transport) Act of 1928 and to confer on each of the four great railway companies a general power to act as a carrier by road, subject to certain statutory restrictions. Parliament was impressed by the twin facts that there was a real menace to the railway industry in the country and that the prosperity of the whole trading community is now dependent on the prosperity of the railways. The Acts, which are in substance identical, begin by authorising each of the companies to convey by road passengers and passenger's luggage, parcels and merchandise in any district to which access is afforded by its system.

GENERAL PROVISIONS OF THE ENGLISH ACTS.—The general power to engage in road transport within a specified sphere thus conferred on each of the railway companies is subject to the following restrictions:—(a) None of the companies may convey by any road vehicle any passenger who on any one journey is both taken up and set down in the area consisting of the Metropolitan Police District and the City of London; (b) Where a local authority is maintaining an adequate and satisfactory service of tramcars or omnibuses, no railway company is to compete; (c) No road vehicle run by a railway company is to use any railway bridge whose use under like circumstances is prohibited to similar vehicles not belonging to the company; (d) If the Local authority is at any time of opinion that the interests of the public are prejudicially affected by the exercise of the new powers by any one of the railway companies, he may after inquiry direct the company in question to make provision to his satisfaction for the protection of the public interest; and if the company fails to do so, the authorities may by proper procedure withdraw the concession. In the case of every regular service of electrical or mechanical vehicles, the railway company must provide such reasonable

(a) the advantages offered to the public, trade and industry by the development of motor transport, and

(b) the desirability of co-ordinating road and rail transport, and

(c) the desirability of preventing the deterioration of the road system, and

(d) the desirability of preventing uneconomic competition among motor vehicles,

and after having heard the representatives of the interests affected and having consulted the Provincial and Regional Transport Authorities concerned, may, by notification in the Official Gazette,—

(i) prohibit or restrict throughout the province or in any area or on any route within the province, subject to such conditions as it may think desirable, the conveying of long distance goods traffic generally or of prescribed classes of goods, by private or public carriers; or

(ii) fix maximum or minimum fares or freights for stage carriages and public carriers to be applicable throughout the province or within any area or on any route within the province.

(2) The Provincial Government shall permit, at such intervals of time as it may fix, the interests affected by any notification issued under sub-section (1) to make representations urging the cancellation or variation of the notification on the following grounds, namely:—

(a) that the railways are not giving reasonable facilities or are taking unfair advantage of the action of the Provincial Government under this section; or

(b) that conditions have changed since the publication of the notification;

or

services in regard to the conveyance of mails as the Postmaster-General may from time to time require. Each company may demand and take in respect of the new traffic the fixed rates or such reasonable fares, rates and charges as they may think fit. All passenger fares must be exhibited in a conspicuous position inside the vehicle. In the case of passenger fares any local authority interested, and in the case of merchandise charges any trader interested or any representative body of traders, may apply to the Railway Rates Tax Tribunal to reduce any fare, rate or charge on the ground that it is unreasonable; and the tribunal, after hearing all parties whom they consider entitled to be heard, may make such modification as may to them seem just. Any such modification may be reviewed by the tribunal at any time upon the railway company's application. The Acts confer on the railway companies extensive powers of entering into working agreements with local authorities, companies, bodies and persons owning or running road vehicles for hire or as public service vehicles. Any such agreement must be notified to the State Officer in charge of traffic and transport and he must be informed whether or not such agreement is an agreement whereby the business of any company, body or person is controlled by the railway company through shareholding or nomination of directors or as the result of a loan or other financial transaction or otherwise. Any road transport service provided by a company, body or person whose business is for the time being thus controlled is subject to the provision of the Acts as regards fares, rates and charges, withdrawal of service,

and competition with local authorities. In the interests of the motor manufacture industry each of the railway companies is expressly prohibited from manufacturing any part of any road motor vehicle to be used in pursuance of the new road transport powers, except the body. The Acts repeal all the pre-existing special express powers of engaging in road transport conferred by earlier private Acts. The railway companies recognise that a considerable amount of rail traffic has been permanently diverted on to the road: but they believe that by a proper co-ordination of road and rail services they will be able to recover for the rails some traffic that is at present on the roads, and to share in the traffic which was once rail traffic, but has now left the rails for ever". (*Disney's Carriage by Railway*, Chap. XVIII, pp. 269-274.)

SEC. 51-A of the Indian Railways Act may also be read in this connection. The section runs as follows:—

"51-A. (1) Any railway company, not being a company for Additional Power which the Statute 42 to provide and main- and 43 Vict., Chap. 41 tain transport ser- provides, may frame a vices. scheme for the provi-

sion and maintenance of a motor transport or air-craft service for passengers, animals or goods with a terminus at or near a station on the railway owned or managed by such company.

(2) The scheme shall be submitted to the general controlling authority, which may sanction it, subject to such modifications and conditions as it may prescribe.

(c) that the special needs of a particular industry or locality require to be considered afresh.

(3) If the Provincial Government, after considering any representation made to it under sub-section (2) and having heard the representatives of the interests affected and the Provincial and Regional Transport Authorities is satisfied that any notification issued under sub-section (1) ought to be cancelled or varied, it may cancel the notification or vary it in such manner as it thinks fit.

44. (1) The Provincial Government shall, by notification in the Official Gazette, constitute for the province a Provincial Transport authorities. Transport Authority to exercise and discharge the powers and functions specified in sub-section (3), and shall in like manner constitute Regional Transport Authorities to exercise and discharge throughout such areas (in this Chapter referred to as regions) as may be specified in the notification, in respect of each Regional Transport Authority, the powers and functions conferred by or under this chapter on such Authorities:

Provided that in the North-West Frontier Province and in Chief Commissioners' Provinces the Provincial Government may abstain from constituting any Regional Transport Authority:

Provided further that the area specified as the region of a Regional Transport Authority shall in no case be less than an entire district, or the whole area of a Presidency-town.

(2) A Provincial Transport Authority or a Regional Transport Authority shall consist of such number of officials and non-officials as the Provincial Government may think fit to appoint; but no person who has any financial interest whether as proprietor, employee or otherwise in any transport undertaking shall be appointed as or continue as a member of a Provincial or Regional Transport Authority, and, if any person being a member of any such Authority acquires a financial interest in any transport undertaking, he shall, within four weeks of so doing, give notice in writing to the Provincial Government of the acquisition of such interest and shall vacate office.

(3) A Provincial Transport Authority shall exercise and discharge throughout the province the following powers and functions, namely:—

(3) The scheme shall be published in the Official Gazette and thereupon the railway company shall, subject to sub-sec. (4), have the power to provide and maintain a service in accordance therewith.

(4) In respect of any service provided and maintained by any railway company under this section.—

(a) the company shall be deemed not to be a railway administration for the purposes of this Act or of any other enactment affecting railways, and no property used exclusively for purposes of the service shall be deemed to be included in the railway or its rolling-stock; and

(b) all enactments and rules for the time being in force relating to motor vehicles, air-craft and roads shall apply accordingly.

(5) The general controlling authority may, by notification in the Official Gazette after giving to the railway company six months' notice of its intention so to do, withdraw its sanction to any scheme sanctioned under sub-sec. (2) or may modify the scheme or impose further conditions on it.

SEC. 44 (1).—"The extent of the region and the constitution of the regional authorities are left entirely to Provincial Governments, as it is impossible to specify in the Bill, except by way of the general indica-

tion given in cl. (3), a constitution which would suit the different conditions, sizes of region, etc., prevailing in each province". (*Statement of Objects and Reasons.*)

CL. (2).—The constitution of the provincial authority is permissive. It may be required for purposes of co-ordination or to settle differences between regional authorities or to increase control over through routes. Some statutory basis is therefore required. (*Statement of Objects and Reasons.*)

CLS. (3) AND (4).—"This indicates how authorities may be constituted. What may suit one province may not suit another; but if a composite authority is constituted containing representatives of transport interests then it is only equitable that the main transport interests should be accorded equal representation". (*Statement of Objects and Reasons.*)

SELECT COMMITTEE REPORT.—"The clause has been recast to make it mandatory on Provincial Governments to establish Provincial Transport Authorities, and except in the smaller provinces Regional Transport Authorities also, and to secure that the area of jurisdiction of the Regional Authorities shall be reasonably large. We have provided that both Provincial and Regional Autho-

(a) to co-ordinate and regulate the activities and policies of the Regional Transport Authorities, if any, of the province;

(b) to perform the duties of a Regional Transport Authority where there is no such Authority and, if it thinks fit or if so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more regions;

(c) to settle all disputes and decide all matters on which differences of opinion arise between Regional Transport Authorities; and

(d) to discharge such other functions as may be prescribed.

(4) For the purpose of exercising and discharging the powers and functions specified in sub-section (3), a Provincial Transport Authority may, subject to such conditions as may be prescribed, issue directions to any Regional Transport Authority and the Regional Transport Authority shall be guided by such directions.

[(5) The Provincial Transport Authority and any Regional Transport Authority, if authorized in this behalf by rules made under section 68, may delegate such of its powers and functions to such authority or person and subject to such restrictions, limitations and conditions as may be prescribed by the said rules.] (*Added by Act XX of 1942.*)

45. Every application for a permit shall be made to the Regional Transport Authority of the region or of one of the regions in which it is proposed to use the vehicle and, if the applicant resides or has his principal place of business in any one of those regions, to the Regional Transport Authority of that region.

Application for stage carriage permit.

particulars, namely:

(a) the type and seating capacity of the vehicle in respect of which the application is made;

(b) the route or routes on which or the area within which it is intended to use the vehicle;

(c) the time table, if any, of the service to be provided; and

(d) such other matters as may be prescribed.

Procedure of Regional Transport Authority in considering application for stage carriage permit.

47. (1) A Regional Transport Authority shall, in deciding whether to grant or refuse a stage carriage permit, have regard to the following matters, namely:—

rities shall be bodies composed of officials and non-officials but have not otherwise fettered the discretion of the Provincial Government in constituting them except by excluding persons having a financial interest in a transport undertaking. We have set forth more fully the functions of Provincial Transport Authorities, and have given them a power to issue directions to Regional Transport Authorities".

SEC. 45.—*See* 1943 N.L.J. 190.

SEC. 46: SELECT COMMITTEE REPORT.—“We have omitted the requirement that proposed fares are to be disclosed. Such a provision would encourage rival applicants to underbid each other. The other alteration is formal”.

SECS. 47, 48 AND 55 “lay down the general principles which should guide transport authorities in granting permits for stage or contract carriages or public carriers. These embody the accepted principles of public

necessity and convenience, the prevention of uneconomic competition, and the suitability of the roads to carry the forms of transport requiring the permits. In the case of public goods traffic, the principle adopted is that, while the transport of perishables by short distance transport by road in order to avoid delay and damage caused by terminal transhipment should not be interfered with, long distance traffic should be left primarily to railways”. (*Statement of Objects and Reasons.*)

SEC. 47 (1): REPORT OF SELECT COMMITTEE.—“The words omitted from clause (a) are redundant, and would, if retained, include a reference to rail transport, which we desire to eliminate. We similarly eliminate a reference to rail transport by our insertion of the word “road” in cl. (d). We have omitted as irrelevant the provision requiring consideration of the character, qua-

- (b) fix in the case of motor cabs the fares which may be charged;
- (c) require that every motor cab shall carry a copy of the fare table for inspection by passengers;
- (d) require that any motor cab shall be fitted with a taxi meter; or
- (e) impose on the use of a contract carriage any other condition which may be prescribed.

52. An application for a permit to use a transport vehicle for the carriage of goods for or in connection with a trade or business carried on by the applicant (in this Chapter referred to as a private carrier's permit) shall contain the following particulars namely:—

- (a) the type and carrying capacity of the vehicle;
- (b) the nature of the goods which the applicant expects normally to carry in connection with his trade or business;
- (c) the area for which the permit is required; and
- (d) any other particular which may be prescribed.

53. (1) A Regional Transport Authority shall, in deciding whether to grant or refuse a private carrier's permit, have regard to the condition of the roads to be used by the vehicle or vehicles in respect of which the application is made, and shall satisfy itself that the vehicle or vehicles for which the permit is required will not be used except in connection with the business of the applicant.

(2) The Regional Transport Authority may in granting a private carrier's permit impose conditions to be specified in the permit relating to the description of goods which may be carried, or the area in which the permit shall be valid, or the maximum laden weight and axle weights of any vehicle used.

(3) If the applicant is the holder of a private carrier's permit which has been suspended or has been the holder of a private carrier's permit which has been revoked, the Regional Transport Authority may at its discretion notwithstanding anything contained in sub-section (1) refuse the application.

54. An application for a permit to use a motor vehicle for the carriage of goods for hire or reward (in this Chapter referred to as a public carrier's permit) shall contain the following particulars, namely:—

ensure that the Provincial Government will control the nature of any additional conditions imposed."

SEC. 52: REPORT OF SELECT COMMITTEE.—"The change in clause (a) follows that made in sec. 49. The omission of the words 'within the region' in clause (d) is necessitated by the fact that a permit might be required for two or more regions."

SEC. 53 (1).—The roads generally are not fit for sustained heavy traffic and this is a consideration which must be taken into account. (*Statement of Objects and Reasons.*)

CL. (2).—For instance, the owner of a sugar mill might hold a private carrier's permit to carry cane, sugar, coal and mill stores within a radius of fifty miles from his mill. If found outside that radius or carrying other goods, breach of the conditions would occur. (*Statement of Objects and Reasons.*)

CL. (1): REPORT OF SELECT COMMITTEE.—"The omission removes a reference to rail transport, a matter whose consideration we have transferred by the new clause (43) to

the Provincial Government. The other changes are formal."

CL. (2).—A reference to axle weights has been inserted. (*Select Committee Report.*)

SEC 54 (c) to (e).—The justification for using the roads for heavy goods traffic where alternative facilities exist depends to a large extent on the nature of the goods to be carried. For some the longer time taken by rail or water will be sufficient justification, for others the time factor can be largely discounted. Regional authorities will have to exercise their discretion. (*Statement of Objects and Reasons.*) It is desirable that the applicant should be called upon to show public need, i.e., with reference to particular classes of goods, or that certain firms had agreed to employ him. (*Statement of Objects and Reasons.*)

SEC. 54.—"The change in clause (b) follows that already made in secs. 49 and 52. We have omitted two clauses requiring the weight of the vehicle and the classes of goods carried to be stated, and have in their place inserted two requirements contained

(a) the routes on which or the area in which it is intended to use the vehicle;

(b) the type and carrying capacity of the vehicle;

(c) the manner in which it is claimed that a public need will be served by the vehicle;

(d) such particulars as the Regional Transport Authority may require with respect to any business as a carrier of goods for hire or reward carried on by the applicant at any time before the making of the application, and of the rates charged by the applicant;

(e) particulars of any agreement or arrangement, affecting in any material respect the provision within the region of the Regional Transport Authority of facilities for the transport of goods for hire or reward, entered into by the applicant with any other person by whom such facilities are provided, whether within or without the region; and

(f) any other particulars which may be prescribed.

Procedure of Regional Transport Authority in considering application for public carrier's permit.

55. A Regional Transport Authority shall, in deciding whether to grant or refuse a public carrier's permit, have regard to the following matters, namely:—

(a) the interests of the public generally;

(b) the advantages to the public of the service to be provided and the convenience afforded to the public by the provision of such service;

(c) the adequacy of existing road transport services for the carriage of goods upon the routes or within the area to be served and the effect upon those services of the service proposed;

(d) the benefit to any particular locality or localities likely to be afforded by the service;

(e) the need for providing for occasions when vehicles are withdrawn from service for overhaul or repair; and

(f) the condition of the roads included in the proposed routes or area; and shall also take into consideration any representations made by persons already providing road transport facilities along or near to the proposed route or routes or by any local authority within whose jurisdiction any part of the proposed route or routes lies.

Power to restrict the number of and attach conditions to public carrier's permits.

56. The Regional Transport Authority may, after consideration of the matters set forth in section 55,—

(a) limit the number of transport vehicles or transport vehicles of any specified type for which public carrier's permits may be granted in the region or in any specified area or on any specified routes within the region; or

(b) attach to a public carrier's permit all or any of the following conditions namely:—

(i) that the vehicle shall be used only on specified routes or in a specified area,

(ii) that the laden weight and the axle weights of any vehicle used shall not exceed a specified maximum,

(iii) that such records as may be prescribed relating to the plying of the vehicle shall be maintained, and

(iv) any other prescribed condition appropriate to the service to be pro-

in the English Road Traffic Act, 1933." (*Select Committee Report*.)

SEC. 55.—These conditions are of common application; (a) is intended to indicate that regional authorities should consider any representation that if they allow much highly rated traffic to be diverted from rail to road other railway freights will inevitably be

raised. (*Statement of Objects and Reasons*.)

SELECT COMMITTEE REPORT.—Changes made are mainly in accordance with those already made in such sections as 47 and 53. Clause (h) has been omitted because the substance is sufficiently covered by clauses (a) and (c).

vided by the vehicle which the Regional Transport Authority thinks proper to impose in the public interest or with a view to prevent uneconomic competition between road transport services.

Procedure in applying for and granting permits. 57. (1) An application for a contract carriage permit or a private carrier's permit may be made at any time.

(2) An application for a stage carriage permit or a public carrier's permit shall be made not less than six weeks before the date on which it is desired that the permit shall take effect, or, if the Regional Transport Authority appoints dates for the receipt such applications, on such dates.

(3) On receipt of an application for a stage carriage permit or a public carrier's permit, the Regional Transport authority shall make the application available for inspection at the office of the Authority and shall publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representations in connection therewith may be submitted and the date, not being less than thirty days from such publication, on which, and the time and place at which, the application and any representations received will be considered.

(4) No representation in connection with an application referred to in sub-section (3) shall be considered by the Regional Transport Authority unless it is made in writing before the appointed date and unless a copy thereof is furnished simultaneously to the applicant by the person making such representation.

(5) When any representation such as is referred to in sub-section (3) is made, the Regional Transport Authority shall dispose of the application at a public hearing at which the applicant and the person making the representation shall have an opportunity of being heard either in person or by a duly authorised representative.

(6) When any representation has been made by the persons or authorities referred to in section 50 to the effect that the number of contract carriages for which permits have already been granted in any region or any area within a region is sufficient for or in excess of the needs of the region or of such area, whether such representation is made in connection with a particular application for the grant of a contract carriage permit or otherwise, the Regional Transport Authority may take any such steps as it considers appropriate for the hearing of the representation in the presence of any persons likely to be affected thereby.

(7) When a Regional Transport Authority refuses an application for a permit of any kind, it shall give to the applicant in writing its reasons for the refusal.

58. (1) A permit other than a temporary permit issued under section 62

SEC. 57 (3): WHETHER MANDATORY.—The provisions of sec. 57 (3) are unequivocal and mandatory. A permit granted without complying with these provisions is, therefore, liable to be cancelled. 1943 N.L.J. 388.

Sec. 57 (7) is mandatory that when a representation has been made the R. T. A. shall dispose of the application at a public hearing. 1943 N.L.J. 194.

SECS. 57 AND 58: PERMIT OTHER THAN TEMPORARY PERMIT ISSUED WITHOUT FOLLOWING PROCEDURE.—If a permit which is not a temporary permit issued under sec. 62 is issued by a competent Transport Authority without an application from the owner of the vehicle and without following the procedure laid down in sec. 57 of the Act, that permit will be a valid permit if not revoked or till revoked by the appellate tribunal. Such a permit will attract to it the provisions of the first para-

graph of sec. 58 and will be valid for a period of three years even though on the face of it is for a shorter term. It is not competent to the Civil Court to determine whether such a permit is a good permit or not. 48 C.W.N. 142.

SECS. 57 AND 64.—The R. T. A. after refusing to grant a permit to a party becomes "*functus officio*" in respect of that matter. It would be acting without jurisdiction in granting the permit some time later to the same party, which had failed to avail itself of its remedy to appeal under sec. 64, and which had presented no fresh application under sec. 57, to the R. T. A. 1943 N.L.J. 188. See also 1943 N.L.J. 115.

SEC. 58.—"The period of validity of a permit has been fixed at a minimum of three years with a possible maximum of five years and a saving proviso has been inserted secu-

Duration and renewal of permits. shall be effective without renewal for such period, not less than three years and not more than five years, as the Regional Transport Authority may in its discretion specify in the permit:

Provided that in the case of a permit issued or renewed within two years of the commencement of this Act, the permit shall be effective without renewal for such period of less than three years as the Provincial Government may prescribe.

(2) A permit may be renewed on an application made and disposed of as if it were an application for a permit:

Provided that, other conditions being equal, an application for renewal shall be given preference over new applications for permits.

59. (1) Save as provided in section 61, a permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not without such permission operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit.

(2) The holder of a permit may, with the permission of the authority by which the permit was granted, replace by another vehicle of the same nature and capacity any vehicle covered by the permit.

(3) The following shall be conditions of every permit—

(a) that the vehicle or vehicles to which the permit relates are at all times so maintained as to comply with the requirements of Chapter V and the rules made thereunder;

(b) that the vehicle or vehicles to which the permit relates are not driven at a speed exceeding the speed lawful under this Act;

(c) that any prohibition or restriction imposed and any maximum or minimum fares or freights fixed by notification made under section 43 are observed in connection with any vehicle or vehicles to which the permit relates;

(d) that the vehicle or vehicles to which the permit relates are not driven in contravention of the provisions of section 72;

(e) that the provisions of this Act limiting the hours of work of drivers are observed in connection with any vehicle or vehicles to which the permit relates; and

(f) that the provisions of Chapter VIII so far as they apply to the holder of the permit are observed.

60. (1) The transport authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit—

(a) on the breach of any conditions specified in sub-section (3) of section 59, or of any condition contained in the permit, or

ring preference for holders of permits over applicants for new permits." (*Select Committee Report.*) See Notes under secs. 57 and 64. See 1943 N.L.J. 117.

SEC. 59: SELECT COMMITTEE REPORT.—"The changes made in sub-clause (1) enable permits to be transferred with the permission of the Transport Authority. In sub-clause (3) we have added two additional conditions to those deemed to be attached to the holding of a permit."

SECS. 59 AND 60.—A motor service to which a permit was issued lost all its vehicles. It then included in its service vehicles belonging to another service and the 'B' parts issued to them on those vehicles. The address and the Managing Director of the

service were all changed. The R. T. A. cancelled the permit. *Held*, that the service had ceased to exist, that the permit was transferred without permission and vehicles replaced without permission as required by sec. 59 (1) and (2), Motor Vehicles Act and that a contravention of sec. 60 (1) (b), Motor Vehicles Act, had occurred for which cancellation of the permit was appropriate. 1943 N.L.J. 193.

SEC. 60: SELECT COMMITTEE REPORT.—"The changes made in sub-clauses (1) and (2) are formal. Sub-clause (3) has been omitted as unnecessary, particularly in view of the new provisions now inserted as sec. 61."

(b) if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit, or

(c) if the holder of the permit ceases to possess the vehicle or vehicles covered by the permit, or

(d) if the holder of the permit has obtained the permit by fraud or misrepresentation:

Provided that no permit shall be cancelled unless an opportunity has been given to the holder of the permit to submit his explanation.

(2) Where a transport authority cancels or suspends a permit, it shall give to the holder in writing its reasons for the revocation or suspension.

61. (1) Where the holder of a permit dies, the person succeeding to the possession of the vehicles covered by the permit may, for a period of three months, use the permit as if it had been granted to himself:

Transfer of permit on death of holder.

Provided that such person has, within thirty days of the death of the holder, informed the transport authority which granted the permit of the death of the holder and of his own intention to use the permit:

Provided further that no permit shall be so used after the date on which it would have ceased to be effective without renewal in the hands of the deceased holder.

(2) The transport authority may, on application made to it within three months of the death of the holder of a permit, transfer the permit to the person succeeding to the possession of the vehicles covered by the permit.

62. ¹[(1)] A Regional Transport Authority may, at its discretion, and without following the procedure laid down in section 57, grant permits, to be effective for a limited period not in any case to exceed four months, to authorise the use of a transport vehicle temporarily—

(a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or

(b) for the purposes of a seasonal business, or

(c) to meet a particular temporary need, and may attach to any such permit any condition it thinks fit.

¹[(2) * * * *].

63. (1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one province shall not be valid in any other province unless countersigned by the Provincial Transport Authority of that other province or by the Regional Transport Authority concerned.

Validation of permits for use outside region in which granted.

(2) A Regional Transport Authority when countersigning the permit may attach to the permit any condition which it might have imposed if it had granted the permit, and may likewise vary any condition attached to the permit by the Authority by which the permit was granted.

LEG. REF.

¹ Omitted by Act XX of 1942.

SEC. 61: REPORT OF SELECT COMMITTEE.—“Provision is here made on comprehensive lines for the temporary transfer of permits on the death of a holder.”

SEC. 62: REPORT OF SELECT COMMITTEE.—“We have reduced the period of validity of a temporary permit from six to four months. Cl. (a) has been omitted as unnecessary;

but we have added a power to delegate the function of issuing temporary permits so that they may be issued without the necessity for a formal meeting of the Transport Authority”.

SEC. 63.—“Provision has been made for rules whereby provincial authorities may make mutual arrangements for validating permits outside their jurisdiction without countersignature”.

(3) The provisions of this Chapter relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of counter-signatures of permits.

(4) Notwithstanding anything contained in sub-section (1), a Regional Transport Authority of one region may issue a temporary permit under clause (a) or clause (c) of sub-section (1) of section 62 to be valid in another region or province with the concurrence given generally or for the particular occasion, of the Regional Transport Authority of that other region or of the Provincial Transport Authority of that other province, as the case may be.

Appeals.

64. Any person—

(a) aggrieved by the refusal of the Provincial or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or

(b) aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof, or

(c) aggrieved by the refusal to transfer the permit to the person succeeding on the death of the holder of a permit, or

(d) aggrieved by the refusal of the Provincial or a Regional Transport Authority to countersign a permit, or by any condition attached to such counter-signature, or

(e) aggrieved by the refusal of renewal of a permit, or

(f) being a local authority or police authority or an association which, or a person providing transport facilities who, having opposed the grant of a permit, is aggrieved by the grant thereof or by any condition attached thereto, or

(g) being the holder of a licence, who is aggrieved by the refusal of a Regional Transport Authority to grant an authorisation to drive a public service vehicle,

may, within the prescribed time and in the prescribed manner, appeal to the prescribed authority who shall give such person and the original authority an opportunity of being heard.

CL. (4).—This is necessary particularly for temporary permits for vehicles for feasts, weddings, funerals, etc. (*Statement of Objects and Reasons*.)

REPORT OF SELECT COMMITTEE.—“In sub-cl. (1) the added words clarify the procedure where the permit is to be used in two separate provinces. The alteration in sub-cl. (4) adds a necessary reference which was omitted in the Bill”.

FIXATION OF PERMIT FEES.—The Local Government has nothing to do with the fixation of the permit fees. That falls within the jurisdiction of the Provincial Transport Authority. 48 C.W.N. 142.

SEC. 64: REPORT OF SELECT COMMITTEE.—“A reference to the Provincial Transport Authority has been inserted in cl. (a), and an additional ground of appeal has been added by the new cl. (c). The change in original cl. (c), now (d), is consequential on that made in sec. 47 (1)”. See notes under sec. 57.

SECS. 64 AND 44 (3) (a)—DUTY OF APPELLATE TRIBUNAL.—The duty of the appellate tribunal is only to consider appeals preferred under sec. 64, Motor Vehicles Act. It cannot issue directions under sec. 44 (3) (a). 1943 N.L.J. 190.

SECS. 64 (f) AND 57—RIGHT OF APPEAL—PERSON NOT OPPOSING GRANT OF PERMIT.—It is only the person, or authority who has validly opposed the grant of a permit who

can make an appeal under sec. 64 (f) of the Motor Vehicles Act. If an authority or person does not oppose the grant of a permit, as provided in sec. 57, Motor Vehicles Act, he cannot be said to be aggrieved if the R. T. A. passes an order which turns out to be to his prejudice; when power is given under law to oppose in a certain way, then that power must be exercised in that particular way, and cannot be exercised in a manner not warranted by law. 1943 N.L.J. 115.

SECS. 64 AND 58—RIGHT OF APPEAL—PERSON AGGRIEVED BY THE SANCTION OF A RENEWAL.—Sec. 64 of the Motor Vehicles Act provides for an appeal by a person aggrieved by refusal to grant a permit, by a person, who opposed the grant of a permit, aggrieved by the grant thereof and by a person aggrieved by the refusal of renewal of a permit. The provision in sec. 58 is procedural and can have no effect on the clear provisions of sec. 64. The Act provides for no appeal against the sanction of renewal of a permit. 1943 N.L.J. 117.

SECS. 64 AND 59 (1)—RIGHT OF APPEAL—ORDER OF R. T. A. TRANSFERRING A PERMIT FOR A SERVICE OF STAGE CARRIAGE.—There is no provision in sec. 64, Motor Vehicles Act for an appeal against an order of the R. T. A. transferring, under sec. 59 (1), Motor Vehicles Act, read with B. 68 of the C.P. and Berar Motor Vehicles Rules 1940, a per-

65. (1) No person shall cause or allow any person who is employed by him for the purpose of driving a transport vehicle or who is subject to his control for such purpose to work—

(a) for more than five hours before he has had an interval of rest of at least half an hour; or

(b) for more than nine hours in one day; or

(c) for more than fifty-four hours in the week.

(2) The Provincial Government may by rule made under section 68 grant such exemptions from the provisions of sub-section (1) as it thinks fit, to meet cases of emergency or of delays by reason of circumstances which could not be foreseen.

(3) The Provincial Government¹ [or, if authorized in this behalf by the Provincial Government by rules made under section 68, the Provincial or a Regional Transport Authority], may require persons employing any persons whose work is subject to any of the provisions of sub-section (1) to fix beforehand the hours of work of such persons as to conform with those provisions, and may provide for the recording of the hours so fixed.

(4) No person shall work or shall cause or allow any other person to work outside the hours fixed or recorded for the work of such persons in compliance with any rule made under sub-section (3).

(5) The Provincial Government may prescribe the circumstances under which any period during which the driver of a vehicle although not engaged in work is required to remain on or near the vehicle may be deemed to be an interval for rest within the meaning of sub-section (1).

66. Any contract for the conveyance of a passenger in a stage carriage or contract carriage, in respect of which a permit has been issued under this Chapter, shall, so far as it purports to negative or restrict the liability of any person in respect of any claim made against that person in respect of the death of, or bodily injury to, the passenger while being carried in, entering or alighting from the vehicle, or purports to impose any conditions with respect to the enforcement of any such liability, be void.

Power to make rules as to stage carriages and contract carriages.

67. (1) A Provincial Government may make rules to regulate, in respect of stage carriages and contract carriages,—

(a) the conduct of persons licensed to act as drivers of, and the licensing of and the conduct of conductors of, such vehicles when acting as such; and

(b) the conduct of passengers in such vehicles.

(2) Without prejudice to the generality of the foregoing provision, such rules may—

(a) authorise the removal from such vehicle of any person infringing the rules by the driver or conductor of the vehicle, or, on the request of the driver or conductor, or any passenger by any police officer;

(b) require a passenger who is reasonably suspected by the driver or conductor, of contravening the rules to give his name and address to a police officer or to the driver or conductor on demand;

LEG. REF.

¹ Inserted by Act XX of 1942.

mit for a service of stage carriage from one company to another. 1943 N.L.J. 117.

SEC. 65.—“These provisions are desirable but are not likely to be generally enforced until more regularly times services are established. But they will be used against an owner in the event of an accident where the driver has been grossly over-worked, and

also in well known cases of abuse.” (*Statement of Objects and Reasons*.)

SELECT COMMITTEE REPORT.—“The clause has been recast and expanded. A limit of fifty-four hours’ work per week has been introduced. The limit for a period of continuous work has been raised from ten to eleven hours. Provision has been made for the keeping of records of working hours in order to facilitate enforcement of the provisions of the clause”.

(c) require a passenger to declare, if so requested by the driver or conductor, the journey he intends to take or has taken in the vehicle and to pay the fare for the whole of such journey and to accept any ticket provided therefor;

(d) require, on demand being made for the purpose by the driver or conductor or other person authorised by the owner of the vehicle, production during the journey and surrender at the end of the journey by the holder thereof of any ticket issued to him;

(e) require a passenger, if so requested by the driver or conductor, to leave the vehicle on the completion of the journey the fare for which he has paid;

(f) require the surrender by the holder thereof on the expiry of the period for which it is issued of a ticket issued to him;

(g) require the maintenance of complaint books in stage carriages and prescribe the conditions under which passengers can record any complaints in the same.

68. (1) A Provincial Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, rules under this section may be made with respect to all or any of the following matters, namely:—

(a) the period of appointment and the terms of appointment of and the conduct of business by Regional and Provincial Transport Authorities and the reports to be furnished by them;

(b) the conduct and hearing of appeals that may be preferred under this Chapter, [the fees to be paid in respect of such appeals and the refund of such fees]¹

(c) the forms to be used for the purposes of this Chapter, including the forms of permits;

(d) the issue of copies of permits in place of permits lost or destroyed;

(e) the documents, plates and marks to be carried by transport vehicles, the manner in which they are to be carried and the languages in which any such documents are to be expressed;

(f) the badges and uniform to be worn by drivers and conductors of stage carriages and contract carriages;

(g) the fees to be paid in respect of permits, duplicate permits, plates and badges;

²[(gg) the exemption of prescribed persons or prescribed classes of persons from payment of all or any or any portion of the fees payable under this Chapter;]

(h) the custody, production and cancellation on revocation or expiration of permits, and the return of permits which have become void or have been revoked;

(i) the conditions subject to which a permit issued in one region shall be valid in another region;

(j) the authorities to whom, the time within which and the manner in which appeals may be made;

(k) the construction and fittings of, and the equipment to be carried by stage and contract carriages, whether generally or in specified areas;

LEG. REF.

¹ Added by Act XX of 1942.

² Inserted and substituted by Act XX of 1942.

SEC. 68: REPORT OF SELECT COMMITTEE.—
CL.(j) has been omitted as sec. 65 adequately provides for all matters connected with

hours of work. The other changes made are self-explanatory, and are aimed at supplementing minor deficiencies in the rule-making power.

SEC. 68—RULE 69.—Document extending permit issued under Act of 1914 though not in statutory form is a 'permit' under Act. 48 C.W.N. 142.

(*l*) the determination of the number of passengers a stage or contract carriage is adapted to carry and the number which may be carried;

(*m*) the conditions subject to which goods may be carried on stage and contract carriages partly or wholly in lieu of passengers;

(*n*) the safe custody and disposal of property left in a stage or contract carriage;

(*o*) prohibiting the painting or marking of a stage or a contract carriage in such colour or manner as to induce any person to believe that the vehicle is used for the transport of mails;

(*p*) the conveyance in stage or contract carriages of corpses or persons suffering from any infectious or contagious disease or goods likely to cause discomfort or injury to passengers and the inspection and disinfection of such carriages, if used for such purposes;

(*q*) the provision of taxi meters on motor cabs requiring approval or standard types of taxi meters to be used and examining, testing and sealing taxi meters;

(*r*) prohibiting the picking up or setting down of passengers by stage or contract carriages at specified places or in specified areas or at places other than duly notified stands or halting places and requiring the driver of a stage carriage to stop and remain stationary for a reasonable time when so required by a passenger desiring to board or alight from the vehicle at a notified halting place;

(*s*) the requirements (including the provision of proper sanitary arrangements) which shall be complied with in any duly notified stand or halting place;

(*t*) requiring the owners of transport vehicles to notify any change of address or to report the failure of or damage to any vehicle used for the conveyance of passengers for hire or reward;

(*u*) requiring the person in charge of a stage carriage to carry any person tendering the legal or customary fare;

(*v*) the conditions under which and the types of containers or vehicles in which animals or birds may be carried and the seasons during which animals or birds may or may not be carried;

[(*w*) the licensing of and the regulation of the conduct of agents or canvassers who engage in the sale of tickets for travel by public service vehicles or otherwise solicit custom for such vehicles;] (Substituted by Act XX of 1942.)

(*x*) the inspection of transport vehicles and their contents and of the permits relating to them;

(*y*) the carriage of persons other than the driver in goods vehicles;

(*z*) the records to be maintained and the returns to be furnished by the owners of transport vehicles; and

(*za*) any other matter which is to be or may be prescribed.

CHAPTER V.

CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF MOTOR VEHICLES.

General provision regarding construction and maintenance.

69. Every motor vehicle shall be so constructed and so maintained as to be at all times under the effective control of the person driving the vehicle.

SEC. 69: MANUFACTURERS' LIABILITY.—Since automobiles are manufactured for the purpose of travelling over highways at a rapid speed, it is indispensable to their being so employed that they should be safely and properly constructed with reference to the use for which they are intended. The danger of injury to their occupants from defects in material or construction is so great that there is imposed upon manufacturers a duty of exercising a high degree of care in their construction and equipping them in such manner as will make them

reasonably safe when used with proper care. If an automobile is defectively or insufficiently constructed it becomes immediately dangerous to life and limb, because no matter how competent the drivers employed to operate it, they are helpless to protect themselves from undiscovered and unknown defects. Accordingly a manufacturer of an automobile will normally be charged with notice of the unsafe condition in a machine if the faulty construction is so patent that no person engaged in its manufacture could fail to observe it. If a defect of this cha-

Power to make rules. 70. (1) A Provincial Government may make rules regulating the construction, equipment and maintenance of motor vehicles and trailers.

(2) Without prejudice to the generality of the foregoing power, rules may be made under this section governing any of the following matters either generally in respect of motor vehicles or trailers or in respect of motor vehicles or trailers of a particular class or in particular circumstances, namely:—

(a) the width, height, length and overhang of vehicles and of the loads carried;

(b) seating arrangements in public service vehicles and the protection of passengers against the weather;

(c) the size, nature and condition of tyres;

(d) breaks and steering gear;

(e) the use of safety glass;

(f) signalling appliances, lamps and reflectors;

(g) speed governors;

(h) the emission of smoke, visible vapour, sparks, ashes, grit or oil;

(i) the reduction of noise omitted by or caused by vehicles;

(j) prohibiting or restricting the use of audible signals at certain times or in certain places;

(k) prohibiting the carrying of appliances likely to cause annoyance or danger;

(l) the periodical testing and inspection of vehicles by prescribed authorities;

(m) the particulars other than registration marks to be exhibited by vehicles and the manner in which they shall be exhibited; and

(n) the use of trailers with motor vehicles.

CHAPTER VI.

CONTROL OF TRAFFIC.

71. (1) No person shall drive a motor vehicle or cause or allow a motor vehicle to be driven in any public place at a speed exceeding the maximum speed fixed for the vehicle by or under this Act or by or under any law for the time being in force:

racter is concealed from the purchaser at the time of sale and is unknown to him at the time of an accident which it causes, the manufacturer may be held responsible in damages to any one who is thereby injured.

SEC. 70.—“The rule-making powers outlined in this section are unavoidable. Although uniformity, in respect of rules in this Chapter, is desirable, such rules cannot conveniently be incorporated in the Bill owing to periodical changes in the design of vehicles from time to time”. (*Statement of Objects and Reasons.*)

SELECT COMMITTEE REPORT.—“We have added a power to regulate seating accommodation and provision for the comfort of passengers in passenger-carrying vehicles”.

REGULATIONS AS TO SAFETY APPLIANCES AND STOPPING.—Acts governing motor vehicles generally provide that automobiles must be equipped with safety devices such as lamps, bells and horns, and require them to carry lighted lamps between sunset and sunrise, and to give warning of danger by sounding a horn; and in like manner a municipal corporation is also authorised to carry signal and other safety appliances.

SEC. 71, CL. (1), AND THE EIGHTH SCHEDULE.—“It may with some force be argued that speed limits are connected with the local strength of roads and should be left for local prescription. But, as in the case of permissible weights, there are advantages in making speeds uniform. It is true that motor transport vehicles will ply within the province but there will always be a good deal of traffic across provincial borders. There are other practical reasons why general speed limits should be uniform and imposed by the Act, e.g., insurance risks may vary with permissible speed and it is desirable that premium rates should be uniform throughout India. If mechanical speed governors are introduced, as is to be hoped, they must be set for a certain speed and be sealed by some authority. A governor set for the legal speed in one province may be illegal in another if there is a difference in speed limits. Uniform reasonable speed limits coupled with the compulsory use of speed governors will tend to reduce not only accidents but also premium rates”. (*Statement of Objects and Reasons.*)

Provided that such maximum speed shall in no case exceed the maximum fixed for the vehicle in the Eighth Schedule.

(2) The Provincial Government or any authority authorised in this behalf by the Provincial Government may, if satisfied that it is necessary to restrict the speed of motor vehicles in the interests of public safety or convenience or because of the nature of any road or bridge, by notification in the official Gazette, fix such maximum speed limits as it thinks fit for motor vehicles or any specified class of motor vehicles or for motor vehicles to which a trailer is attached, either generally or in a particular area or on a particular road or roads.

72. (1) The Provincial Government may prescribe conditions for the issue of permits for heavy transport vehicles by the Provincial or Regional Transport Authorities and may prohibit or restrict the use of such vehicles in any area or route within the province:

SELECT COMMITTEE REPORT.—“The changes made are intended to express more clearly the intention of the clause as drafted. In the case of certain vehicles the Eighth Schedule fixes no maximum speed limit. But where such maximum speeds are fixed they are to be effective for the purposes of sub-cl. (1)”.

REGULATION AS TO SPEED.—Limitation upon the speed of automobiles operated on the public streets and highways are primarily intended for the protection of travellers and drivers of bullock and horse-drawn vehicles. The law establishes a uniform maximum rate of speed, such as so many miles per hour, for all motor vehicles operated anywhere in the country roads, or it may make special regulations for particular localities, such as a prohibition against driving faster than 5 miles per hour or a “common travelling pace” in a designated congested locality. The state may also expressly leave to the municipalities the right of determining within certain limits the proper maximum speed of motor vehicles. In the absence of express or implied prohibition by the legislature a municipality may also pass ordinances fixing within reasonable limits the speed at which motor vehicles may be operated within its boundaries, and it is within the province of a city corporation to prescribe different rates of speed for automobiles in different portions of the city according to the width of the streets, their use, and the density of population. In view of the danger to traffic involved in the use of automobiles on country roads, especially in the night time, an ordinance prohibiting the running of automobiles on country roads between sunset and sunrise may be not unreasonable under certain conditions. (*Am. Bul. Case-law.*)

Under sec. 71 (2) which permits the restricting of speed within certain areas, the notification is the fixing, and therefore until the restriction has been notified, the speed limit is not fixed. A notification is therefore a condition precedent to the commission of an offence of exceeding the speed limit and is not merely a method of publishing the speed fixed. 55 L.W. 827 (2) = (1942) 2 M.L.J., 670 = 1943 M. 217.

SEC. 71 (2) is mandatory and it is necessary before the imposition of a speed limit can be enforced that there should be a prior notification in the Gazette. 56 L.W. 73 = A.I.R. 1943 Mad. 391 (1) = (1943) 1 M.L.J. 153.

To sustain a conviction under sec. 71 (1) it must be shown that the speed limit has been “fixed” under sec. 71 (2) and that the accused exceeded it. The fixing of the speed by the proper authority, such as the Road Transport Board is the publication in the Official Gazette. Publication in the District Gazette is not publication in the “Official Gazette” under sec. 71 (2). When there has been no publication or notification in the Gazette of India or in the Gazette of the Province, a notification in the District Gazette does not amount to “fixing” the speed limit and a person exceeding such limit published in the District Gazette is not guilty of exceeding the speed “fixed” and cannot be convicted under sec. 71 (1). 56 L.W. 326 = A.I.R. 1943 Mad. 491 = (1943) 1 M.L.J. 344.

SEC. 72.—“The object is two-fold. Firstly to put a stop to gross overloading by specifying a maximum permissible weight and axle weight which is reasonable for vehicles at present in general use. Secondly, a reasonable limit is imposed which will generally apply but can be varied upwards or downwards by Provincial Governments to suit local conditions.” (*Statement of Objects and Reasons.*)

SELECT COMMITTEE REPORT.—“We have omitted sub-clause (1) which imposed maximum limits on the laden weight and axle weight of motor vehicles, while retaining the prohibition of the driving in public places of vehicles not fitted with pneumatic weight, which we have increased, respectively, from 12,500 and 9,000 pounds to 14,500 and 10,600 will be found included in the definition in cl. 2 (8) of a “heavy transport vehicle”. For the prohibition (subject to a power to prescribe otherwise) of the driving of vehicles exceeding these weights, which was contained in sub-clause (1) which we have omitted, we have substituted a provision enabling the Provincial Government to prescribe condi-

Provided that any permit issued before the commencement of this Act may be continued or renewed by the competent authority for a period not exceeding three years under the conditions upon which the permit was originally issued, unless the Provincial Government directs otherwise.

(2) Except as may be otherwise prescribed, no person shall drive or cause or allow to be driven in any public place any motor vehicle which is not fitted with pneumatic tyres.

(3) No person shall drive or cause or allow to be driven in any public place any motor vehicle or trailer—

(a) the unladen weight of which exceeds the unladen weight specified in the certificate of registration of the vehicle, or

(b) the laden weight of which exceeds the registered laden weight specified in the certificate of registration, or

(c) any axle weight of which exceeds the maximum axle weight specified for that axle in the certificate of registration.

(4) Where the driver or person in charge of a motor vehicle or trailer driven in contravention of sub-section (2) or clause (a) of sub-section (3) is not the owner, a Court may presume that the offence was committed with the knowledge of or under the orders of the owner of the motor vehicle or trailer.

73. Any person authorised in this behalf by the Provincial Government

Power to have vehicle weighed. may, if he has reason to believe that a goods vehicle or trailer is being used in contravention of section 72, require the driver to convey the vehicle to a weighing device, if any, within a distance of one mile from any point on the forward route or within a distance of five miles from the destination of the vehicle for weighing; and if on such weighing the vehicle is found to contravene in any respect the provisions of section 72 regarding weight, he may, by order in writing, direct the driver to convey the vehicle or trailer to the nearest place, to be specified in the notice, where facilities exist for the storage of goods and not to remove the vehicle or trailer from that place until the laden weight or axle weight has been reduced or the vehicle has otherwise been treated so that it complies with section 72.

74. The Provincial Government or any authority authorised in this behalf

Power to restrict the use of vehicles.

by the Provincial Government, if satisfied that it is necessary in the interests of public safety or convenience, or because of the nature of any road or bridge, may by notification in the official Gazette prohibit or restrict, subject to such exceptions and conditions as may be specified in the notification, the driving of motor vehicles or of any specified class of motor vehicles or the use of trailers either generally in a specified area or on a specified road.

tions for the issue by Transport Authorities of permits to drive heavy transport vehicles, and to prohibit or restrict their use in the Province, adding a saving clause to cover any such vehicles which are already plying under permits when the Act comes into force."

SUB-CLAUSE (4).—"We have confined the presumption of knowledge to those cases only in which it seems to be equitable to suppose that the driver would have that knowledge." (*Select Committee Report*.)

Rule 50-A of the C. P. Motor Vehicles Rules, cannot apply to the case of a motor omnibus carrying passengers and luggage, for it applies only to motor vehicles used exclusively for the carriage of goods. R. 63 (3) seems to suggest that it is the duty of the conductor to calculate the number of

passengers allowed after extra luggage has been put on the bus, and any way R. 60 makes it clear that in all cases, where the driver is not responsible, the conductor is held responsible, for the fulfilment of the rules. Where both the conductor and driver are charged for carrying luggage in excess of the weight allowed, as the rule requires the conductor to see that the weight of the luggage carried is not in excess of the weight allowed, the conductor alone is liable. 1939 N.L.J. 95.

SEC. 73: SELECT COMMITTEE REPORT.—
"The first change confines the scope of the clause to goods vehicles, the class of vehicle really concerned. The second change provides against the possibility of a vehicle being diverted from its route and thus unreasonably delayed on its journey."

75. (1) The Provincial Government or any authority authorised in this behalf by the Provincial Government may cause or permit traffic signs to be placed or erected in any public place for the purpose of regulating motor vehicle traffic.

(2) Traffic signs erected under sub-section (1) for any purpose for which provision is made in the Ninth Schedule shall be of the size, colour and type and shall have the meanings set forth in the Ninth Schedule, but the Provincial Government or any authority empowered in this behalf by the Provincial Government may make or authorise the addition to any sign set forth in the said Schedule, of transcriptions of the words, letters or figures thereon in such script as the Provincial Government may think fit, provided that the transcriptions shall be of similar size and colour to the words, letters or figures set forth in the Ninth Schedule.

(3) Except as provided by sub-section (1) no traffic sign shall, after the commencement of this Act, be placed or erected on or near any road; but all traffic signs erected prior to the commencement of this Act by any competent authority shall for the purposes of this Act be deemed to be traffic signs erected under the provisions of sub-section (1).

(4) A Provincial Government may, by notification in the official Gazette empower any District Magistrate or Superintendent of Police ¹[or in the Presidency towns), the Chief Presidency Magistrate or the Commissioner of Police,] to remove or cause to be removed any sign or advertisement which is so placed in his opinion as to obscure any traffic sign from view or any sign or advertisement which is in his opinion so similar in appearance to a traffic sign as to be misleading.

76. The Provincial Government or any authority authorised in this behalf by the Provincial Government may, in consultation with the local authority having jurisdiction in the area concerned, determine places at which motor vehicles may stand either indefinitely or for a specified period of time, and may determine the places at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers.

77. A Provincial Government or any authority authorised in this behalf by the Provincial Government may, by notification in the official Gazette or by the erection at suitable places of the appropriate traffic sign referred to in Part A of the Ninth Schedule designate certain roads as main roads for the purposes of the regulations contained in the Tenth Schedule.

78. (1) Every driver of a motor vehicle shall drive the vehicle in conformity with any indication given by ¹[a mandatory traffic sign] and in conformity with the driving re-

LEG. REF.
¹ Inserted by Act XX of 1942.

SEC. 75 (2): SELECT COMMITTEE REPORT.—“The alteration of sub-clause (2) is designed to ensure that the use of additional traffic-directions such as glass reflectors or other signs not contained in the Ninth Schedule is still possible, while securing at the same time that the more important signs which are set out in the Ninth Schedule are uniform throughout the road systems of British India. Should any new signs be subsequently added to these later by an amendment of the Schedule, the wording of the sub-clause will require them to be adopted uniformly for the purpose for which they are intended.”

SECS. 75 AND 78 AND NINTH SCHEDULE.—The signs included in the Ninth Schedule have from time to time been standardised for use in India in consultation with Provincial Governments. (*Statement of Objects and Reasons.*)

SECS. 78 AND 79 AND THE TENTH AND ELEVENTH SCHEDULES.—“The substance of these Schedules appears in varying form in provincial rules, but it is desirable that driving regulations and signals should be uniform in respect of motor vehicles. For instance, a driver coming to a strange town should not be liable to commit an offence in passing a tram-car owing to local variations in traffic rules.” (*Statement of Objects and Reasons.*)

SEC. 78.—It is an essential feature of the section imposing a liability on drivers to

gulations set forth in the tenth Schedule and shall comply with all directions given him by any police officer for the time being engaged in the regulation of traffic in any public place.

[(2) In this section "mandatory traffic sign" means a traffic sign included in Part A of the Ninth Schedule, or any traffic sign of similar form (that is to say, consisting of or including a circular disc displaying a device, word or figure and having a red ground or border) erected for the purpose of regulating motor vehicle traffic under sub-section (1) of section 75.] *(Added by Act XX of 1942.)*

Signals and signalling devices.

79. The driver of a motor vehicle shall on the occasions specified in the Eleventh Schedule make the signals specified therein:

Provided that the signal of an intention to turn to the right or left or to stop may be given by a mechanical or an electrical device of a prescribed nature affixed to the vehicle.

80. No person shall drive or cause or allow to be driven in any public place any motor vehicle with a left hand steering control unless it is equipped with a mechanical or electrical signalling device of a prescribed nature and in working order.

81. No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to remain at rest on any road in such a position or in such a condition or in such circumstances as to cause or be likely to cause danger, obstruction or undue inconvenience to other users of the road.

82. No person driving or in charge of a motor vehicle shall carry any person or permit any person to be carried on the running board or otherwise than within the body of the vehicle.

respond to signals that it is not for them to speculate why the signal was given and to act accordingly. If the applicant disregarded the signals made from a lorry standing at a distance, the fact that at a later stage the accident happened in spite of his best efforts is no excuse. 146 I.C. 208=34 Cr.L.J. 1260=A.I.R. 1933 Nag. 177. The Act of 1914 requires that a driver should stop in three sets of circumstances, firstly that traffic may be regulated, secondly that a name and address may be obtained with a view to prosecution, and thirdly for the purpose of enforcing any of the provisions of the Act, such as checking the licence and inspecting a bus where it is suspected to be overloaded and it is not necessary that the police officer stopping the vehicle should be engaged in regulating traffic. 31 Cr.L.J. 639=A.I.R. 1930 M. 445=57 M.L.J. 457. Where there is no evidence to the effect that the police officer whose signal was disobeyed was in uniform a conviction under the rules for disobeying the signal cannot be sustained. 43 C.W.N. 278.

SECS. 78 AND 112: BURDEN OF PROOF—CHARGE OF EXCEEDING SPEED LIMIT.—In a

prosecution for an offence under sec. 78 read with sec. 112 for exceeding the speed limit laid down under sec. 71 (2) of the Motor Vehicles Act, it is the duty of the prosecution, in order to bring home the offence to the accused to prove (1) that a certain speed has been laid down under the Act as the maximum speed that a vehicle should attain, and (2) that the accused exceeded that speed limit. It is not sufficient to prove merely that there were two posts on the road on which the number "10" was painted to indicate that the speed should not exceed 10 miles an hour. It has further to be proved that the speed had been fixed by some authority empowered to fix a speed under sec. 71 (2). When that is not proved, a conviction is unsustainable. 55 L.W. 722=A.I.R. 1943 Mad. 61=(1942) 2 M.L.J. 629.

SEC. 79: SELECT COMMITTEE REPORT.—"As we have omitted clause (115) which made the driving of a vehicle without due care and attention a separate offence, we have deleted the second proviso to this clause as a consequential amendment."

SECS. 80 TO 83, will standardise similar

83. No person driving a motor vehicle shall allow any person to stand or sit or any thing to be placed in such a manner or position as to hamper the driver in his control of the vehicle.

Obstruction of driver.

84. No person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place unless there is in the driver's seat a person duly licensed to drive the vehicle or unless the mechanism has been stopped and a brake or brakes applied or such other measures taken as to ensure that the vehicle cannot accidentally be put in motion in the absence of the driver.

Stationary vehicles.

85. No driver of a two-wheeled motor cycle shall carry more than one person in addition to himself on the cycle and no such person shall be carried otherwise than sitting on a proper seat securely fixed to the cycle behind the driver's seat.

Pillion riding.

86. (1) The driver of a motor vehicle in any public place shall, on demand by any police officer in uniform, produce his licence for examination.

Duty to produce licence and certificate of registration.

(2) The owner of a motor vehicle, or in his absence the driver or other person in charge of the vehicle, shall, on demand by a registering authority or

provisions in provincial rules. (*Statement of Objects and Reasons.*)

SEC. 85: SELECT COMMITTEE REPORT.—“We have omitted the reference to riding astride. It is unnecessary in Indian conditions to require that a pillion passenger shall be seated astride the cycle.”

SEC. 86: SELECT COMMITTEE REPORT.—“The addition to sub-clause (2) makes a provision regarding the certificate of fitness which was not adequately provided for in the sub-clause as originally drafted. In sub-clause (3) consequential amendments are made, the necessity for personal appearance is dispensed with, and the period allowed for production of the required documents is extended. The redraft of the proviso to sub-clause (3) expresses more clearly the degree to which the relaxation given by sub-clause (3) may be extended to the drivers who are normally expected to have such documents with them.” “Upon demand” means then and there on the spot. 18 A.L.J. 933=21 Cr.L.J. 724=58 I.C. 148. The term should not be interpreted to mean “within a reasonable time after demand.” The word “demand” connotes something imperative that brooks no delay. I.L.R. 1936 Nag. 164=164 I.C. 351=37 Cr.L.J. 1012=A.I.R. 1936 Nag. 150. Where the driver of a motor vehicle fails to produce his licence immediately on demand having kept it in a not easily accessible part of the car but produces it subsequently after very little delay, the offence committed is of a technical nature and it is a case in which the prosecution might properly have been waived. (*Ibid.*) No person is a driver unless driving. Further it is only a police officer who can demand the licence, and an order requiring the driver to attend a Magistrate's house or Court with his licence is illegal. 19 A. 754; 101 I.C. 668=25 A.L.J. 574=1927 A. 478. But see also 1926 P. 446. Under sec. 8 (of the old Act) the failure to produce

the driving licence on demand by the police officer is an offence but not the mere non-carrying of it on person. 33 P.L.R. 278. Secs. 8 and 9 (old Act) do not apply to permit under R. 24 but to driving licence prescribed by sec. 6 of the Act and R. 22—Failure of a driver of a motor vehicle to produce on demand a permit issued to him under R. 24 is not an offence. 1928 A. 492. The section does not contemplate that police officer cannot ask a driver of a motor vehicle for his licence in the private grounds of a private person and that he can only do so when a car is actually being driven by the person, whose licence is demanded, whilst on the public road. 97 I.C. 48=7 P.L.T. 542=27 Cr.L.J. 1072=A.I.R. 1926 P. 446. Non-production of licence when demanded, by police is a trivial and technical offence under sec. 8 of the Act. There is no prohibition against the driving of a car by a properly licensed person who has not got his licence with him and it is no offence to do so. The order of suspension along with the fine, is appealable. 65 I.C. 425=23 Cr. L.J. 73=A.I.R. 1922 N. 71. It is compulsory upon a driver of a motor vehicle to carry his licence with him; he is bound to produce it at once, directly a police constable calls upon him to do so, and failure to produce immediately upon such demand is punishable under the Act. 43 A. 123=1921 A. 277; see also I.L.R. 1936 Nag. 164. Non-production of licence—Technical offence—Order of suspension appealable. 23 Cr.L.J. 73=65 I.C. 425=1922 N. 71. There is no authority for the proposition that a motor car which carries mails, and also carries passengers, is exempt from the operation of the ordinary rules about licence for drivers and those restricting the number of passengers to be carried under the permit. (1890) Rat. Unrep. Cr. P. Code, 512, (Dist.), 100 I. C. 1053=29 Bom.L.R. 191=28 Cr.L.J. 397=1927 B. 154.

any person authorised in this behalf by the Provincial Government, produce the certificate of registration of the vehicle and, where the vehicle is a transport vehicle, the certificate of fitness referred to in section 38.

(3) If the licence or certificates, as the case may be, are not at the time in the possession of the person to whom demand is made, it shall be a sufficient compliance with this section if such person produces the licence or certificates within ten days at any police station in British India which he specifies to the police officer or authority making the demand:

Provided that, except to such extent and with such modifications as may be prescribed, the provisions of this sub-section shall not apply to a driver driving as a paid employee, or to the driver of a transport vehicle or to any person required to produce the certificate of registration or the certificate of fitness of a transport vehicle.

87. (1) The driver of a motor vehicle shall

Duty of driver to stop in certain cases. cause the vehicle to stop and remain stationary so long as may reasonably be necessary—

(a) when required to do so by any police officer in uniform, or

(b) when required to do so by any person in charge of an animal if such person apprehends that the animal is, or being alarmed by the vehicle will become, unmanageable, or

(c) when the vehicle is involved in the occurrence of an accident to a person, animal or vehicle or of damage to any property, whether the driving or management of the vehicle was or was not the cause of the accident or damage, and he shall give his name and address and the name and address of the owner of the vehicle to any person affected by any such accident or damage who demands it provided such person also furnishes his name and address.

(2) The driver of a motor vehicle shall, on demand by a person giving his own name and address and alleging that the driver has committed an offence punishable under section 116, give his name and address to that person.

(3) In this section the expression "animal" means any horse, cattle, elephant, camel, ass, mule, sheep or goat.

88. The owner of a motor vehicle the driver of which is accused of any

SEC. 87.—This reproduces the existing sec. 4 of the Indian Motor Vehicles Act, 1914, with the additional definition of "animal." (*Statement of Objects and Reasons.*)

SELECT COMMITTEE REPORT.—"The change in clause (b) is designed to secure that the mere alarm of an animal will not justify the person in charge in stopping the driver of a vehicle."

CL. (2).—The redraft makes it clear that the allegation regarding commission of an offence must be one made at the time by the person demanding the driver's name, and that such person must himself be ready to supply his own name and address.

CL. (3).—We consider it advisable to exclude dogs from the denotation of animal, particularly in view of clause (c) of sub-clause (1). (*Select Committee Report.*) The law provides that the operator of any motor vehicle on any public highway must stop upon signal by a police officer or by the driver of any vehicle drawn by horses, and that upon signal by any one riding or driving a horse which appears frightened, such operator must stop the motor of the machine and all motive power, and remain stationary unless a movement forward shall be

deemed necessary to avoid accident or injury, until the horse appears to be under control. Where the statute requires the operator of an automobile to stop upon signal, there must be an actual signal before he will be held responsible for negligence for violating the law. As a matter of common prudence when an automobile approaches or comes up behind a vehicle drawn by horses, the driver must manage and control his machine in such a manner as to exercise every reasonable precaution to prevent the frightening of the horses, and to ensure the safety and protection of any person riding or driving them or even that the driver of a motor vehicle at the indication of a horse becoming alarmed must go to the side of the road and remain stationary until the horse has passed. Where there was no evidence to show that the driver of a motor vehicle knew that an accident had as a matter of fact taken place or had reason to so believe, his failure to stop his vehicle cannot amount to an offence. 173 I.C. 860=39 Cr.L.J. 382=A.I.R. 1938 Pat. 268.

SEC. 88.—This already appears in substance in provincial rules. (*Statement of Objects and Reasons.*)

Duty of owner of motor vehicle to give information.

offence under this Act shall, on the demand of any police officer authorised in this behalf by the Provincial Government, give all information regarding the name and address of and the licence held by the driver which is in his possession or could by reasonable diligence be ascertained by him.

Duty of driver in case of accident and injury to a person.

89. When any person is injured as the result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall—

(a) take all reasonable steps to secure medical attention for the injured person, and, if necessary, convey him to the nearest hospital, unless the injured person or his guardian, in case he is a minor, desires otherwise;

(b) give on demand by a police officer any information required by him, or, if no police officer is present, report the circumstances of the occurrence at the nearest police station as soon as possible, and in any case within twenty-four hours of the occurrence.

90. When any accident occurs in which a motor vehicle is involved, any person authorised in this behalf by the Provincial Government may, on production if so required of his authority, inspect the vehicle and for that purpose may enter at any reasonable time any premises where the vehicle may be and may remove the vehicle for examination:

Provided that the place to which the vehicle is so removed shall be intimated to the owner of the vehicle, and the vehicle shall be returned without unnecessary delay.

Power to make rules.

91. (1) The Provincial Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the nature of the mechanical or electrical signalling devices which may be used on motor vehicles;

(b) the removal and the safe custody of vehicles including their loads which have broken down or which have been left standing or have been abandoned on roads;

SEC. 89.—“This is very necessary and it is proposed that the penalty for its breach should include disqualification—*vide* clause 17 (6).” (*Statement of Object and Reasons*.)

SELECT COMMITTEE REPORT.—“We have omitted the opening words of clause (a) because there might be no police officer present and the injured person might be unconscious. We have also provided that an injured person shall not be taken to hospital against his will.”

REPORTING ACCIDENT.—If there is no police officer present, the driver or person in charge of the motor vehicle shall report the accident without delay at the nearest police station. 1929 A.L.J. 1044=30 Cr. L.J. 1085=51 A. 996=1929 A. 750. Offence under the Act—Sec. 562, Cr. P. Code, does not apply. Sec. 562 (1) (a) only applies to a certain limited class of cases such as theft and so on under the I. P. C., but does not apply to an offence under a totally different Act such as the Motor Vehicles Act. 28 Bom.L.R. 297=27 Cr.L.J. 528=1926 Bom.

230.

“ACCIDENT.” MEANING OF.—The word “accident” is not defined in the Motor Vehicles Act or in any of the rules framed thereunder. Ordinarily it means an event which takes place without one’s foresight or expectation. Need for amendment of the wording of R. 27 of the Madras Motor Vehicles Rules pointed out. 51 M. 504=108 I.C. 909=1928 M. 364=29 Cr.L.J. 461. Light—Driving without lights—Liability of owner. 27 P.R. (Cr.) 1918=47 I.C. 44. See also 16 A.L.J. 623.

SEC. 90.—The proviso supplies a reasonable safeguard against possible abuses. (*Select Committee Report*.)

SEC. 91. CL. (2): SELECT COMMITTEE REPORT.—“We have redrafted clause (2) without altering the substance. We have added ‘stands’ for which partial provision is made in sec. 68 to parking-places in clause (c). We have added two specific rule-making powers, and a general rule-making power in clause (f) which is reproduced from the 1914 Act.

- (c) the installation and use of weighing devices;
- (d) the exemption from all or any of the provisions of this Chapter of Fire Brigade vehicles, ambulances and other special classes of vehicle, subject to such conditions as may be prescribed;
- (e) the maintenance and management of parking places and stands and the fees, if any, which may be charged for their use;
- (f) prohibiting the driving down hill of a motor vehicle with the gear disengaged either generally or in a specified place;
- (g) prohibiting the taking hold of or mounting of a motor vehicle in motion;
- (h) prohibiting the use of foot-paths or pavements by motor vehicles;
- (i) generally, the prevention of danger, injury or annoyance to the public or any person, or of danger or injury to property or of obstruction to traffic; and
- (j) any other matter which is to be or may be prescribed.

CHAPTER VII.

MOTOR VEHICLES TEMPORARILY LEAVING OF VISITING BRITISH INDIA.

Power of Central Government to make rules.

92. (1) The Central Government may, by notification in the official Gazette, make rules for all or any of the following purposes, namely:—

(a) the grant and authentication of travelling passes, certificates or authorisations to persons temporarily taking motor vehicles out of British India to any place outside India or to persons temporarily proceeding out of British India to any place outside India and desiring to drive a motor vehicle during their absence from British India;

(b) prescribing the conditions subject to which motor vehicles brought temporarily into British India from outside India by persons intending to make a temporary stay in British India may be possessed and used in British India; and

(c) prescribing the conditions subject to which persons entering British India from any place outside India for temporary stay in British India may drive motor vehicles in British India.

(2) No rule made under this section shall operate to confer on any person any immunity in any province from the payment of any tax levied in that province on motor vehicles or their users.

(3) Rules made under clauses (b) and (c) of sub-section (1) shall, in case of motor vehicles and persons entering British India from the French and Portuguese Settlements bounded by India, be applicable only to motor traffic to which The International Convention relating to motor traffic concluded at Paris on the 24th day of April, 1926¹ [or any convention modifying the same], applies.

(4) Nothing in this Act or in any rule made thereunder by a Provincial Government relating to—

(a) the registration and identification of motor vehicles, or

(b) the requirements as to construction, maintenance and equipment of motor vehicles, or

(c) the licensing and the qualifications of drivers of motor vehicles shall apply to any motor vehicle to which or to any driver of a motor vehicle to whom any rules made under clause (b) or clause (c) of sub-section (1) apply.

CHAPTER VIII.

INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY RISKS.

Definitions.

93. In this Chapter—

LEG. REF.

¹ Inserted by Act XX of 1942.

SEC. 92.—“Under this, rules can be made not only to deal with vehicles, covered by an International Convention but also those

(a) "authorised insurer" means an insurer in whose case the requirements of the Insurance Act, 1938, with respect to the registration of and deposits by insurers are complied with, and

(b) "certificate of insurance" means a certificate issued by an authorised insurer in pursuance of sub-section (4) of section 95; and includes where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be.

94. (1) No person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter.

Explanation.—A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.

(2) This section shall not apply to any vehicle owned by or on behalf of the Central Government or a Provincial Government or local authority notified in this behalf by the Provincial Government, or a State-owned railway, at any time when the vehicle is driven by a servant of the owner in the course of his employment, or is otherwise subject to the control of the owner.

Requirements of policies . 95. (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

(a) is issued by a person who is an authorised insurer, and

(b) insures the person or classes of person specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred

coming from and going to countries which are not signatories to any Convention." (*Statement of Objects and Reasons.*)

SEC. 94: GENERAL.—The provisions relating to compulsory insurance in respect of third party risks follows closely the recommendations of the Motor Vehicles Insurance Committee and are almost wholly adapted from the English law. (*Statement of Objects and Reasons.*)

REPORT OF SELECT COMMITTEE.—"The change made in the first line confines liability for a contravention of the clause to the owner of the vehicle, who is the person in possession of knowledge whether the vehicle is or is not insured".

SUB-CL. (2).—"We have removed the proviso for the making of deposits instead of insuring. We see little prospect of such a provision being extensively utilised, and none but wealthy corporations could avail themselves of it. We have added local authorities to the bodies exempted under the sub-clause, as these are accorded exemption in the English Act. We have also added State-owned railways in the view that their financial position makes it unnecessary for them to insure against third party risks. (*Select Committee Report.*)

SEC. 95.—"The limits of cover are those

recommended by the Motor Vehicles Insurance Committee. In sub-sec. (3) power is given to Provincial Governments to require, in addition, that the liability of an owner in respect of claims arising under the Workmen's Compensation Act shall also be covered by insurance". (*Statement of Objects and Reasons.*)

SUB-CL. (1).—"The changes in cl. (b) are formal, and clarifying only. Those in the proviso, cl. (i), are formal also. In cl. (4) the wording has been altered to agree with that used in sub-cl. (2) (b) and a reference has been inserted to cover workmen being conveyed to work. This follows the English Act. The new additional cl. (4a) is also taken from the English Act. In sub-cl. (2) we have reduced the limit of liability fixed by the clause in two cases. We have inserted the words "in respect of any one accident" to clarify the intention of the sub-clause. The other change in cl. (b) is consequential on that made in sub-cl. (1), proviso cl. (ii). In sub-cl. (4) we have made a formal amendment, and we have inserted a provision allowing cover-notes to serve in lieu of a certificate of insurance. The changes in sub-cl. (5) are formal only". (*Statement of Objects and Reasons.*)

by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not, except as may be otherwise provided under sub-section (3), be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment, or

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability.

(2) Subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely:—

(a) where the vehicle is a vehicle used or adapted to be used for the carriage of goods, a limit of twenty thousand rupees;

(b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, in respect of persons other than passengers carried for hire or reward, a limit of twenty thousand rupees; and in respect of passengers a limit of twenty thousand rupees in all, and four thousand rupees in respect of an individual passenger, if the vehicle is registered to carry not more than six passengers excluding the driver or two thousand rupees in respect of an individual passenger, if the vehicle is registered to carry more than six passengers excluding the driver;

(c) where the vehicle is a vehicle of any other class, the amount of the liability incurred.

(3) A Provincial Government may prescribe that a policy of insurance shall in order to comply with the requirements of this Chapter cover any liability arising under the provisions of the Workmen's Compensation Act, 1923, in respect of the death of or bodily injury to any paid employee engaged in driving or otherwise in attendance on or being carried in a motor vehicle.

(4) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance or a cover note in the prescribed form and containing the prescribed particulars of any conditions subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of person.

96. (1) If, after a certificate of insurance or a cover note has been issued under sub-section (4) of section 95 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy,

Duty of insurers to satisfy judgments against persons insured in respect of third party risks.

Sec. 96.—“Sub-cl. (2) is a variation of sec. 38 of the English Road Traffic Act, 1930, and sec. 12 of the English Road Traffic Act, 1934. Those sections provide that an insurer could not repudiate liability on

account of the breach of certain specified conditions that the insurer might have inserted in the policy. The general effect of this provision has been given close attention by the Cassel Committee whose report

then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the Court of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—

(a) that the policy was cancelled by mutual consent or by virtue of any provision contained therein before the accident giving rise to the liability, and that either the certificate of insurance was surrendered to the insurer or that the person to whom the certificate was issued has made an affidavit stating that the certificate has been lost or destroyed, or that either before or not later than fourteen days after the happening of the accident the insurer has commenced proceedings for cancellation of the certificate after compliance with the provisions of section 105; or

(b) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—

(i) a condition excluding the use of the vehicle—

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a public service vehicle or a goods vehicle, or

(d) without side-car being attached, where the vehicle is a motor cycle;

or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(c) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

has recently been published and they have recommended that, instead of specifying conditions for breach of which an insurer would not be able to avoid liability, it would be better to specify those for breach of which liability could be avoided. The draft of sub-cl. (3) follows their recommendations in this respect. It is more satisfactory as it defines the exact position of the insurer in relation to the conditions he may impose". (*Statement of Objects and Reasons.*)

SELECT COMMITTEE REPORT.—"Sub-cl. (2), (3) and (4) of the Bill have been replaced by two new sub-clauses which together with the new sub-clause now numbered sub-cl. (6) have the effect of considerably

simplifying legal proceedings in connection with any contested claim. The effect of our provisions is to secure that such proceedings shall be confined to one suit only, in which the insurer shall have a right on receiving notice through the Court to contest his liability on certain of the grounds contained in the Bill as drafted. We have, however, excluded several of the conditions contained in the draft Bill for breach of which an insurer might have a licence declared cancelled. Sub-cl. (1), (6) and (7), now numbered (1), (4) and (5), remain unchanged except for formal and consequential amendments".

(3) Where a certificate of insurance or cover note has been issued under sub-section (4) of section 95 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 95, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(4) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(5) In this section the expressions "material fact" and "material particular" mean, respectively, a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(6) No insurer to whom the notice referred to in sub-section (2) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment as is referred to in sub-section (1) otherwise than in the manner provided for in sub-section (2).

97. (1) Where under any contract of insurance effected in accordance with the provisions of this Chapter a person is insured against liabilities which he may incur to third parties then—

Rights of third parties
against insurers on insol-
vency of the insured.

(a) in the event of the person becoming insolvent or making a composition or arrangement with his creditors, or

(b) where the insured person is a company, in the event of a winding up order being made or a resolution for a voluntary winding up being passed with respect to the company or of a receiver or manager of the company's business or undertaking being duly appointed, or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge, if, either before or after that event, any such liability is incurred by the insured person, his rights against the insurer under the contract in respect of the liability shall notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Where an order for the administration of the estate of a deceased debtor is made according to the law of insolvency, then, if any debt provable in insolvency is owing by the deceased in respect of a liability to a third party against which he was insured under a contract of insurance in accordance with the provisions of this Chapter, the deceased debtor's rights against the insurer in respect of that liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the person to whom the debt is owing.

(3) Any condition in a policy issued for the purposes of this Chapter purporting either directly or indirectly to avoid the policy or to alter the rights of the parties thereunder upon the happening to the insured person of any of the events specified in clause (a) or clause (b) of sub-section (1) or upon the making of an order for the administration of the estate of a deceased debtor according to the law of insolvency shall be of no effect.

(4) Upon a transfer under sub-section (1) or sub-section (2) the insurer shall be under the same liability to the third party as he would have been to the insured person, but—

(a) if the liability of the insurer to the insured person exceeds the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the insured person against the insurer in respect of the excess, and

(b) if the liability of the insurer to the insured person is less than the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the third party against the insured person in respect of the balance.

98. (1) No person against whom a claim is made in respect of any liability referred to in clause (b) of sub-section (1) of section 95 shall on demand by or on behalf of the person making the claim refuse to state whether or not he was insured in respect of that liability by any policy issued under the provisions of this Chapter, or would have been so insured if the insurer had not avoided or cancelled the policy, nor shall he refuse, if he was or would have been so insured, to give such particulars with respect to that policy as were specified in the certificate of insurance issued in respect thereof.

(2) In the event of any person becoming insolvent or making a composition or arrangement with his creditors or in the event of an order being made for the administration of the estate of a deceased person according to the law of insolvency, or in the event of a winding up order being made or a resolution for a voluntary winding up being passed with respect to any company or of a receiver or manager of the company's business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge on any property comprised in or subject to the charge, it shall be the duty of the insolvent debtor, personal representative of the deceased debtor or company as the case may be, or the official assignee or receiver in insolvency, trustee, liquidator, receiver or manager, or person in possession of the property to give at the request of any person claiming that the insolvent debtor, deceased debtor or company is under such liability to him as is covered by the provisions of this Chapter, such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by section 97, and for the purpose of enforcing such rights, if any; and any such contract of insurance as purports whether directly or indirectly to avoid the contract or to alter the rights of the parties thereunder upon the giving of such information in the events aforesaid, or otherwise to prohibit or prevent the giving thereof in the said events, shall be of no effect.

(3) If, from the information given to any person in pursuance of sub-section (2) or otherwise, he has reasonable ground for supposing that there have or may have been transferred to him under this Chapter rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by the said sub-section on the persons therein mentioned.

(4) The duty to give the information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums, and other relevant documents in the possession or power of the person on whom the duty is so imposed to be inspected and copies thereof to be taken.

99. (1) No settlement made by an insurer in respect of any claim which might be made by a third party in respect of any liability of the nature referred to in clause (b) of sub-section (1) of section 95 shall be valid unless such third party is a party to the settlement.

(2) Where a person who is insured under a policy issued for the purposes of this Chapter has become insolvent, or where, if such insured person is

a company, a winding up order has been made or a resolution for a voluntary winding up has been passed with respect to the company, no agreement made between the insurer and the insured person after liability has been incurred to a third party and after the commencement of the insolvency or winding up, as the case may be, nor any waiver, assignment or other disposition made by or payment made to the insured person after the commencement aforesaid shall be effective to defeat the rights transferred to the third party under this Chapter, but those rights shall be the same as if no such agreement, waiver, assignment or disposition or payment has been made.

100. (1) For the purposes of sections 97, 98 and 99, a reference to "liabilities to third parties" in relation to a person insured under any policy of insurance shall not include a reference to any liability of that person in the capacity of insurer under some other policy of insurance.

Saving in respect of sections 97, 98 and 99.

(2) The provisions of sections 97, 98 and 99 shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of an amalgamation with another company.

101. Where a certificate of insurance has been issued to the person by whom a policy has been effected, the happening in relation to any person insured by the policy of any such event as is mentioned in sub-section (1) or sub-section (2) of section 97 shall, notwithstanding anything in this Chapter, not affect any liability of that person of the nature referred to in clause (b) of sub-section (1) of section 95; but nothing in this section shall affect any rights against the insurer conferred under the provisions of sections 97, 98 and 99 on the person to whom the liability was incurred.

Insolvency of insured persons not to affect liability of insured or claims by third parties.

102. Notwithstanding anything contained in section 306 of the Indian Succession Act, 1925, the death of a person in whose favour a certificate of insurance or cover note had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer.

Effect of death on certain causes of action.

Effect of certificate of insurance.

103. When an insurer has issued a certificate of insurance in respect of a contract of insurance between the insurer and the insured person, then—

(a) if and so long as the policy described in the certificate has not been issued by the insurer to the insured, the insurer shall, as between himself and any other person except the insured, be deemed to have issued to the insured person a policy of insurance conforming in all respects with the description and particulars stated in such certificate; and

(b) If the insurer has issued to the insured the policy described in the certificate, but the actual terms of the policy are less favourable to persons claiming under or by virtue of the policy against the insurer either directly or through the insured than the particulars of the policy as stated in the certificate, the policy shall, as between the insurer and any other person except the insured, be deemed to be in terms conforming in all respects with the particulars stated in the said certificate.

104. (1) Whenever the period of cover under a policy of insurance

Duty to surrender certificate on cancellation of policy. issued under the provisions of this Chapter is terminated or suspended by any means before its expiration by effluxion of time, the insured person shall within seven days after such termination or suspension deliver to the insurer by whom the policy was issued the latest certificate of insurance given by the insurer in respect of the said policy, or, if the said certificate has been lost or destroyed make an affidavit to that effect.

(2) Whoever fails to surrender a certificate of insurance or to make an affidavit, as the case may be, in accordance with the provisions of this section shall be punishable with fine which may extend to fifteen rupees for every day that the offence continues subject to a maximum of five hundred rupees.

105. Whenever a policy of insurance issued under the provisions of this Chapter is cancelled or suspended by the insurer who has issued the policy, the insurer shall within seven days notify such cancellation or suspension to the registering authority in whose records the registration of the vehicle covered by the policy of insurance is recorded or to such other authority as the Provincial Government may prescribe.

106. (1) Any person driving a motor vehicle in any public place shall on being so required by a police officer in uniform produce the certificate of insurance relating to the use of the vehicle:

Production of certificate of insurance. Provided that if the driver of a motor vehicle within seven days from the date on which the production of the certificate of insurance was so required produces the certificate at such police station as may have been specified by him at the time its production was required, he shall not be liable to conviction under this sub-section by reason only of failure to produce the certificate to the police officer.

(2) If, where owing to the presence of a motor vehicle in a public place an accident occurs involving bodily injury to another person, the driver of the vehicle does not at the time produce the certificate of insurance to a police officer, he shall produce the certificate of insurance at the police station at which he makes the report required by section 89:

Provided that no person shall be liable to conviction under this sub-section by reason only of failure to produce his certificate of insurance if within seven days from the occurrence of the accident he produces the certificate at such police station as may be specified by him to the police officer at the site of the accident or to the officer in charge of the police station at which he reported the accident.

(3) The owner of a motor vehicle shall give such information as he may be required by or on behalf of a police officer empowered in this behalf by the Provincial Government to give for the purpose of determining whether the vehicle was or was not being driven in contravention of section 94 and on any occasion when the driver was required under this section to produce his certificate of insurance.

(4) In this section the expression "produce his certificate of insurance" means produce for examination the relevant certificate of insurance or such other evidence as may be prescribed that the vehicle was not being driven in contravention of section 94.

SEC. 106, CL. (1): REPORT OF SELECT COMMITTEE.—We have extended the time limit allowed for production of the certificate of insurance. In sub-cl. (2) we have removed

the provision enabling a person other than a police officer to demand production of the certificate of insurance. The other changes made are formal or self-explanatory.

107. A Provincial Government may make rules requiring the owner of any motor vehicle when applying whether by payment of a tax or otherwise for authority to use the vehicle in a public place to produce such evidence as may be prescribed by those rules to the effect that either—

(a) on the date when the authority to use the vehicle comes into operation there will be in force the necessary policy of insurance in relation to the use of the vehicle by the applicant or by other persons on his order or with his permission, or

(b) the vehicle is a vehicle to which section 94 does not apply.

108. (1) A Provincial Government may, on the application of a co-operative

Co-operative insurance.

society of public service vehicle owners registered or deemed to have been registered under the Co-operative Societies Act, 1912, or under an Act of a Provincial Legislature governing the registration of Co-operative Societies and subject to the control of the Registrar of Co-operative Societies of the province, allow the society to transact the business of an insurer for the purposes of this Chapter as if the society were an authorised insurer, subject to the following conditions, namely:—

(a) the society shall establish and maintain a fund of not less than twenty-five thousand rupees for the first fifty vehicles or fractional part thereof and *pro rata* for every additional vehicle in the possession of members of the society and the said fund shall be lodged in such custody as the Provincial Government may prescribe and shall not be available for meeting claims or other expenses except in the event of the winding up of the society;

(b) the liability of the society shall be limited as specified in clause (b) of sub-section (2) of section 95;

(c) the society shall, if required by the Provincial Government, re-insure against claims above a prescribed amount;

(d) the provisions of this Chapter, in so far as they relate to the protection of third parties and to the issue and production of certificates, shall apply in respect of any insurance effected by the society;

(e) an independent authority not associated with the society shall be appointed by the Provincial Government to facilitate and assist in the settling of claims against the society;

(f) the society shall operate on an insurance basis, that is to say,—

(i) it shall levy its premiums in respect of a period not exceeding twelve months, during which period the insured shall be held covered in respect of all accidents arising, subject to the limits of liability specified in clause (b) of sub-section (2) of section 95;

(ii) it shall charge premiums estimated to be sufficient, having regard to the risks, to meet the capitalised value of all claims arising during the period of cover, together with an adequate charge for expenses attaching to the issue of policies and to the settlement of claims arising thereunder;

(g) the society shall furnish to the Superintendent of Insurance the returns required to be furnished by insurers under the provisions of the Insurance Act, 1938, and the Superintendent of Insurance may exercise in respect thereof any of the powers exercisable by him in respect of returns made to him under the said Act; and

(h) any provisions of law applicable to the winding up of authorised insurers shall be equally applicable to the society.

SEC. 108.—“This is as recommended by the Motor Vehicles Insurance Committee and incorporates the recommendations of the Cassel Committee in respect of mutual indemnity associations”. (*Statement of Ob-*

jects and Reasons.)

SELECT COMMITTEE REPORT.—“We have revised and clarified the wording of the sub-clauses without affecting their substance materially”.

(2) Except as provided in sub-section (1), the Insurance Act, 1938, shall not apply to any co-operative society of public service vehicle owners allowed to transact the business of an insurer under this section.

109. A registering authority or the officer in charge of a police station shall, if so required by a person who alleges that he

Duty to furnish particulars of vehicle involved in accident.

is entitled to claim compensation in respect of an accident arising out of the use of a motor vehicle, or if so required by an insurer against whom a claim

has been made in respect of any motor vehicle, furnish to that person or to that insurer, as the case may be, on payment of the prescribed fee any information at the disposal of the said authority or the said police officer relating to the identification marks and other particulars of the vehicle and the name and address of the person who was using the vehicle at the time of the accident or was injured by it.

110. A Provincial Government may, by notification in the official Gazette, appoint a person or a body of persons to investigate

Power to appoint persons to investigate and report on accidents.

and report on accidents involving the death of or bodily injury to any person arising out of the use of motor vehicles and the extent to which their claims

to compensation have been satisfied and to advise and assist such persons or their representatives in presenting their claims for compensation:

Provided that nothing in this section shall confer on any such person or body of person the right to adjudicate in any way on the liability of the insurer or on the amount of damages to be awarded except at the express desire of the insurer concerned.

110. A Provincial Government may, by notification in the official Gazette, rules for the purpose of carrying into effect the provisions of this Chapter.

Power to make rules.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the forms to be used for the purposes of this Chapter;

(b) the making of applications for and the issue of certificates of insurance;

(c) the issue of duplicates to replace certificates of insurance lost or destroyed;

(d) the custody, production, cancellation and surrender of certificates of insurance;

(e) the records to be maintained by insurers of policies of insurance issued under this Chapter;

(f) the identification by certificates or otherwise of persons or vehicles exempted from the provisions of this chapter;

(g) the furnishing of information respecting policies of insurance by insurers;

(h) the carrying into effect of the provisions of section 108;

(i) adapting the provisions of this Chapter to vehicles brought into British India by persons making only a temporary stay therein by applying those provisions with prescribed modifications; and

(j) any other matter which is to be or may be prescribed.

SEC. 109.—This is as recommended by the Motor Vehicles Insurance Committee and incorporates sec. 17 of the English Road Traffic Act, 1934. (*Statement of Objects and Reasons.*)

SEC. 110.—“This, as drafted, will enable Provincial Governments to take such action as they deem fit to ascertain that the purposes of this part of the Act are being generally fulfilled. Judicious action under this clause would lead to insurers relying on an

authority of this nature for an unbiased verdict as to the liability, and to a decrease in law suits. (*Statement of Objects and Reasons.*)

SELECT COMMITTEE REPORT.—“We have omitted this clause which gave power to set up machinery for assisting third parties in presenting claims. We have, however, inserted in the rule-making clause adequate provision in place of the clause omitted”.

CHAPTER IX.

OFFENCES, PENALTIES AND PROCEDURE.

112. Whoever contravenes any provision of this Act or of any rule made thereunder shall, if no other penalty is provided for the offence, be punishable with fine which may extend to twenty rupees, or, if having been previously convicted of any offence under this Act he is again convicted of an offence under this Act, with fine which may extend to one hundred rupees.

SEC. 112: CRIMES INCIDENT TO OPERATION.—Where the legislature has power to prohibit the operation of motor vehicles on the highways the prohibition is generally enforced by providing for fines or other punishment to be imposed upon a violation of the regulations properly established. Laws regulating the use of automobiles are generally enforced, among other methods by making it an offence to operate a motor vehicle faster than at designated rates of speed (sec. 115), or without complying with the registration laws, and by providing that whoever operates a motor vehicle while in an intoxicated condition shall be liable to punishment (sec. 117.) So also, if a person knows that an accident has occurred through his operation of an automobile, it shall amount to an offence if he leaves the place of accident without stopping and giving his name, residence, including street and house number, and operator's licence number to the injured party, or to a police officer (see sec. 88). As part of the penalty for violating the provisions of the statutes and ordinances regulating the speed and operation of automobiles the legislature provides for the suspension of the right to run the machine for a given period (sec. 17). For absence of name-plate on the car only the owner can be convicted, not the person who from time to time may have the use of the car. 7 Pat.L. T. 542=97 I.C. 48=1926 P. 446. Separate sentences cannot be passed under sec. 5 of the Motor Vehicles Act (1914) and sec. 337 of the Indian Penal Code, for they are the same offences. 1931 M.W.N. 397. It is not sufficient to absolve drivers of motor vehicles from the consequences of rash driving merely to show that the person to whom or to whose property they have caused injury was himself negligent. 133 I.C. 601=1931 A.L.J. 770=1931 A. 708. Driver proved to have been under the influence of liquor—Collision as the result of rash driving—Separate offences—Separate conviction valid. 30 Bom.L.R. 636=1928 B. 231=112 I. C. 101. Reckless driving—Endorsement of particulars of conviction on the licence. See 5 Cr.R. 247. Sec. 5 of the old Act has not specified the definition of reckless and negligent driving. Where there is nothing to show that at the time complained of, the traffic on the road was such that the speed at which the accused was driving the motor vehicle can be considered to be either negligent or reckless, a conviction under sec. 5 cannot be sustained. 173 I.C. 860. An error of judgment alone is not sufficient to convict a man. There must be "criminal negligence" which means "gross or culpable

neglect or failure to exercise reasonable and proper care". 59 C. 113=36 C.W.N. 246 (2)=1932 C. 461. The accused was driving on a wrong side of the road at a sharp corner entering into a thoroughfare of considerable traffic with the result that he came into collision with a motor bicycle, the side-car of which was damaged. It was due to the presence of mind of the person who was riding the motor bicycle that no further damage occurred. *Held*, that an offence under sec. 279, Penal Code, was committed. The offence of the accused was more serious than that contemplated by sec. 5 of Act VIII of 1914. That section refers to a person who is driving a car in a manner which would in ordinary circumstances be proper, but owing to the special condition of the road at the time he is riding on it, is improper. 84 I.C. 253=16 S.L.R. 147=26 Cr.L.J. 253=1921 Sind 97. The words in sec. 112 of the Motor Vehicles Act "convicted of any offence under this Act" mean only convicted of an offence under the present Act and does not include convictions under the old Act of 1914 and so the latter be taken into consideration in fixing the fine payable. 1941 O.W.N. 351. Where the registered owner of a motor lorry for private use suffers his driver to carry goods of another person for hire, he is unquestionably guilty of an offence under R. 138 of the Motor Vehicles Rules which is punishable under sec. 112 of the Motor Vehicles Act. 52 L.W. 948.

'THIS ACT'—CONSTRUCTION.—The words in sec. 112 'convicted of any offence under this Act' mean only convicted of an offence under the present Act and does not include convictions under the old Act of 1914 and so the latter cannot be taken into consideration in fixing the fine payable. 16 Luck. 644=1941 O.W.N. 351=A.I.R. 1941 Oudh 250.

SUMMONS UNDER THE ACT IS TO BE IN THE FORM PRESCRIBED UNDER SEC. 68, CR. P. CODE.—The procedure of issuing summonses by the Magisterial Courts purporting to charge motorists, owners or drivers of offences under the Act without giving the slightest particulars of the offence alleged is not justified by law. Sec. 68, Cr. P. Code, incorporates the form of summons, which is a statutory form, contained in Sch. 5 to the Code, which summons is to be issued to accused persons. 108 I.C. 230=26 A.L.J. 331=29 Cr.L.J. 357=1928 A. 261. The practice of issuing summonses under sec. 16 of the Motor Vehicles Act (1914) charging the accused merely with an offence under that section without indicating the nature

of the charge against him, should be condemned. Where such a summons was issued to the accused and the case itself was taken up before the date fixed and the accused was not granted time to produce his defence, his conviction is not legal and is liable to be set aside. I.L.R. (1940) Lah. 678.

CHARGE, FORM OF.—Where the offence with which accused was charged was really one under sec. 5 of the Act of 1914, but the charge mentioned in secs. 16 and 17 and fully stated the facts and the offence he was alleged to have committed, *held*, that as the accused knew the charge he had to meet, the mistake in the number of the sections could not be said to have prejudiced the accused. 59 C. 113=36 C.W.N. 246 (2)=1932 C. 461. Prosecutions for motoring offences should be lodged promptly; otherwise the motorist may be unable to recollect as to what happened and to give his own explanation. 1939 A.M.L.J. 94.

EVIDENCE AND PROOF.—*See* (1942) 2 M.L.J. 629 cited under sec. 78. The Courts will take judicial knowledge of facts which are commonly and generally known with reference to automobiles, such as the fact that their use as vehicles for travelling is comparatively recent, that they make an unusual noise, and can be and usually are made to travel on public highways at a speed many times greater than that of ordinary vehicles drawn by animals, and that many of them can be operated at the rate of at least forty miles an hour. Certain facts concerning automobiles will be presumed in the absence of evidence to the contrary. Thus a person using a public highway with his automobile will be presumed to have registered and to have obtained a licence for his machine. Certain other facts must be directly proven, such as negligence on the part of a person operating an automobile, and the burden of proof is on the person alleging that he has sustained an injury from such negligence. Since it is not negligence *per se* to use an automobile on a public highway, and since damage alone will never support an action for negligence, there is no presumption as to the negligence of a driver of an automobile arising from the mere fact that while it was being operated on a public street it collided with another vehicle or a pedestrian, and proof of such fact alone does not make out a *prima facie* case of negligence. The common law rule in this respect may be changed by statute, which may expressly provide that where any person suffers loss or damage by reason of a motor vehicle on a highway, the burden of proof shall be on the owner or driver.

BURDEN OF PROOF.—Apart from express statutory provision, a plaintiff claiming damages for personal injury in a running down case would have to prove that he was injured, that his injury was due to the defendant's fault and the fact and extent of his loss and damage; hence unless he

succeeds in establishing all these matters, he must fail. It may be by virtue of a statute, he need only establish the first and the third elements, *i.e.*, that he was injured by the defendant and the extent of his damages. If he establishes those two matters, the onus is removed from him and it is then for the defendant to establish to the reasonable satisfaction of the Court or jury, that the loss, damage or injury did not arise through the negligence or improper conduct of himself or his servants. This the defendant may do in various ways, as for instance by satisfactory proof of a latent defect, or by proof that the plaintiff was the author of his own injury; or by proof that the circumstances were such that neither party was to blame because neither party could avoid the other. But the onus placed on the defendant is not in law a shifting or transitory onus. It remains on the defendant until the very end of the case when the question must be determined whether or not the defendant has sufficiently shown that he did not in fact cause the accident by his negligence. If, on the whole of the evidence, the defendant establishes this to the satisfaction of the jury, he will be entitled to judgment; if however the issue is left in doubt or the evidence is balanced, even then defendant will be held liable in virtue of the statutory onus, whereas in that event but for the statute the plaintiff would fail, because but for the statute the onus would be on him. *A fortiori* the defendant will be held liable, if the evidence actually establishes his negligence. 1932 A.C. 690=139 I.C. 663=1932 P.C. 246 (P.C.) (case under Manitoba Motor Vehicles Act). *See also* (1942) 2 M.L.J. 629=1943 Mad. 61.

SENTENCE.—It is inequitable to exact from a person the enhanced fine under sec. 112 unless he has suffered a first conviction and after that conviction he has again offended. 44 P.L.R. 101=A.I.R. 1942 Lah. 125.

BOMBAY MOTOR VEHICLE RULES (1940), R. 93 (2) AND (4).—Sub-rule (2) of R. 93 of the Bombay Motor Vehicles Rules lays down unconditionally the number of persons that may be carried in a goods vehicle, this provision applies not only when the goods vehicle is loaded with goods but also even when it does not happen to carry any goods. This is clear from sub-rule (4) which contemplates a goods vehicle being used for carrying persons when it is not loaded with goods at all. Where the driver of a motor lorry used as a goods vehicle carries more than six persons in it without a permit though the vehicle is not loaded with goods at the time, he is guilty of a breach of R. 93 (2) of the Bombay Motor Vehicles Rules, and is liable to conviction under sec. 112. 44 Bom. L.R. 225=A.I.R. 1942 Bom. 184.

MADRAS MOTOR VEHICLES RULES, R. 138.—Where the registered owner of a motor lorry for private use suffers his driver to carry goods of another person for hire, he is unquestionably guilty of an offence under R.

113. Whoever wilfully disobeys any direction lawfully given by any person or authority empowered under this Act to give

Disobedience of orders, obstruction and refusal of information.

such direction, or obstructs any person or authority in the discharge of any functions which such person or authority is required or empowered under this Act to discharge, or, being required by or under this Act to supply any information, withholds such information or gives information which he knows to be false or which he does not believe to be true, shall, if no other penalty is provided for the offence, be punishable with fine which may extend to two hundred rupees.

114. Whoever, being disqualified under this Act for holding or obtaining

Offences relating to licences.

a licence, drives a motor vehicle in a public place or applies for or obtains a licence or, not being entitled to have a licence issued to him free of endorsement, applies for or obtains a licence without disclosing the endorsements made on a licence previously held by him or, being disqualified under this Act for holding or obtaining a licence, uses in British India a licence such as is referred to in sub-section (2) of section 9, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both, and any licence so obtained by him shall be of no effect.

115. (Cf. Eng. Act, section 11.) (1) Whoever drives a motor vehicle in

Driving at excessive speed. contravention of section 71 shall be punishable with fine which may extend to one hundred rupees.

138 of the Motor Vehicles Rules which is punishable under sec. 112 of the Act. 52 L. W. 948=A.I.R. 1941 Mad. 352=(1941) 1 M. L.J. 470.

AND U. P. MOTOR VEHICLES RULES (1940) RR. 2 (g) AND 79 (viii).—R. 2 (g) of the Motor Vehicles Rules merely means that the word 'Magistrate' means a stipendiary Magistrate where this word is used in the rules. The mere fact that a person was charged with certain acts made offences by R. 79 (viii) is no reason for holding that the Magistrate trying the case must be such a Magistrate as is defined in the rules and that an Honorary Special 'Magistrate' is incompetent to try it. 1941 O.W.N. 193 (1) =A.I.R. 1941 Oudh 266.

SEC. 115: SELECT COMMITTEE REPORT.—(Old clause 115).—We have omitted this clause penalising careless driving. We consider its terms too wide and we regard as misguided the attempt to instil road-courtesy by coercion.

[See notes under sec. 71, *supra*.] While a speed of eighteen or twenty miles an hour in a sparsely settled portion of a city may not be negligence, and motorman may assume that automobiles preceding him and travelling in the same direction will not pass on to the tracks without precautions to ascertain whether a car is approaching, yet similar conduct in a densely populated and busy portion of a city would be indefensible.

HOMICIDE.—One who wilfully or negligently drives automobile on a public street at a prohibited rate of speed or in a manner expressly forbidden by statute, and thereby causes the death of another, may be guilty of homicide; and this is true although the person who is recklessly driving the machine

uses, as soon as he sees a pedestrian in danger, every effort to avoid injuring him, provided that the operator's prior recklessness was responsible for his inability to control the car and prevent the accident which resulted in the death of the pedestrian. With reference to the responsibility for a homicide so caused, it may be stated that the owner of an automobile, who is an occupant thereof at the time of a collision, is not responsible criminally where it is operated by a driver over whom he has only general control, and where he could have done nothing to prevent the collision. (*Ame. Bul. Case-law*).

EVIDENCE OF SPEED.—An adult person of reasonable intelligence and ordinary experience in life is presumed to be capable, without proof of further qualification, to express an opinion as to how fast an automobile which came under his observation was going at a particular time, and the Courts have liberally admitted as evidence of speed the opinions of witnesses who actually saw the machine in motion at the time in question; and the force of such evidence does not appear materially to be weakened by vague expressions such as that the automobile was "going like an express train" or that it went "very fast" the rate thereafter being "estimated as being twenty-five or thirty miles an hour". (*Ame. Bul. Case-law*.) When the speed of a motor vehicle is described by such general expressions as that it went a good deal "faster than a horse trots," it went "pretty fast,"—it has been decided that excessive speed is not proved, especially where the machine in question actually ran but little more than its length after striking a pedestrian. (*Ibid.*)

(2) Whoever causes any person who is employed by him or is subject to his control in driving to drive a motor vehicle in contravention of section 71 shall be punishable with fine which may extend to two hundred rupees.

(3) No person shall be convicted of an offence punishable under sub-section (1) solely on the evidence of one witness to the effect that in the opinion of the witness such person was driving at a speed which was unlawful, unless that opinion is shown to be based on an estimate obtained by the use of some mechanical timing device.

(4) The publication of a time table under which, or the giving of any direction that, any journey or part of a journey is to be completed within a specified time shall, if in the opinion of the Court it is not practicable in the circumstances of the case for that journey or part of a journey to be completed in the specified time without infringing the provisions of section 71, be *prima facie* evidence that the person who published the time table or gave the direction has committed an offence punishable under sub-section (2).

116. (Cf. Eng. Act, section 15.) Whoever drives a motor vehicle at a speed ^{Driving recklessly or} or in a manner which is dangerous to the public, ^{dangerously.} having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable on a first conviction for the offence with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, and for a subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

SEC. 116.—“This is at present only an offence against provincial rules with the penalty specified in sec. 16 of the Indian Motor Vehicles Act, 1914, and possible suspension of the licence under sec. 18. The offence is one which should be penalised heavily and be accompanied by disqualification (suspension of licence). This has been provided for in sec. 17 (5). It has also been made cognisable, but the proviso has been added to sec. 128 to prevent undue detention of an accused person in custody.” (*Statement of Objects and Reasons*.)

SELECT COMMITTEE REPORT.—“We have extended the scope of the clause by omitting the words ‘in a public place’. We consider that dangerous driving anywhere should be punishable. We have also omitted the word ‘recklessly’, with the intention of confining the clause to the clear case where danger is or is likely to be caused to the public. We have provided here and in other offences where an enhanced penalty is provided for a subsequent conviction that that conviction must be within three years of a previous conviction.”

RECKLESS DRIVING—FACTS TO BE PROVED. Sec. 5 of the old Motor Vehicles Act, 1914, has not specified the definition of reckless and negligent driving. Where there is nothing to show that at the time complained of, the traffic on the road was such that the speed at which the accused was driving the motor vehicle can be considered to be either negligent or reckless, a conviction cannot be sustained. 173 I.C. 880=39 Cr.L.J. 382=

A.I.R. 1938 Pat. 268.

OFFENCE UNDER SEC. 5 OF THE ACT OF 1914 AND OFFENCE UNDER SEC. 279, I. P. CODE.—DISTINCTION BETWEEN.—Per *Baquerly, J.*—Sec. 5, Motor Vehicles Act (1914), deals with reckless driving dangerous to the public having regard to all the circumstances of the case. Sec. 279, Penal Code, refers to driving in a manner so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any other person. The difference between these two sections seems to be this. A man may drive a motor vehicle in a manner dangerous to the public, even if there is no person actually on the spot to be endangered, the public being regarded as some kind of an all-pervading presence which may reasonably be expected to be at the place at the time. For instance, if a man drives out of a side-road and dashes across a main road into another side-road at sixty miles an hour he may not endanger any person at all because there happened at the moment to be—nobody there to be endangered, but he is certainly driving in a manner ‘dangerous to the public’ having regard to the amount of traffic which may reasonably be expected to be there. Still his offence cannot come under sec. 279, Penal Code, because there is not “any other person” who is likely to be hurt. For an offence under sec. 279, Penal Code, there must definitely be some other person to be endangered. So, if in driving across the main road in this manner some passer-by only saves his life by a wild leap to safety,

then the driver of the vehicle is driving in a manner so rash and negligent as at least to be likely to cause hurt to that person who only saved his life by his agility and an offence under sec. 279, Penal Code, has been committed. 175 I.C. 539=39 Cr.L.J. 642=A.I.R. 1938 Rang. 161.

ARREST OF OFFENDER—LEGALITY.—For the commission of an offence under the Motor Vehicles Act a person cannot be arrested. The power of arrest given under sec. 57, Cr. P. Code, will also be of no avail unless and until such offender fails to give his correct name and address. 175 I.C. 639=39 Cr.L.J. 645=A.I.R. 1938 Rang. 161.

SECS. 116 & 117: RECKLESS AND DANGEROUS DRIVING—ILLUSTRATIVE CASES UNDER THE OLD ACT.—Driving an automobile along a thickly populated city at a *speed in excess of that permitted by law* is usually sufficient evidence of negligence when the action is against the operator of an automobile for damages sustained in a collision with the machine. While running at night an automobile *should carry proper lights*, so that others may see it, and to enable its operator, in connection with such other means of illumination as may be available, to see far enough ahead to do whatever ordinary care may demand in order to avoid a collision with any other vehicle. The statutes require the display of lights on automobiles. Running at night without proper lights, in violation of the statutory requirements, is evidence of negligence, and such disregard of the safety of others may, independently of the provisions of any statute, amount to negligence at common law. Since it is the duty of the operator of an automobile to give reasonable warning of his approach, his silent approach behind a horse-drawn vehicle and *failure to sound his horn* may amount to negligence, but the blowing of a horn or whistle, or the ringing of a bell or gong without any attempt to moderate the speed, will not be a sufficient compliance with the duty of care imposed upon the operators of automobiles if the circumstances demand that the speed should be slackened or the machine stopped, and if such a course is practicable. Noises which are incident to the normal operation of motor vehicles are not of themselves evidence of negligence, and if a horse is *frightened by ordinary noises* such as are usually made when an automobile is propelled at the legal speed, there ordinarily can be no recovery for injuries which may result. Apart from the provisions of any statute it seems to be the duty of the operator of an automobile, when he begins to "crank up" a noisy machine, to keep a *watchful eye on horses standing near by*, and if they manifest symptoms of fright, to stop at once until they can be removed. Automobiles, in the absence of any special statutory directions are governed by the same *rules of the road* as apply to the management of other vehicles using the highway. By these rules, it is the duty of a traveller to avoid colli-

sion with those whom he meets and to yield way enough for others to pass in safety. A driver *disregarding the rules of the road* and choosing to go on the wrong side of the street on account of an obstruction on the other side, is bound to exercise greater care to avoid accident than is normally required of one proceeding on the right side of the street. The mere fact of *deviating from the line of traffic* does not necessarily amount to rashly or negligently or recklessly or dangerously driving. 28 Bom.L.R. 1066=97 I.C. 978=1926 B. 564. See also 170 I.C. 860. The law or *usage of the road* is not the criterion of negligence. The test is whether the accident could have been avoided by the accused if he had exercised that care and diligence which ordinarily cautious persons using the road in similar circumstances would have done. 30 N.L.R. 317=148 I.C. 541=35 Cr.L.J. 696=1934 N. 65. The person in charge of the car, though he may not be the owner, to whose orders the driver is in fact submitting at the time of the accident, or immediately thereafter, is amendable to this section. 108 I.C. 230=26 A.L.J. 331=29 Cr. L.J. 357=1928 A. 261. Where there was no evidence to show that the driver of a motor vehicle knew that an accident had as a matter of fact taken place or had reason to so believe, his failure to stop his vehicle cannot amount to an offence. 173 I.C. 860. Where *two automobiles are travelling in the same direction*, the one ahead has the superior right and may maintain its position in the centre of the highway, if there is sufficient space on its left to enable the machine approaching from its rear safely and conveniently to pass. If there is not room for passage then it must, upon request or equivalent notice, if practicable and safe, turn aside so as to leave sufficient room, and if at the moment this is not possible, it becomes the duty of the rear car to wait until a place is reached where it may be done. Two cars were going under 15 miles per hour along the road from South to North, and while another car came in the opposite direction from North to South, G's baby car, passed the two cars going towards the North. G was going about 25 miles per hour. The road was at the place 40 to 50 feet wide as would give ample room for 4 cars to pass abreast with any amount of room to spare. There was no traffic of any kind on the road at the time except the 4 cars. G was not shown to be over the wrong side of the road. *Held*, that there would be ample room for a very small car like that of G to pass without trenching on the right hand side of the road. Even if he did go slightly over the middle line the car coming in the opposite direction had 20 feet in which to swing to its left. G's driving could not therefore be assumed to be reckless or negligent; an estimate speed of 25 mile per hour could not be regarded as anything out of the ordinary, on that road. 115 I.C. 900=30 Cr.L.J. 539=1929

117. Whoever while driving or attempting to drive a motor vehicle is under

Driving while under the influence of drink or drugs.

the influence of drink or a drug to such an extent as to be incapable of exercising proper control over the vehicle, shall be punishable for a first offence with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both, and for a subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

118. Whoever drives a motor vehicle in any public place when he is to his

Driving when mentally or physically unfit to drive.

knowledge suffering from any disease or disability calculated to cause his driving of the vehicle to be a source of danger to the public, shall be punishable for a first offence with fine which may extend to two hundred rupees and for a second or subsequent offence with fine which may extend to five hundred rupees.

R. 14. A motor driver is bound not to drive in a manner which would be dangerous to the public. In determining whether the manner of driving was dangerous to the public or not regard must be had to all the circumstances of the case and the amount of traffic which actually was at the time in the place. 97 I.C. 973=28 Bom.L. R. 1066=27 Cr.L.J. 1213=1926 Bom. 564. Where the accused saw another car approaching him on its proper side of the road and where he ought to have drawn in behind the water-cart passing in the same direction as the accused and not have attempted to force his way past it in front of the oncoming car, *held*, that such conduct on the part of the accused came within the purview of old sec. 5 and that the conviction was proper. 23 A.L.J. 790=26 Cr.L.J. 1254=1925 A. 798. Since an automobile is not inherently a dangerous machine, in the absence of statute the law does not impose on the owner or operator of an automobile the duty of chaining it to a post or otherwise fastening it so as to make it impossible for persons tampering with the machine to start it; but statutes and rules generally provide that every motor vehicle shall be equipped with a lock, key or other device to prevent it from being set in motion by unauthorised persons while standing unattended in any highway, park or other public place. Apart from the requirement of rules of this character it is not negligence to leave an automobile unattended for a reasonable time in the street, after disconnecting the power from the batteries and setting the brakes.

ACTS UNDER STRESS OF SUDDEN DANGER.—

The general principles which require one to act in such a manner as to avoid injury to himself or others, and to take those steps to avoid accidents which would be taken by a reasonably prudent person under like circumstances, are not enforced in all their rigour as to situations of sudden danger. This is in recognition of the fallibility of human nature in sudden crises and the greater probability of errors of judgment

occurring where a danger is imminent, and where a person is compelled instantly, without delaying for deliberation, to adopt some course of conduct to avoid injury. The frequent use of automobiles on public highways continually gives rise to situations which involve sudden danger, where one or more persons, without an instant's delay, must determine on and adopt a mode of proceeding which will minimize the chance of collision and injury to themselves and others. Frequently a pedestrian may be compelled to act quickly when he suddenly sees an automobile approaching, and if he decides that he has sufficient time to escape in a given direction he will not necessarily be held to be guilty of contributory negligence, although his judgment is shown to have been erroneous and in consequence he is run down and injured. But where a pedestrian deliberately attempts to cross in front of an approaching car, knowing that his chances of getting over to the other side in safety are about evenly balanced he may be charged with having assumed the risk of injury and may be guilty of contributory negligence. However, the driver of an automobile may be found to be negligent in turning from side to side, instead of stopping the machine to avoid hitting a pedestrian, who, warned by a signal of the approach of the car, has become confused and is dodging back and forth to avoid being hit, and the pedestrian will not necessarily be charged with contributory negligence. (*Ame. Bul. Case-law.*)

SECS. 117 AND 118.—"It is obviously necessary that persons who become temporarily unfit, *e.g.*, through a broken arm, extreme fatigue or illness should be barred from driving, and in case of accident from pleading temporary unfitness as the cause of the accident". (*Statement of Objects and Reasons.*)

SELECT COMMITTEE REPORT.—"We have omitted the words, 'or likely to suffer', and the reference to 'mental disability'. They are dangerously wide and difficult of reasonable interpretation".

Punishment for abetment of certain offences.

119. Whoever abets the commission of an offence under section 116, 117 or 118, shall be punishable with the punishment provided for the offence.

120. Whoever without the written consent of the Provincial Government Racing and trials of speed. permits or takes part in a race or trial of speed between motor vehicles in any public place shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to three hundred rupees, or with both.

121. Any person who drives or causes or allows to be driven in any public place a motor vehicle or trailer while the vehicle or Using vehicle in unsafe condition. trailer has any defect, which such person knows or could have discovered by the exercise of ordinary care and which is calculated to render the driving of the vehicle a source of danger to persons and vehicles using such place, shall be punishable with fine which may extend to two hundred and fifty rupees or, if as a result of such defect an accident is caused causing bodily injury or damage to property, with fine which may extend to five hundred rupees.

122. Whoever, being an importer of or dealer in motor vehicles, sells or delivers or offers to sell or deliver a motor vehicle or Sale of vehicle in or alteration of vehicle to a condition contravening this Act. trailer in such condition, that the use thereof in a public place would be in contravention of Chapter V or any rule made thereunder or alters the motor vehicle or trailer so as to render its condition such that its use in a public place would be in contravention of Chapter V or any rule made thereunder shall be punishable with fine which may extend to two hundred rupees:

Provided that no person shall be convicted under this section if he proves that he had reasonable cause to believe that the vehicle would not be used in a public place until it had been put into a condition in which it might lawfully be so used.

123. (Cf. Eng. Act, section 49.) (1) Whoever drives a motor vehicle or

SEC. 120: USE OF HIGHWAY FOR RACES AND SPEED CONTESTS.—Highways are constructed for public travel, and their exclusive use cannot be lawfully granted, even temporarily, by a municipality to any individual or association for the purpose of holding races and speed contests. Such a use of the roads and streets of a community amounts to a nuisance at common law, and the operation on them of motor vehicles travelling at dangerous speeds is illegal, and constitutes gross negligence as to any person who may be injured. Such a use of the public highways cannot be justified by the passage of an ordinance by the local authorities, and where a state law has fixed a maximum rate of speed for motor vehicles which is necessarily exceeded in the races, the ordinance itself is wholly void, and may operate to make the municipality a participator in the violation of the law, so that it may become liable in damages for injuries which persons may sustain during the races. (*Ame. Rul. Case-law.*)

SEC. 121.—This provision usually appears in provincial rules. (*Statement of Objects*

and Reasons.)

SELECT COMMITTEE REPORT.—The penalty has been reduced, but we have added a provision for an enhanced penalty where bodily harm or damage to property actually occurs as a result of the offence.

SEC. 122: SELECT COMMITTEE REPORT.—“We have excluded from the scope of the clause the casual private seller of a vehicle and confined it to importers and dealers only”.

SEC. 123: SELECT COMMITTEE REPORT.—“We have reduced the penalty for a first offence, and made a subsequent offence punishable with enhanced penalty only if committed within three years of a previous one. The more definite word ‘drives’ has been substituted for ‘uses’ in the first line”.

As to what constitutes the use of the car or permitting the use of the car, see 55 L.W. 754=1943 Mad. 41=(1942) 2 M. L.J. 577.

If a lorry is owned by two or more persons, each of them is the owner of the lorry and each of them would be liable under the strict wording of sec. 123 (1) of the Act for

Using vehicle without permit.

causes or allows a motor vehicle to be used or lets out a motor vehicle for use in contravention of the provisions of sub-section (1) of section 42 shall be punishable for a first offence with fine which may extend to five hundred rupees, and for a subsequent offence if committed within three years of the commission of a previous similar offence with a fine which shall not be less than one hundred rupees and may extend to one thousand rupees.

(2) Nothing in this section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injury or for the transport of materials for repair or of food or materials to relieve distress or of medical supplies for a like purpose:

Provided that the person using the vehicle reports such use to the Regional Transport Authority within seven days.

124. (Cf. Eng. Act, section 3.) Whoever drives a motor vehicle or causes

Driving vehicle exceeding permissible weight.

or allows a motor vehicle to be driven in contravention of the provisions of section 72 or of the conditions of any permit issued thereunder, or in contravention of any prohibition or restriction imposed under section 74 shall be punishable for a first offence with fine which may extend to one hundred rupees, and for a second or subsequent offence with fine which may extend to five hundred rupees.

an illegal act. But it is undesirable to exact a fine from all the owners separately. 44 P.L. B. 101=A.I.R. 1942 Lah. 125.

The driving of a transport vehicle on the public road without a licence or permit authorising the use of that vehicle in that place contravenes sec. 42 (1) of the Act; and whoever drives such a vehicle in a public place without such a permit is punishable under sec. 123 (1) of the Act. That the permit is to be obtained by the owner makes no difference and a driver cannot escape liability for such driving on that ground. 54 L.W. 480=1941 Mad. 845=(1941) 2 M.L.J. 349.

The sanctioned carrying capacity of a vehicle is determined under the rules framed under sec. 68 of the Act and the responsibility of exceeding it exclusively belongs to the conductor; under Rr. 218 and 219, this duty devolves on the driver only in the absence of the conductor. In the case of a driver of a vehicle who holds a permit in Form P. S. P., which contains no express condition for the use of the vehicle that its seating capacity shall not be exceeded, overloading is not a breach of the conditions of the permit punishable under sec. 123 (1) read with sec. 42 (1) of the Act, and the driver cannot therefore be convicted when there is a conductor on the vehicle. 56 L.W. 72=(1943) M.W.N. 60 (2)=A.I.R. 1943 Mad. 283=(1943) 1 M.L.J. 130. See also 55 L.W. 216=1942 M.W.N. 223=(1941) 2 M.L.J. 349.

Sec. 42 (1) applies only to the owners of transport vehicles, but sec. 123 applies to any one who drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of sec. 42 (1). Sec. 123 is clearly much wider than sec. 42 (1) and a person who is responsible for charging increased fares commits an offence under sec. 123 (1), even though he

is not the owner of the vehicle in question. I.L.R. (1944) Nag. 173=1944 N.L.J. 29=A.I.R. 1944 Nag. 89.

SEC. 124: SELECT COMMITTEE REPORT.—“The alterations made are partly consequential on the changes made by us in sec. 72. A reference to sec. 74 has been inserted.”

USE OF BRIDGES BY HEAVY MOTOR VEHICLES.—As a general rule, bridges are constructed for ordinary use in an ordinary manner, and not for an unusual or extraordinary use, either by crossing at great speed, or by the passing of vehicles of unusual weight, and the duty imposed on public authorities to keep the local bridges in repair is properly performed by keeping a bridge in a reasonably safe condition for travel by the ordinary methods in vogue in the neighbourhood, and by the people who commonly use the bridge. (*Am. Rule. Case-law*). A person undertaking to use or travel upon a bridge in an unusual or extraordinary manner, or with a traction engine or a very heavy vehicle not suitable or adapted for the public use in the transaction of usual and ordinary affairs of business, takes every possible risk of loss and damage upon himself; and he can have no remedy for injuries sustained, although they are the direct result of defects and imperfections for which there would be a liability in case of injury to individuals in the lawful and proper use of the highway. (*Ibid.*, 1171.) The proper test is not whether a traction engine or motor vehicle was of greater weight, and more dangerous, than ordinary wagons and teams, but whether the bridge was at the time being put to an unusual use and method of travel involving extraordinary peril, or whether the circumstances were such that a person of ordinary prudence, in the exercise of ordinary care in the situation, would reasonably apprehend

125. Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 94 shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

126. Whoever takes and drives away any motor vehicle without having either the consent of the owner thereof or other lawful authority shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both:

Provided that no accused person shall be convicted under this section if the Court is satisfied that the accused acted in the reasonable belief that he had lawful authority or in the reasonable belief that the owner would in the circumstances of the case have given his consent if he had been asked therefor.

127. Whoever otherwise than with lawful authority or reasonable excuse enters or mounts any stationary motor vehicle or tampers with the brake or any part of the mechanism of a motor vehicle shall be punishable with fine which may extend to one hundred rupees.

128. (1) A police officer in uniform may arrest without warrant any person who commits in his view an offence punishable under section 116 or section 117 or section 126:

Provided that any person so arrested in connection with an offence punishable under section 117 shall be subjected to a medical examination by a registered medical practitioner within two hours of his arrest or shall then be released from custody.

(2) A police officer in uniform may arrest without warrant—

(a) any person who being required under the provisions of this Act to give his name and address refuses to do so, or gives a name or address which the police officer has reason to believe to be false, or

(b) any person concerned in an offence under this Act or reasonably

and anticipate that it would be dangerous to go in such manner upon the bridge. Surely, no man would be justified in driving a heavily laden motor bus over a temporary rude bridge on a small stream made by villagers for the easy passage of workmen engaged in normal agricultural operations.

RIGHT TO USE STEAM ROLLERS ON HIGHWAYS.—A municipality or a contractor acting under its authority may lawfully use steam rollers or other machines operated by steam, for the purpose of constructing or repairing streets and roads. Certain noises normally accompany the operation of a steam roller, and these do not of themselves constitute a nuisance on negligence, and, generally, there can be no recovery against a municipality for frightening a horse to death by negligently starting a roller and suddenly blowing off steam and smoke, since a claim for death from fright is generally considered as being too speculative and too remote to furnish the basis of an action for damages in the absence of any direct injury. (2 *Ame. Bul. Case-law*, 1170). However, if the engineer of a steam roller sees the initial signs of fright and uneasiness in a horse, and, giving no heed to them, con-

tinues the blowing of the whistle and the original cause of the fright, until the horse breaks entirely away from control, liability for consequential injuries may ensue although the noise were usual and normal. (*Ibid.*)

SEC. 128 (2) has been introduced as much difficulty is encountered in getting offenders to comply with the summons served on them. (*Statement of Objects and Reasons.*)

SEC. 128 (1): SELECT COMMITTEE REPORT. —“We have confined the power of arrest without warrant given by this sub-clause to cases in which a police officer sees an offence committed. Sub-cl. (2) has been omitted in consequence of the omission of clause 115. In sub-cl. (3) we have removed the power to arrest an offender who gives an address outside British India, and confined the power of arrest to cases in which there is an apprehension that the offender will not be available for trial.”

Before sub-sec. (2) of sec. 128 applies, it is the duty of the prosecution to establish that the offending driver was required under the provisions of the Act to give his name and address. 197 I.C. 136=A.I.R., 1941 Lah. 422.

suspected to have been so concerned, if the police officer has reason to believe that he will abscond or otherwise avoid the service of a summons.

(3) A police officer arresting without warrant the driver of a motor vehicle shall, if the circumstances so require, take or cause to be taken any steps he may consider proper for the temporary disposal of the vehicle.

129. (1) Any police officer authorised in this behalf or other person authorised in this behalf by the Provincial Government may, if he has reason to believe that any identification mark carried on a motor vehicle or any licence, permit, certificate of registration, certificate of insurance or other document produced to him by the driver or person in charge of a motor vehicle is a false document within the meaning of section 464 of the Indian Penal Code, seize the mark or document and call upon the driver or owner of the vehicle to account for his possession of or the presence in the vehicle of such mark or document.

(2) Any police officer authorised in this behalf by the Provincial Government may, if he has reason to believe that the driver of a motor vehicle who is charged with any offence under this Act may abscond or otherwise avoid the service of a summons, seize any licence held by such driver and forward it to the Court taking cognizance of the offence.

(3) A police officer seizing a licence under sub-section (2) shall give to the person surrendering the licence a temporary acknowledgment therefor and such acknowledgment shall authorise the holder to drive until the licence has been returned to him or the Court has otherwise ordered.

[129-A. Any police officer authorized in this behalf or other person authorized in this behalf by the Provincial Government may, if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of sub-section (1) of section 22 or without the permit required by sub-section (1) of section 42 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle.] (Inserted by Act XX of 1942.)

130. (1) A Court taking cognizance of an offence under this Act may, unless the offence is an offence specified in Part A of the Fifth Schedule, state upon the summons to be served on the accused person that he—

(a) may appear by pleader and not in person, or
(b) may by a specified date prior to the hearing of the charge plead guilty to the charge by registered letter and remit to the Court such sum not exceeding twenty-five rupees as the Court may specify.

(2) Where the offence dealt with in accordance with sub-section (1) is an offence specified in Part B of the Fifth Schedule, the accused person shall, if he pleads guilty to the charge, forward his licence to the Court with the letter containing his plea in order that the conviction may be endorsed on the licence.

(3) Where an accused person pleads guilty and remits the sum specified and has complied with the provisions of sub-section (2), no further proceedings in respect of the offence shall be taken against him, nor shall he be liable to be disqualified for holding or obtaining a licence by reason of his having pleaded guilty.

SEC. 130.—This provides for speedy action in technical prosecutions. (*Statement of Objects and Reasons.*)

REPORT OF SELECT COMMITTEE.—“The new sub-clause inserted as sub-clause (2) is intended to secure the presentation of the

driving licence to enable the Court to record the endorsement which is required by the Fifth Schedule and cl. 19 (2), although the convicted person is not himself required to attend Court.”

131. No person prosecuted for an offence punishable under section 115 or section 116 shall be convicted unless—

(a) he was warned at the time the offence was committed that the question of prosecuting him would be taken into consideration, or

(b) within fourteen days from the commission of the offence, a notice specifying the nature of the offence and the time and place where it is alleged to have been committed was served on or sent by registered post to him or the person registered as the owner of the vehicle at the time of the commission of the offence, or

(c) within twenty-eight days of the commission of the offence, a summons for the offence was served on him:

Provided that nothing in this section shall apply where the Court is satisfied that—

(a) the failure to serve the notice or summons referred to in this subsection was due to the fact that neither the name and address of the accused nor the name and address of the registered owner of the vehicle could with reasonable diligence have been ascertained in time, or

(b) such failure was brought about by the conduct of the accused.

132. No Court inferior to that of a Presidency Magistrate or a Magistrate of the second class shall try any offence punishable under this Act or any rule made thereunder.

CHAPTER X.

MISCELLANEOUS.

Publication of and commencement of rules.

133. (1) Every power to make rules given by this Act is subject to the condition of the rules being made after previous publication.

(2) All rules made under this Act shall be published in the official Gazette and shall, unless some later date is appointed, come into force on the date of such publication.

(3) All rules made under this Act by the Central Government or by any Provincial Government shall be laid for not less than fourteen days before the Central or Provincial Legislature, as the case may be, as soon as possible after they are made, and shall be subject to such modifications as the Legislature may make during the session in which they are so laid.

SEC. 131.—“This provision is reasonable in the interest of the motorist, to prevent him from being charged, after an unduly lengthy period, in connection with an alleged offence the circumstances of which may no longer be easily remembered.” (*Statement of Objects and Reasons*.)

REPORT OF SELECT COMMITTEE.—“We have omitted the sub-clause which provided for a presumption that the provisions of the clause had been complied with until the contrary was proved.”

SEC. 133 -(3): SELECT COMMITTEE REPORT.—“We have added a sub-clause requiring rules made under the Act to be submitted to the Legislature concerned after they are made and have given to the Legislature power to modify them.” See Notes under sec. 112.

SEC. 133: CASES UNDER THE OLD ACT.—See 47 I.C. 444; 27 P.R. (Cr.) 1918; 53 I.C. 895=10 L.W. 399; 55 Mad. 187. In respect of a motor cycle, if a breach of R. 40 of the rules framed under the Act is alleged, the cycle should, if possible, be examined by a police officer with some knowledge

of motor cycles, to see whether the silencer was defective. Irrespective of the fact whether the rider is the owner of the motor cycle or not, it is an offence to ride a motor vehicle without a silencer, 1939 A.M.L.J. 94. Before the new rules under the Motor Vehicles Act, 1939, came into operation, the old rules must be read subject to the provisions of the Act of 1939 after that Act has come into force. Under Rr. 4 (4) and 6 (2) of the Motor Vehicles Rules of 1930 read in the light of secs. 31 and 34 of the Act of 1939, a motor vehicle must be registered afresh when its ownership is transferred, unless the vehicle in question has been destroyed or has become permanently incapable of use. The mere fact that it was not in use at the time when the ownership changed in not enough. 45 C.W.N. 111. Car carrying mails and also passengers is not exempt from rules as to licence and number of passengers to be carried in it. 29 Bom.L.R. 191=1927. Bom. 150. Bombay R. 6 (1) (b) and Schedule D—*Ultra vires*—Time limit of the certificate. 46 B. 646=65 I.C. 633=24 Bom.L.R. 50. Observations

on the vagueness of the rules framed and the necessity for making them clear, and suggestions as to the amendment of the rules. *See* 98 I.C. 847=1926 Mad. 1084=51 M.L.J. 446. *See also* 51 Mad. 504. As to evidence necessary in prosecution under the Act, and rules, *see* 7 Pat.L.T. 542=97 I.C. 48=1926 Pat. 446. Rule 16 (c)—Non-lighting of car—Absent owner. 26 M.L.T. 331=53 I.C. 825. *See also* 1922 Nag. 71. Sec. 16, Motor Vehicles Act (1914), has not any necessary ingredient of rashness or negligence in it and R. 27, Motor Act Rules, merely lays down the rule of the road, breach of which need not necessarily involve rashness or negligence. Consequently where rashness or negligence enters into the offence, the conviction under sec. 279, I. P. Code, is not only proper but more appropriate. 136 I.C. 571=1932 A. 69. The fact that an unlicensed person was charged with driving a motor car without a licence and pleaded guilty to that charge is not sufficient to justify a Court in convicting the motor driver of having allowed him to drive, where he was not specifically charged with that offence under Motor Vehicles Act. 119 I.C. 536=30 Cr.L.J. 1077=1930 Sind 64. Where the owner of a motor car was sentenced to a fine on his pleader admitting him to be "guilty" for not having given information as to the death of a person by motor accident, *held*, (1) that there was no such offence as that for which the owner was convicted either under sec. 16 (old Act) or under any other provision of the Act; (2) that the summons issued by the Magistrate did not contain the necessary particulars and was invalid in law and consequently need not have been obeyed; (3) that the admission as to guilty by the pleader did not constitute an estoppel or admission preventing the person proceeded against from impugning the validity of the proceedings; (4) that the practice of persons summoned absenting themselves and pleading "guilty" deserved condemnation, and would really go in aggravation of an offence. Essentials of a valid summons pointed out. 26 A.L.J. 331; 108 I.C. 230=1928 A. 261. Omission in a summons to specify the sections of the Act, or rules made thereunder for breach of which a person was being prosecuted is a serious defect. 1928 A. 492=50 A. 876=111 I.C. 127=29 Cr.L.J. 799. (Case-law discussed.) *See also* 1937 O.W.N. 815=170 I.C. 476=A.I.R. 1937 Oudh 444; 1937 O.W.N. 283=166 I.C. 978. Sec. 16 (old Act) is a penal clause, and it is the duty of a Court issuing a summons to specify in it what particular rules the accused had contravened. The procedure of issuing summonses by Magistrates purporting to charge motorists, owners or drivers of offences under the Act, without giving the slightest particulars of the offence charged, is not justified by law. A summons not in the prescribed form may be disregarded, and proceedings thereon will be invalid. 150 I.C. 241=85 Cr.L.J. 1161 (3)=31 O.W.N.

828=1934 Oudh 370 (2). Where the accused was hauled before the Court on a summons under sec. 16 (old Act) in which he was not given notice of the charge, and was tried, convicted and sentenced in one day without an opportunity being given to him of meeting the prosecution case after the close of the prosecution evidence, the conviction and sentence are liable to be set aside in revision. 165 I.C. 716 (1)=1936 A.W.R. 874=1936 A.L.J. 1011=A.I.R. 1936 A. 761. The "B" permit granted to the driver is only valid within the district of the Superintendent of Police and if it is driven into another district, it must be countersigned by the Superintendent of the latter district. 151 I.C. 727=35 Cr.L.J. 1400=36 Bom.L.R. 366=1934 B. 201. As to power of municipalities to tax motor vehicles plying for hire, *see* 88 I.C. 1045=41 C.L.J. 566=26 Cr.L.J. 1269=1925 C. 1026. Suspension of a permit for an offence of overloading a motor cannot be permitted. 110 I.C. 803=29 Cr.L.J. 771=10 P.L.T. 429=1929 P. 64. Taking petrol charges from a person who uses the accused's motor lorry *does not amount to hiring*. The mere payment to the accused of the cost of petrol used while his lorry is at the disposal of the person so paying such charges is not payment for the use of the lorry. It is equivalent to mere replacement in the petrol tank of the petrol used. The accused therefore cannot be convicted of an offence of plying his lorry for hire, though he had no G Permit. 41 L.W. 498=68 M.L.J. 481. *See also* I. L.R. (1939) Kar. 391=A.I.R. 1939 Sind 85; A.I.R. 1938 Mad. 233=46 L.W. 959=1938 M.W.N. 30. "Plying for hire" means the act of soliciting custom. Where a person who owned a motor lorry purchased goods at one place and after transporting them to another place sold the goods there to their customers but did not appear that he solicited custom at any time, the owner of the lorry was not liable to be convicted for breach of the Punjab Motor Vehicles Plying for Hire Rules. 132 I.C. 702=1931 L. 569. *See also* A.I.R. 1939 Sind 85. The expression "to ply for hire" ordinarily means to exhibit a vehicle in such a way as to invite those who may desire to do so to hire it or to travel in it on payment of the usual fares, and also to offer its use on payment to any member of the public, thereby soliciting custom. The owner of a bus driving it on a private errand cannot therefore be said to have been using it as a motor vehicle plying for hire. 32 Bom.L.R. 337=1930 B. 161; 116 I.C. 885=30 Cr.L.J. 700=10 L. 505=1929 L. 422. The owner of a lorry plying for hire without a renewal of registration or permit and without any directions painted on the body was charged and convicted under sec. 16, Motor Vehicles Act. The rules alleged to have been contravened were rules 78, 79 and 81, U. P. Motor Rules, and sec. 8 of the Motor Vehicles Act. The judgment did not contain a discussion of the Rules, and it ap-

peared from the judgment that the Magistrate had got confused with rule 16 and sec. 16 of the Act, and that the case proceeded as though the accused was being charged with having contravened R. 16 of the U. P. Motor Rules. The summons merely informed the accused that he had to appear and answer to a charge under sec. 16 of the Act. *Held*, the proceedings were invalid and must be set aside. 150 I.C. 941 = 35 Cr.L.J. 1161 (2) = 11 O.W.N. 828 = 1934 Oudh 370.

BOMBAY RULES.—R. 21 of the Bombay Motor Vehicles Rules framed by the Local Government under sec. 11 of the Motor Vehicles Act (1914) is not *ultra vires* of the Local Government. A notification issued by a District Magistrate under R. 21, prohibiting the driving on certain roads of the District of, *inter alia*, any motor vehicle, public or private, the maximum weight of goods in which exceeds one and a half tons is a valid notification and a breach of it amounts to an offence. 40 Bom.L.R. 1099 = A.I.R. 1938 Bom. 506.

BURMA RULES.—Burma Motor Vehicles Rules—R. 24 (b)—Conductor, if in charge of the bus—Over loading—Who is to be charged. *See* A.I.R. 1942 Rang. 51 (2).

CALCUTTA RULES.—Absent master is not criminally liable for fast driving where he had cautioned the driver not to exceed the regulation speed and to drive with due care and caution. 51 C. 948 = 28 C.W.N. 854 = 25 Cr.L.J. 1209 = 1924 C. 985. *See also* 25 C.W.N. 21. Before the new rules under the Motor Vehicles Act, 1939, came into operation, the old rules must be read subject to the provisions of the Act of 1939 after that Act has come into force. Under Rr. 4 (4) and 6 (2) of the Motor Vehicles Rules of 1930 read in the light of secs. 31 and 34 of the Act of 1939, a Motor Vehicle must be registered afresh when its ownership is transferred, unless the Vehicle in question has been destroyed or has become permanently incapable of use. The mere fact that it was not in use at the time when the ownership changed is not enough. 45 C.W. N. 111.

C. P. RULES.—The rules framed by the Governor-in-Council, Central Provinces, under the Motor Vehicles Act, do not *proprio vigore* apply to the subject of any State. They become applicable by virtue of a reciprocity arrangement concluded in 1930 with the Central Provinces States. 1939 N.L.J. 355.

(C. P. and BERAR), R. 70—STANDARD RATE OF FARES—VARIATION—SANCTION^o OF.—A variation in the standard rate of fares originally quoted and accepted by the R.T.A. requires the sanction of the R.T.A. A variation of the rate is a variation of a condition under R. 70 of the C. P. and Berar Motor Vehicles Rules, 1940. A refusal to sanction an application under R. 70, Motor Vehicles Rules, for a subsequent variation of conditions of a permit does not amount to such imposition of conditions of a per-

mit as would afford grounds for an appeal. 1943 N.L.J. 411.

MADRAS RULES.—Though R. 30 (a) may be primarily intended to apply to motor vehicles which are used for the express purpose of letting for hire, yet even if a motor vehicle is used only once for such a purpose, then on that one occasion it is none the less let for hire even though the owner does not ordinarily use his lorry for the purposes of reward. The not taking out of a 'G' permit in such a case constitutes an offence under sec. 16 of the old Act. 46 L.W. 959 = 1938 M.W.N. 30. *See also* A.I.R. 1939 Sind 85. In a prosecution of the owner of a motor lorry under sec. 16 of the old Act for overloading the lorry in contravention of R. 15-A, of the Motor Vehicle Rules, the burden is on the prosecution to show that the accused knew that the lorry was overloaded. When the lorry in question with the load is shown to be proceeding from a place far away from the place where the owner of the lorry has his business, it cannot be held that the accused knew of the overloading. 48 L.W. 319 = 1938 M.W.N. 867 = (1938) 2 M.L.J. 582. *See also* A.I.R. 1938 Mad. 743 = (1938) 1 M.L. J. 800.

"LETTING FOR HIRE".—In R. 30 (a) (1) (i) of the Madras Rules framed under the Motor Vehicles Act of 1914, need not be one definite and localised act. When a motor lorry is engaged for a journey from Calicut in the district of Malabar to Pollachi in the district of Coimbatore for hire, the vehicle must be said to have been let for hire not merely at Calicut, but along the public roads in the Presidency of Madras in the districts of Malabar and Coimbatore, and, therefore, the owner who obtains no special permit in Form G commits an offence under sec. 16 of the Motor Vehicles Act (1914) not only in the District of Malabar but also in the district of Malabar but also in the district of Coimbatore if the lorry gets beyond the limits of the districts of Malabar on its journey to Pollachi. The framers of the rules must reasonably be held to have intended that permits should be taken out for every area through which vehicles engaged or plied for hire travel. 177 I.C. 314 = 1938 M.W.N. 822 = 47 L.W. 774 = A.I. R. 1938 Mad. 743 = (1938) 1 M.L.J. 800. In a prosecution under sec. 16 of the Motor Vehicles Act (1914) for violation of R. 30 (a) (1) (i) of the Madras Motor Vehicles Rules, it is incumbent on the prosecution to prove by evidence that the vehicle in question was not provided with G permit. Failure to let in evidence of this essential fact is a fatal defect. 177 I.C. 314 = 1938 M. W.N. 822 = 47 L.W. 774 = A.I.R. 1938 Mad. 743 = (1938) 1 M.L.J. 800. Where the registered owner of a motor lorry for private use suffers his driver to carry goods of another person for hire, he is unquestionably guilty of an offence under R. 138 of the Motor Vehicles rules which is punishable under sec. 112 of the Motor Vehicles Act.

52 L.W. 948.

PATNA RULES.—Conditions of the permit apply to the licensed vehicles for the period of the licence irrespective of whether it was in use at the time as a carriage standing or plying for hire or the use was gratuitous. 9 P. 169=1929 P. 522. The person responsible for having a board fixed upon the vehicle under r. 12 is owner and not the person who, from time to time, may have the use of the car. Where a car is purchased by an estate for the use of its manager the manager cannot be said to be the owner under r. 12. 97 I.C. 48=7 P.L.T. 542=27 Cr.L.J. 1072=1926 P. 446. As to r. 20 (5) regarding reflecting mirrors, see 18 Pat.L.T. 62=166 I.C. 741=A.I.R. 1937 Pat. 3. In r. 46, a person merely driving his vehicle cannot be said to be 'plying' his vehicle. It means that the person driving, stops to take up or put down passengers for reward. 17 Pat.L.T. 378=163 I.C. 399=A.I.R. 1936 Pat. 321 (1). In r. 61 'attendant' does not mean a mere cleaner. 17 Pat.L.T. 162=161 I.C. 703 (1)=A.I.R. 1936 P. 172.

U. P. RULES.—There is nothing in the wordings of the U. P. Rules to show that r. 11 applies to cars registered outside the United Provinces. It is clear from the definition of "Registering Authority" in r. 3 that this expression, as used in r. 11 means the authority who had registered the car under the rules in force in the United Provinces. Where therefore the applicant's car is not registered in the United Provinces but brought there for a short period, r. 11 has no application to his case. 120 I.C. 272=31 Cr.L.J. 40=1930 A.L.J. 527=1930 A. 34. See also 150 I.C. 941=1934 Oudh 370; 1927 A. 478. Violation of rules under this section—Rules framed by U. P. Government—r. 12 cl. (a)—"Front portion of vehicle"—Meaning of. 40 I.C. 1004=19 Cr.L.J. 860=12 A.L.J. 613. The permit accorded permission to the owner of the lorry to ply within the district and the road on which it was permitted to ply was also specified therein. The permit did not, however, specify the maximum number of passengers. The road on which the lorry was driven was not specified in the permit and it was also then carrying a greater number of passengers than could be taken in a lorry. The owner was thereupon convicted for violation of rr. 79 and 81 of the Motor Vehicles Rules. *Held*, that (i) as the maximum number of passengers was not specified in the permit, the conviction for violation of r. 81 was bad; (ii) the words "within the district" were merely descriptive of the route specifically described and did not justify the lorry being plied in other routes within the district; and that the conviction for violation of r. 81 was correct. 143 I.C. 582=34 Cr.L.J. 620=1933 A.L.J. 499=1933 A. 465. R. 22 applies only to a person licensed to drive in another province and not licensed in the United Provinces. 101 I.C. 668=49 A. 754=25 A.L.J.

574=28 Cr.L.J. 492=1927 A. 478. U. P. Government Rules No. 22 applies only to a person licensed in United Provinces. 49 A. 754=101 I.C. 668=25 A.L.J. 574=1927 All. 47,8

ODDH RULES.—R. 2 (g) of the Motor Vehicles Rules merely means that the word 'Magistrate' means a stipendiary Magistrate where this word is used in the rules. The mere fact that a person was charged with certain acts made offences by r. 79 (*viz*) is no reason for holding that the Magistrate trying the case must be such a Magistrate as is defined in the rules and that an Honorary Special Magistrate is incompetent to try it. 1941 O.A. 145=1941 O.W. N. 193 (1).

PUNJAB RULES.—Where the driver of a motor lorry does not use the lorry in conformity with the conditions specified in the road certificate, the owner of the lorry is guilty of an offence under sec. 16, read with r. 3, Punjab Motor Vehicles Plying for Hire Rules, 1922, even though he is not present when the breach of the condition takes place. Where, therefore, a driver was found carrying 17 (when only ten could be carried under the road certificate) and one passenger was sitting on mudguard, which was prohibited. *Held*, that there being clear breach of the road certificate, the owner was liable under r. 3, Punjab Motor Vehicles Plying for Hire Rules, 1922, although he was not present. (38 C. 415; 45 C. 430 and 1924 C. 985, Rel. on; 27 P.R. 1918; 1928 C. 410 and 1924 R. 63, Dist.) 1930 L. 865. Unless the wording of the rules is beyond doubt, the manufacturers' specifications regarding maximum load which can be carried cannot be read as part of the rules made by the Punjab Government. When the rule-making authority has deliberately made a distinction between private lorries and public lorries and has specified that public lorries shall not carry more than a specified amount of weight, it is reasonable to assume that it was not intended that any such limitation should apply to vehicles which are not public motor vehicles. Hence the owner of private lorries cannot be convicted under r. 23 of the Punjab Motor Vehicles Rules read with sec. 16, on the ground that his lorry was carrying a load in excess of its carrying capacity. A.I.R. 1938 Lah. 691=40 P.L.R. 942. R. 23 of Punjab Rules makes the driver as well as owner responsible for breach of rules. Driver cannot escape liability in case of overloading on the ground of the presence of the checker and ticket seller. 17 Lah. 604=38 P.L.R. 1015. Rule 49—Superintendent of Police fixing only week for inspection but not date—Inspector fixing particular date within that week—Lorry driver failing to produce his lorry on that date but producing it on subsequent date during that week—Driver not liable to conviction. 39 P.L.R. 130=169 I. C. 426=A.I.R. 1936 Lah. 23.

BURMA RULES.—Owner of a Motor car is not criminally liable for negligence of the

[133-A. (1) The Provincial Government may, for the purpose of carrying into effect the provisions of this Act, establish a Motor Vehicles Department and appoint as officers thereof such persons as it thinks fit.

(2) Every such officer shall be deemed to be a public servant within the meaning of the Indian Penal Code.

(3) The Provincial Government may make rules to regulate the discharge by officers of the Motor Vehicles Department of their functions and in particular and without prejudice to the generality of the foregoing power to prescribe the uniform to be worn by them, the authorities to which they shall be subordinate, the duties to be performed by them, the powers (including the powers exercisable by police officers under this Act) to be exercised by them, and the conditions governing the exercise of such powers.] (*Inserted by Act XX of 1942.*)

134. (1) The Indian Motor Vehicles Act, 1914, is hereby repealed.

[(2) Notwithstanding the repeal of the Indian Motor Vehicles Act, 1914, rules made by any Provincial Government under section 11 of that Act, other than rules prescribing the fees payable in respect of the grant or renewal of licences to drive motor vehicles, shall, whether or not they are consistent with this Act but subject to the provisions of sub-section (3) of this section, continue to be in force for a period of nine months from the commencement of this Act, unless before the expiry of that period they are cancelled by the Provincial Government by notification in the Official Gazette:] (*Sub-section (2) omitted by Act XX of 1942.*)

(3) Notwithstanding the repeal of the Indian Motor Vehicles Act, 1914, rules made or purporting to be made by a Provincial Government under sub-section (2) of section 11 of that Act, requiring or relating to the insurance of motor vehicles, being rules in force at the commencement of this Act, shall, until Chapter VIII of this Act takes effect in the province, have effect as if enacted in this Act.

[(4) Nothing contained in this Act shall, until the expiry of a period of nine months from the commencement of this Act, operate to invalidate any provisions relating to the taxation of motor vehicles contained in any Provincial enactment or rules made thereunder in force at the commencement of this Act.

driver in driving the car without properly illuminated rear light, if the owner has made provision for such illumination. (36 C. 415 and 45 C. 430, Dist.). 76 I.C. 564 = I.R. 600 = 2 Bur.L.J. 201 = 25 Cr.L.J. 196 = 1924 R. 63. A taxi driver who was convicted was fined Rs. 60 and was suspended for one year. *Held*, that the order of suspension of licence was part of the sentence and the conviction was appealable. *Held*, further, that no proceedings by way of revision could be entertained where no appeal was brought. 146 I.C. 545 (2) = 1933 Cr.C. 1146 = 1933 R. 329.

Per *Baguloy, J.*—The power to seize a licence given under rules framed by Local Government from its owner and keep it for a certain time cannot in any way help to carry into effect the provisions of the Act. It is not even a temporary suspension of the licence because it provides that a temporary substitute is to be given for it, and sec. 18 only provides for a licence to be cancelled or suspended by Local Government or by a Court trying the holder of a licence for an offence. R. 38-B must therefore be held to be *ultra vires*. 175 I.C. 639 = 39 Cr. L.J. 642 = A.I.R. 1938 Rang. 161.

THE SCHEDULES: SELECT COMMITTEE REPORT.—“A new form for Drivers' Licence has been substituted in the First Schedule for Form D contained in the Bill. Other forms in that Schedule have been amended either for the purpose of bringing the contents and the wording into harmony with the provisions of the Bill as now amended, or to remove superfluities, or to supply omissions. In the Fifth Schedule, the amendments made by us to cl. 20 abolishing perpetual endorsement have rendered the headings to Parts A and B unnecessary. We have eliminated from the list of offences entailing endorsement that of driving an uninsured vehicle, and we have also removed ten minor offences from Part B. In the Sixth Schedule we have provided for a system of Registration Marks consisting of three letters followed by four figures, the first two letters being indicative of the Province, the third possibly indicative of the registering authority. In the Eighth Schedule, we have inserted a speed limit for a class of vehicle not already provided for. In the Tenth Schedule, we have added an additional driving signal.”

¹[(5) While, under the provisions of sub-section (2), any rules made by a Provincial Government under section 11 of the Indian Motor Vehicles Act 1914, continue to be in force—

(a) section 112 shall be construed as if after the words “any rule made thereunder” there were inserted the words and figure “or of any rule made under the Indian Motor Vehicles Act, 1914 and continuing in force,” and

(b) section 113 shall be construed as if after the words “under this Act”, wherever they occur; there were inserted the words and figure “or under any rule made under the Indian Motor Vehicles Act, 1914 and continuing in force.” (Sub-sections 4 and 5 omitted by Act XX of 1942.)

THE SCHEDULES. THE FIRST SCHEDULE.

Forms.

FORM A.

[See section 7 (2).]

Form of application for licence to drive a motor vehicle.

I

Application.

I apply for a licence to enable me to drive
as a paid employee

*otherwise than as a paid employee

*vehicles of the following description :—

(a) motor cycles.

(b) motor cars.

(c) invalid carriages,

(d) motor cabs,

(e) delivery vans,

(f) light transport vehicles *including public service vehicles,
excluding

(g) heavy transport vehicles *including public service vehicles,
excluding

(h) tractors,

(i) road-rollers,

(j) locomotives,

(k) a vehicle of special type (description attached) constructed or adapted to be driven by
me.

* Strike out whichever inapplicable.

II

Particulars to be furnished by the applicant.

1. Full name and name of father.....
2. Permanent address
3. Temporary address
4. Age at date of application.....
5. Particulars of any licence previously held by applicant.....
6. Particulars and date of every conviction which has been ordered to be endorsed on any licence held by the applicant.
7. Have you been disqualified for obtaining a licence to drive? If so, for what reason?
8. Have you been subjected to a driving test as to your fitness or ability to drive a vehicle in respect of which a licence to drive is applied for? If so, give date, testing authority and result of test.

III

Declaration as to physical fitness of applicant.

The applicant is required to answer “yes” or “No” in the space provided opposite each question.

- (a) Do you suffer from epilepsy, or from sudden attacks of disabling giddiness or fainting?
- (b) Are you able to distinguish with each eye at a distance of 25 yards in good daylight (with glasses, if worn) a motor car number plate containing seven letters and figures?
- (c) Have you lost either hand or foot or are you suffering from any defect in movement, control, or muscular power of either arm or leg?

¹[(d) Can you readily distinguish the pigmentary colours red and green?

(e) Do you suffer from night blindness?]¹

²(f) Do you suffer from a defect of hearing?

¹(g) Do you suffer from any other disease or disability likely to cause your driving of a motor vehicle to be a source of danger to the public?

If so give particulars.

I declare that to the best of my information and belief the particulars given in section II and the declaration made in Section III hereof are true,

NOTE.—An applicant who answers "Yes" to questions (b) and (c) in the declaration and "No" to the other questions may claim to be subjected to a test as to his competency to drive vehicles of a specified type or types.

Date.....19 .

Signature or Thumb Impression of applicant.

Certificate of test of ability to drive.

The applicant has ^{passed} ~~failed in~~ the test specified in the Third Schedule to the Motor Vehicles

Act, 1939. The test was conducted on a* .
on (date)

Signature of Testing Authority.
Duplicate Signature or Thumb
Impression of applicant.

* Here enter description of vehicle.

FORM B.

[See section 11 (2).]

Form of application for renewal of driving licence.

I hereby apply for a renewal of the licence under the Motor Vehicles Act, 1939, which was issued to me on the.....by.....(state title of licensing authority.)

I hereby declare that I am not subject to any disease or disability likely to cause my driving of a motor vehicle to be a source of danger to the public.

Date

19 .

Signature of Applicant.

FORM C.

- [See section 7 (3) and section 12.]

Form of medical certificate in respect of an applicant for a licence to drive any transport vehicle or to drive any vehicle as a paid employee.

(To be filled up by a registered medical practitioner.)

1. What is the applicant's apparent age?.....
2. Is the applicant, to the best of your judgment, subject to epilepsy, vertigo or any mental ailment likely to affect his efficiency?
3. Does the applicant suffer from any heart or lung disorder which might interfere with the performance of his duties as a driver?
4. (a) Is there any defect of vision? If so, has it been corrected by suitable spectacles?
- ²[(b) Can the applicant readily distinguish the pigmentary colours red and green?
- (c) Does the applicant suffer from night blindness?]
- ³(d) Does the applicant suffer from a degree of deafness which would prevent his hearing the ordinary sound signals?
5. Has the applicant any deformity or loss of members which would interfere with the efficient performance of his duties as a driver?
6. Does he show any evidence of being addicted to the excessive use of alcohol, tobacco or drugs?

LEG. REF.

¹ For question (d) new questions (d) and (e) substituted, and (e) and (f) re-lettered

(f) and (g) by Act XL of 1939.

² Substituted by Act XL of 1939.

³ Relettered (d) by Act XL of 1939.

7. Is he, in your opinion, generally fit as regards (a) bodily health, and (b) eyesight
8. Marks of identification.

I certify that to the best of my knowledge and belief the applicant.....
.....is the person hereinabove described, and that the attached photograph is a reasonably correct likeness.

(Signature).....

[Space for photograph.]

Name.....

Designation.....

NOTE. Special attention should be directed to distant vision and to the condition of the arms and hands and the joints of both extremities.

FORM D.

[See section 8 (1).]

Driving Licence.

No..... 19.....

(Name)

son/daughter of (father's name)

of (permanent address)

(temporary address)

<p>Photograph</p> <p>if necessary.</p>
--

Signature or thumb impression.

is licensed to drive, throughout British India, vehicles of the following description :—*

- * (a) Motor cycle.
- (b) Motor car.
- (c) Motor cab.
- (d) Delivery van.
- (e) Light transport vehicle.
- (f) Heavy transport vehicle.
- (g) Locomotive.
- (h) Tractor.
- (i) Invalid carriage.
- (j) road-roller.
- (k) A motor vehicle hereunder described :—

He is also authorised to drive as a paid employee*.

This licence is valid from.....to.....
(*To be struck out if inapplicable.)

Date.....19 .

Signature and designation of
Licencing Authority.

Authorisation to drive a public service vehicle.

So long as this licence is valid and is renewed from time to time, the holder is authorised to drive a public service vehicle within the province of.....

Date.....19 .

And within the province of.....

Date.....19 .

Signature and designation of
prescribed authority.

Signature and designation of
prescribed authority.

And within the province of.....
 Date.....19 ..

This licence is hereby renewed up to

the.....day of.....19 .
 the.....day of.....19 .
 the.....day of.....19 .
 the.....day of.....19 .
 the.....day of.....19 .

*Signature and designation of
 prescribed authority.*

Signature of Licencing Authority.

ENDORSEMENTS.

Date.	Section and Rule.	Fine or other punishment.	Signature of Endorsing Authority.

FORM E.

[See section 24 (1).]

Form of Application for the Registration of a Motor Vehicle.

1. Full name, name of father, and address of person to be registered as registered owner.....
2. Class of vehicle.....
3. Type of body.....
4. Maker's name.....
5. Year of manufacture.....
6. Number of cylinders.....
7. Horse power.....
8. Maker's classification or, if not known, wheel base.....
9. Chassis number.....
10. Engine number.....
11. Seating capacity (including driver).....
12. Unladen weight.....
13. Particulars of previous registration and registered number (if any).....
- Additional particulars to be completed only in the case of transport vehicle other than motor cabs—
14. Number, description and size of tyres—
 - (a) front axle.....
 - (b) rear axle.....
 - (c) any other axle.....
15. Maximum laden weight.....lbs.
16. Maximum axle weight—
 - (a) front axle.....lbs.
 - (b) rear axle.....lbs.
 - (c) any other axle.....lbs.

The above particulars are to be filled in for a rigid frame motor vehicle of two or three axles, for an articulated vehicle of three axles, or, to the extent-applicable, for a trailer (other than the trailer to be registered as part of an articulated vehicle) as the case may be. Where a second trailer or additional trailers are to be registered with an articulated motor vehicle, the following particulars are to be furnished for each such trailer :—

17. Type of body.....
18. Unladen weight.....
19. Number, description and size of tyres on the axle.....
20. Maximum axle weight.....

Date

19 ..

Signature of applicant.

Explanation.—An articulated vehicle means a tractor to which a trailer is attached in such a manner that part of the trailer is superimposed on and part of the weight of the trailer is borne by the tractor.

NOTE.—The motor vehicle above described is held by the person to be registered as the registered owner, under a hire purchase agreement with.....

Signature of owner.

Signature of Hire Purchase Company.

FORM F.

[See section 36 (1).]

Document to be furnished by the maker or authorised assembler in the case of transport vehicles other than motor cabs.

Certified that the vehicle.
 Chassis No. and Engine No. is designed for maximum weights as follows
 when fitted with the tyre-equipment specified below :—
 Maximum laden weight lbs.
 Maximum weight front axle lbs.
 Maximum weight rear axle lbs.
 Maximum weight any other axle lbs.
 Tyres—
 Front wheels
 Rear wheels
 Other wheels

Date *Signature of maker or authorised assembler.*

Special certificate to be furnished by an assembler.

Certified that I am authorised by the maker of the vehicle described above to issue this certificate.

Signature of authorised assembler.

FORM G.

[See section 24 (2).]

Form of Certificate of Registration.

Registered number

Brief description of vehicle,

(*e.g.*, Ford touring car, Chevrolet 22 seater bus, Albion lorry, trailer, etc.)

Name, name of father, and address of Registered Owner

Signature of registering authority.

Transferred to

Signature of registering authority.

Transferred to

Signature of registering authority.

Detailed description.

1. Class of vehicle
2. Maker's name
3. Type of body
4. Year of manufacture
5. Number of cylinders
6. Chassis number
7. Engine number
8. Horse power
9. Maker's classification or, if not known, wheel-base
10. Seating capacity (including driver)
11. Unladen weight

Additional particulars in the case of all transport vehicles other than motor cabs—

12. Registered laden weight
13. Number, description and size of tyres—
 (a) front axle
 (b) rear axle
 (c) any other axle
14. Registered axle weight—
 (a) front axle lbs.
 (b) rear axle lbs.
 (c) any other axle lbs.

Additional particulars of alternative or additional trailer or trailers registered with an articulated vehicle—

15. Type of body
16. Unladen weight lbs.
17. Number, description and size of tyres on the axle
18. Registered axle weight lbs.

Date

19

Signature of registering authority.

NOTE.—The motor vehicle above described is held by the person registered as the registered owner under a hire purchase agreement with

Date

Signature of registering authority.

FORM H.

[See sections 38 and 39 (2).]

Certificate of fitness (applicable in the case of transport vehicles only.)

Vehicle No. is certified as complying with the provisions of Chapter V of the Motor Vehicles Act, 1939, and the rules made thereunder. This certificate will expire on

Date 19 .. Signature and Designation of Inspecting Authority.

The certificate of fitness is hereby renewed—

up to 19 ..
up to 19 ..
up to 19 ..

Signature of Inspecting Authority.

THE SECOND SCHEDULE.

[See section 7 (5).]

I. DISEASES AND DISABILITIES ABSOLUTELY DISQUALIFYING A PERSON FOR OBTAINING A LICENCE TO DRIVE A MOTOR VEHICLE.

1. Epilepsy.
2. Lunacy.
3. Heart disease likely to produce sudden attacks of giddiness or fainting.
4. Inability to distinguish with each eye at a distance of twenty-five yards in good daylight (with the aid of glasses, if worn) a series of seven letters and figures in white on a black ground of the same size and arrangement as those of the registration mark of a motor car.
5. A degree of deafness which prevents the applicant from hearing the ordinary sound signals.
6. [Inability readily to distinguish the pigmentary colours red and green.]¹
7. Night-blindness.

II. DISEASES AND DISABILITIES ABSOLUTELY DISQUALIFYING A PERSON FOR OBTAINING A LICENCE TO DRIVE A PUBLIC SERVICE VEHICLE.

1. Leprosy.

THE THIRD SCHEDULE.

[See sections 7 (6) (a) and 17 (6).]

TEST OF COMPETENCE TO DRIVE.

PART I.

The candidate shall satisfy the person conducting the test that he is able to—

1. Start the engine of the vehicle.
2. Move away straight ahead or at an angle.
3. Overtake, meet or cover the path of other vehicles and take an appropriate course.
4. Turn right and left corners correctly.
5. Stop the vehicle in an emergency and normally, and in the latter case bring it to rest at an appropriate part of the road.
6. Drive the vehicle backwards and whilst so doing enter a limited opening either to the right or left.
7. Cause the vehicle to face in the opposite direction by means of forward and reverse gears.
8. Give by hand and by mechanical means (if fitted to the vehicle), or, in the case of a disabled driver for whom it is impracticable or undesirable to give signals by hand, by mechanical means, in a clear and unmistakable manner, appropriate signals at appropriate times to indicate his intended actions.
9. Act correctly and promptly on all signals given by traffic signs and traffic controllers, and take appropriate action on signs given by other road users.

NOTE.—(i) Requirements 6 and 7 are not applicable in the case of a motor cycle or tricycle not equipped with means for reversing.

(ii) Requirements 6, 7 and 8 are not applicable in the case of invalid carriages.

PART II.

The candidate shall satisfy the person conducting the test that he is cognisant of the provisions of sections 81, 82, 83, 84 and 85 of the Tenth Schedule; that he knows the meaning of the traffic signs specified in the Ninth Schedule; and, if he has not been medically examined, that he is not so deaf as to be unable to hear the ordinary sound signals, and is able to distinguish with each eye at a distance of twenty-five yards in good day light (with the aid of glasses, if worn) a registration mark containing seven letters and figures.

THE FOURTH SCHEDULE.

[See sections 14 (1) and 39 (1) and (3).]

AUTHORITIES ENTITLED TO GRANT LICENCES TO DRIVE, AND TO REGISTER MOTOR VEHICLES, THE PROPERTY² [OR FOR THE TIME BEING UNDER THE EXCLUSIVE CONTROL] OF THE CENTRAL GOVERNMENT, AND REGISTRATION MARKS FOR SUCH VEHICLES.

PART A.

The authorities specified in the second column may grant licences in respect of vehicles, the property² [or for the time being under the exclusive control] of the Department of the Central Government specified in the first column.

LEG. REF.

¹ Item (6) substituted by Act XL of 1939.

² In the Fourth schedule in the heading and in Parts A and B, after the words "the pro-

Defence Department of the Central Government.

1. District Commanders.
2. Commanders of independent brigades.
3. Officers commanding units having mechanically propelled vehicles in their charge.
4. Commanders, Royal Engineers.

PART B.

The authorities specified in the second column may register motor vehicles, the property ¹[or for the time being under the exclusive control] of the Department of the Central Government specified in the first column, and may grant certificates of fitness in respect of such vehicles.

Defence Department of the Central Government.

The Master General of the Ordinance in India
[or any person authorised by him in his behalf]¹.

PART C.

Registration marks for vehicles registered under section 39.

¹[A broad arrow followed by not more than six figures, or a broad arrow followed by a single letter and not more than five figures.]

THE FIFTH SCHEDULE.

[See sections 19 (2) and (3) and 130.]

OFFENCES ON CONVICTION OF WHICH AN ENDORSEMENT SHALL BE
MADE ON THE LICENCE OF THE PERSON AFFECTED.

PART A.

1. Driving recklessly or dangerously (section 116).
2. Driving while under the influence of drink or drugs (section 117).
3. Abetment of an offence under section 116 or 117 (section 119).
4. Taking part in unauthorised race or trial of speed (section 120).
5. Driving when disqualified (section 118).
6. Obtaining or applying for a licence without giving particulars of endorsement (section 114).
7. Failing to stop on the occurrence of an accident (section 87).
8. Altering a licence or using an altered licence.
9. Any offence punishable with imprisonment in the commission of which a motor vehicle was used.

PART B.

1. Driving without a licence or without a licence which is effective, or without a licence applicable to the vehicle driven (section 3).
2. Allowing a licence to be used by another person [section 6 (2)].
3. Driving at excessive speed (section 115).
4. Driving when mentally or physically unfit to drive (section 118).
5. Abetment of an offence punishable under section 115 or 118.
6. Refusing or failing within specified time to produce licence (section 86).
7. Failing to stop when required (section 87).
8. Driving an unregistered vehicle (section 22).
9. Driving a transport vehicle not covered by a certificate of fitness (section 38).
10. Driving in contravention of any rule made under section 70 (2) (g) relating to speed governors.
11. Driving a vehicle exceeding the permissible limit of weight (section 124).
12. Failure to comply with a requisition made under section 73.
13. Using a vehicle in unsafe condition (section 121).
14. Driving a transport vehicle in contravention of section 42.

THE SIXTH SCHEDULE.

[See sections 24 (3) and 29 (2).]

REGISTRATION MARKS.

One of the groups of letters specified in the second column followed by any one other letter shall be used as the registration mark for a vehicle in the province specified in the first column.

Assam	.	.	.	AS.
Bengal	.	.	.	BG, BL.
Bihar	.	.	.	BR.
Bombay	.	.	.	BM, BY.
Central Provinces and Berar	.	.	.	CP.
Madras	.	.	.	MD, MS.
North-West Frontier Province	.	.	.	FP.
Orissa	.	.	.	OR.

LEG. REF.

¹ Vide footnote 2, p. 987.
party", wherever they occur, the words "or for the time being under the exclusive control" have been inserted; in Part B, to the entry in

the second column the words "or any person authorised by him in this behalf" added; in Part C, the words within square brackets substituted by Act XX of 1942.

Sind	.	.	.	KA.
Punjab	.	.	..	PB, PI.
United Provinces	.	.	.	UP, US.
Ajmer-Merwara	.	.	.	AJ.
Andaman and Nicobar Islands	.	.	.	AN.]
Coorg	.	.	.	CG.
Delhi	.	.	.	DL.

NOTE.—These letters shall be followed by not more than four figures, and the letters and figures shall be shown—

1. In the case of transport vehicles In black on a white ground.
2. In the case of temporary registrations (section 25) In red on a yellow ground.
3. In the case of registration marks allotted to dealers [section 41 (2) (k)] In white on a red ground.
4. In other cases In white on a black ground.

THE SEVENTH SCHEDULE.

[See section 37 (2).]

MAXIMUM AXLE WEIGHTS PERMISSIBLE FOR TRANSPORT VEHICLES.

TABLE A.

For each low pressure pneumatic tyre, fitted to a wheel on the axle, of a nominal size—					The permissible weight in pounds is—
5.00-17	..	..	..	..	980
5.25-17	..	..	..	..	1,060
5.25-18	..	..	..	..	1,100
5.50-17	..	..	..	..	1,140
5.50-18	..	..	..	..	1,195
5.50-20	..	..	..	..	1,225
6.00-16	..	..	..	..	1,200
6.00-17	..	..	..	..	1,350 ¹
6.00-18	..	..	..	..	1,450
6.00-20	..	..	..	..	1,550
6.25-16	..	..	..	..	1,300
6.50-16	..	..	..	..	1,400
6.50-17	..	..	..	..	1,550
6.50-18	..	..	..	..	1,700
6.50-20	..	..	..	..	1,850
7.00-15	..	..	..	..	1,500
7.00-16	..	..	..	..	1,675
7.00-17	..	..	..	..	1,850
7.00-18	..	..	..	..	2,050
7.00-20	..	..	..	..	2,200
7.50-15	..	..	..	..	1,700
7.50-16	..	..	..	..	2,050
7.50-17	..	..	..	..	2,150
7.50-18	..	..	..	..	2,450
7.50-20	..	..	..	..	2,650
7.50-24	..	..	..	..	2,650
8.25-18	..	..	..	..	2,900
8.25-20	..	..	..	..	3,100
8.25-22	..	..	..	..	3,100
8.25-24	..	..	..	..	3,100
9.00-15	..	..	..	..	2,650
9.00-18	..	..	..	..	3,300
9.00-20	..	..	..	..	3,550
9.00-22	..	..	..	..	3,550
9.00-24	..	..	..	..	3,650
9.75-15	..	..	..	..	3,175
9.75-18	..	..	..	..	3,900
9.75-20	..	..	..	..	4,200
9.75-22	..	..	..	..	4,200
9.75-24	..	..	..	..	4,400
10.50-20	..	..	..	..	4,850
10.50-22	..	..	..	..	5,000
10.50-24	..	..	..	..	5,200
11.25-20	..	..	..	..	5,450
11.25-22	..	..	..	..	5,800
11.25-24	..	..	..	..	6,050

LEG. REF.

¹ Inserted by Act XL of 1939.

TABLE B.

For each high pressure pneumatic tyre,
fitted to a wheel on the axle, of a nomi-
nal size—

The permissible
weight in pounds
is—

30×5	..	..	..	2,000
33×5	..	..	..	2,000
34×5	..	..	..	2,000
35×5	..	..	..	2,200
32×6	..	..	..	2,650
34×6	..	..	..	2,650
36×6	..	..	..	2,650
32×6½	..	..	..	2,950
32×7	..	..	..	3,000
34×7	..	..	..	3,300
36×7	..	..	..	3,300
38×7	..	..	..	3,300
36×8	..	..	..	4,000
38×8	..	..	..	4,200
40×8	..	..	..	4,400
38×9	..	..	..	4,850
40×9	..	..	..	5,100
42×9	..	..	..	5,300
40×10	..	..	..	5,700
44×10	..	..	..	6,150

Explanation.—The figures "5.00-17" etc., in Table A represent, respectively, the nominal sectional diameter of the tyre and the diameter of the wheel rim; and the figures "30×5" etc., in Table B represent, respectively, the over-all diameter of wheel and tyre and the nominal sectional diameter of the tyre, all figures being in inches. The actual sectional diameter of the tyre when mounted on its appropriate rim and inflated shall in no case be less than the nominal sectional diameter.

Note.—Tyres may be calibrated in so-called metric sizes, for example, "170×120". In that case the first number represents the sectional diameter of the tyre in millimetres and the second number represents the diameter of the rim in inches. The permissible weight in pounds for each such tyre shall be determined by dividing the nominal sectional diameter of the tyre in millimetres by the figure 25.4, the quotient being the nominal sectional diameter in inches. The permissible weight given in Table A for the nearest equivalent nominal sectional diameter in inches and the actual rim diameter shall be the permissible weight for that tyre.

THE EIGHTH SCHEDULE.

[See section 71.]

LIMITS OF SPEED FOR MOTOR VEHICLES.

Maximum
speed
per hour.
Miles.

Class of Vehicle.

1. Passenger vehicles, that is to say, vehicles constructed solely for the carriage of passengers and their effects :—
 - (a) if all the wheels are fitted with pneumatic tyres and the vehicle is not drawing a trailer :—
 - (i) if the vehicle is a motor cycle, motor car or motor cab No limit.
 - (ii) if the vehicle is a public service vehicle other than a motor cab .. 30
 - (b) if the vehicle, being a motor car or motor cab, is drawing two-wheeled trailer of a laden weight not exceeding 1,700 pounds *avoirdupois*, and if all the wheels of the vehicle and trailer are fitted with pneumatic tyres 30
 - (c) any other vehicle, including an invalid carriage 20
2. Goods vehicles, that is to say, vehicles constructed or adapted for use or used for the conveyance of goods :—
 - ¹[(a) if all the wheels are fitted with pneumatic tyres and the vehicle is a delivery van and is not drawing a trailer No limit.]
 - (b) if all the wheels are fitted with pneumatic tyres and the vehicle is a light transport vehicle and is not drawing a trailer 25
 - ¹[(c) if all the wheels are fitted with pneumatic tyres and the registered laden weight of the vehicle does not exceed 17,000 pounds *avoirdupois* and the vehicle is not drawing a trailer 20]
 - (d) in any other case 15
3. Tractors :—
 - (a) if drawing not more than one trailer and all the wheels of the tractor and trailer are fitted with pneumatic tyres 15
 - (b) in any other case 6
4. Locomotives, whether drawing a trailer or not 6

LEG. REF.

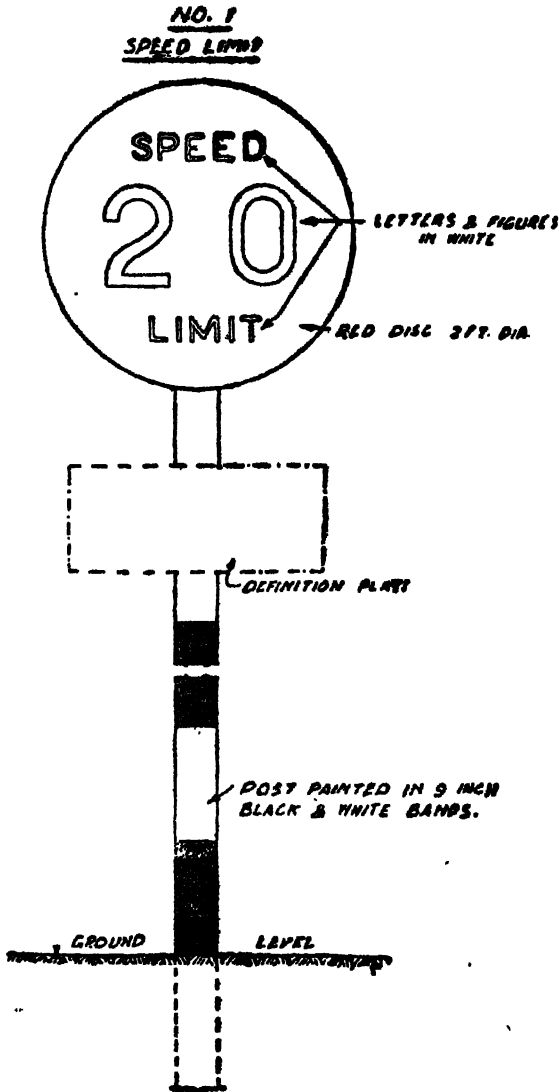
¹ In the Eighth Schedule, in entry No. 2, clauses (a) and (b) re-lettered as clauses (b) and (d), respectively, and new clauses (a) and (c) inserted by Act XX of 1942.

THE NINTH SCHEDULE.

(See sections 75, 77 and 78.)

TRAFFIC SIGNS.

PART A.—MANDATORY SIGNS.



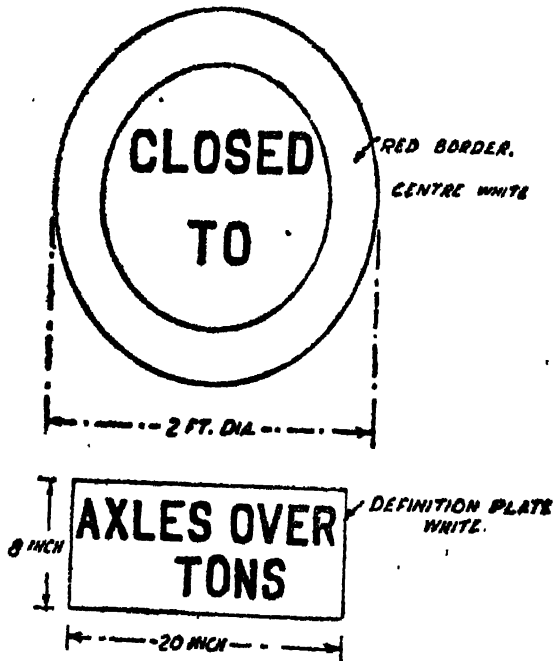
NOTE.—

(1) The figure 20 is given merely as an example. The actual figures will be as prescribed in each case where this sign is used.

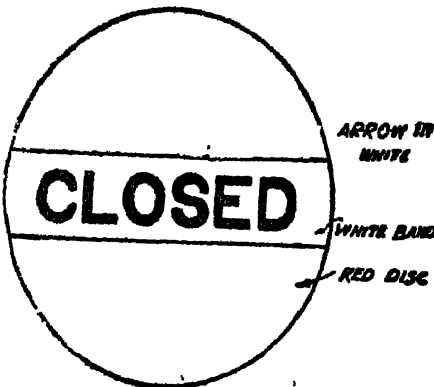
(2) The general design of the post is given for guidance.

(3) Where the speed limit is, or is to be, imposed only on a certain class or classes of motor vehicle the class or classes will be specified on the "definition plate." Where in addition to a general speed limit applicable to other motor vehicles a specified speed limit is, or is to be imposed on vehicles of a certain class or classes, the general speed limit will be specified on the disc and the special speed limit together with the class or classes of vehicle to which it applies will be specified on the "definition plate."

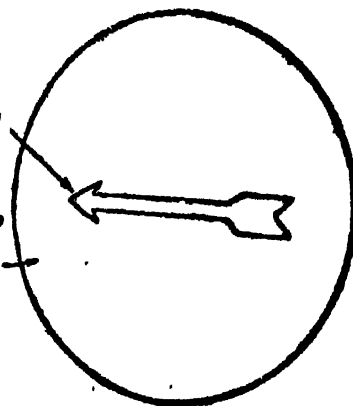
NO. 2
WEIGHT LIMIT



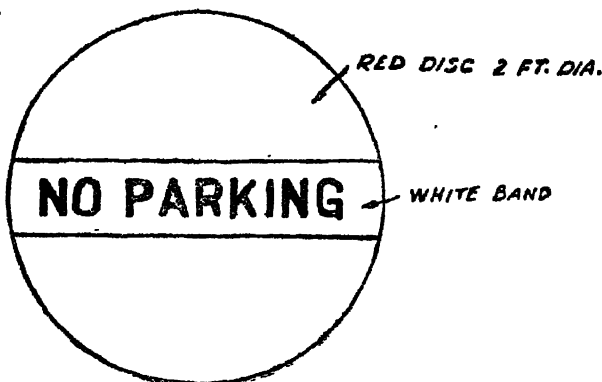
NO. 3
TOTAL PROHIBITION



NO. 4
DIRECTION SIGN



NO. 5
NO PARKING



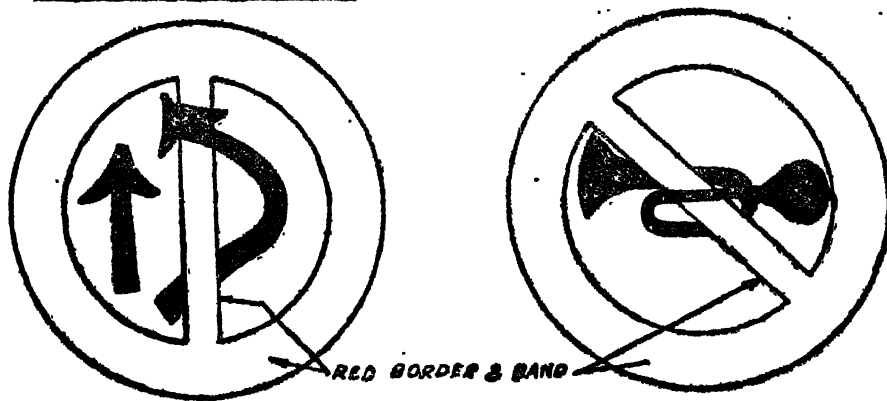
NOTE.—No. 5 as here set forth may be amplified by instructions inscribed upon a definition plate placed below it as in the general arrangement set forth in Sign No. 1 of this Part. Upon the definition plate may be set forth the times during which parking is prohibited. In like manner an arrow-head inscribed on the definition plate will indicate that parking is prohibited on that part of the street or road lying to the side of the sign to which the arrow-head points.

¹ [No. 7

Use of Sound Signals Prohibited.

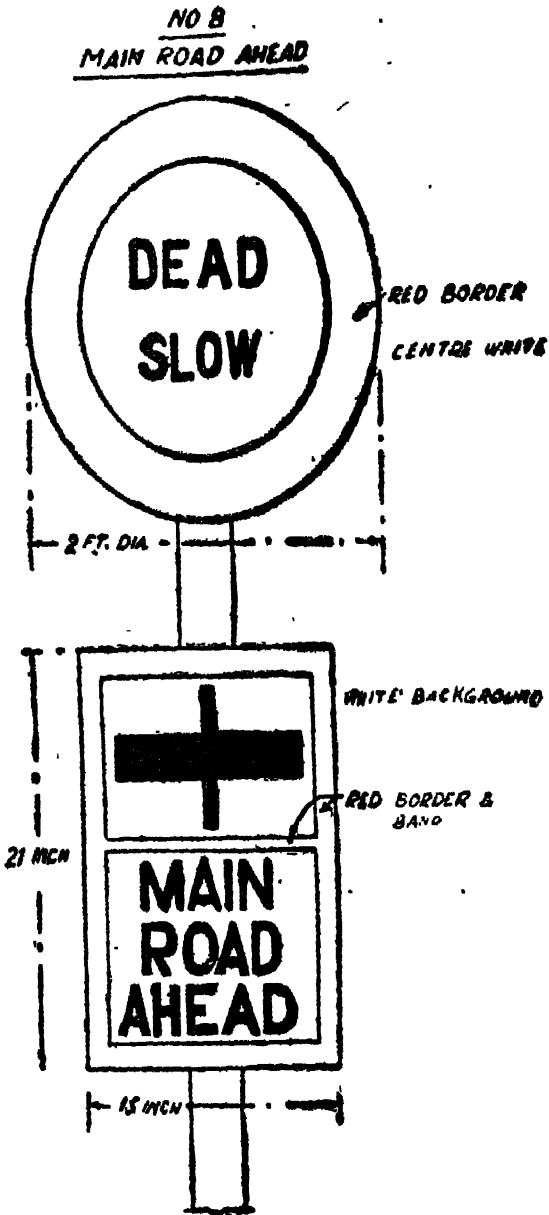
Cross and border—Red.
Background—White.
Device—Black.]

NO. 6
OVERTAKING PROHIBITED



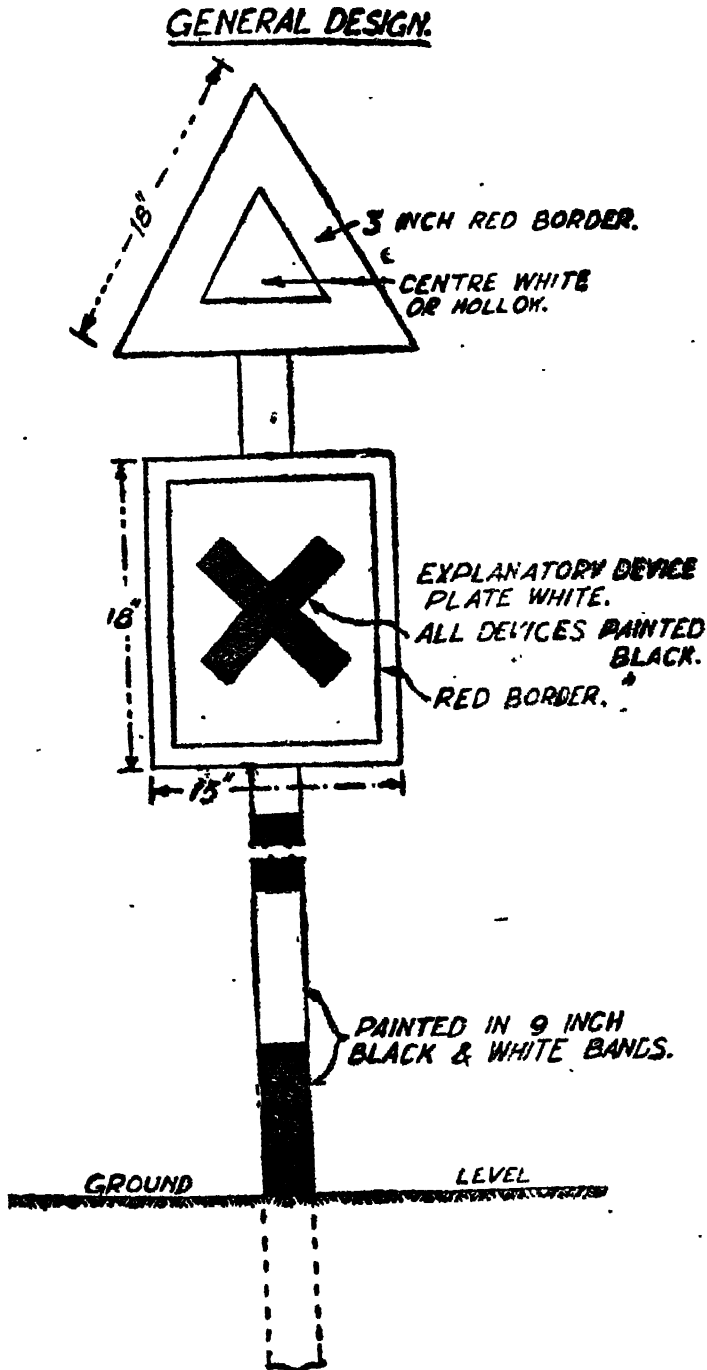
LEG. REF.

¹ Substituted by Act XL of 1939.

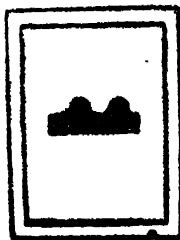


PART B.—CAUTIONARY SIGNS.

The signs of this Part shall be used in conjunction with a red triangular plate, the centre of which shall be either hollow or painted white, in the manner indicated in the general design reproduced below.



NO. 1
ROUGH ROAD



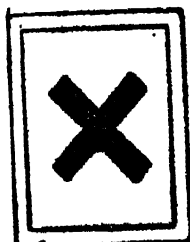
NO. 2
ZIG-ZAG (RIGHT)



NO. 2
ZIG-ZAG (LEFT)



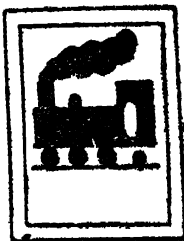
NO. 3
CROSS ROADS



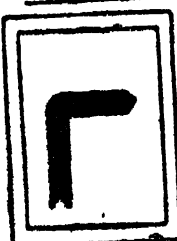
NO. 4
LEVEL CROSSING
(GUARDED)



NO. 5
LEVEL CROSSING
(UNGUARDED)



NO. 6
RIGHT TURN



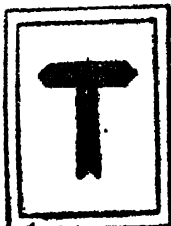
NO. 6
LEFT TURN



NO. 7
SCHOOL



NO. 8
DEAD END CROSS ROAD



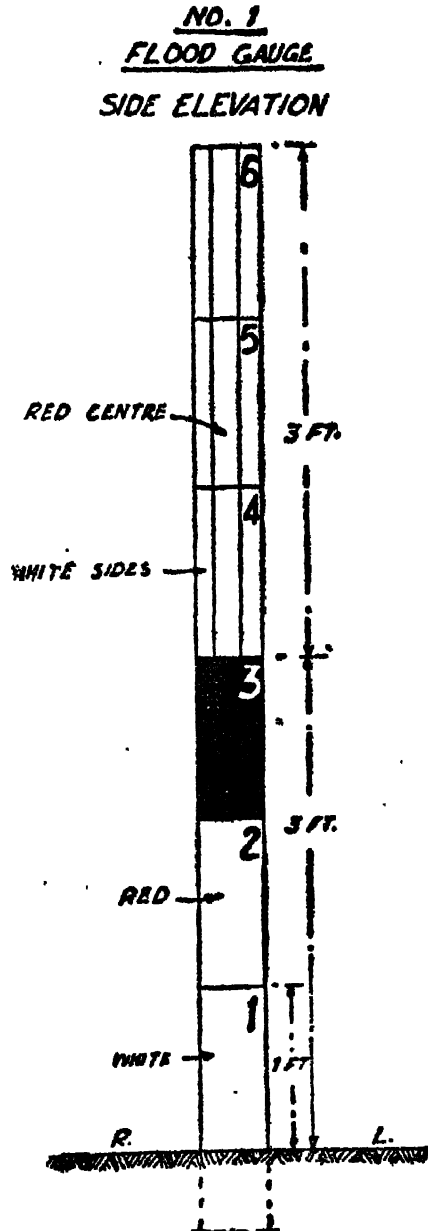
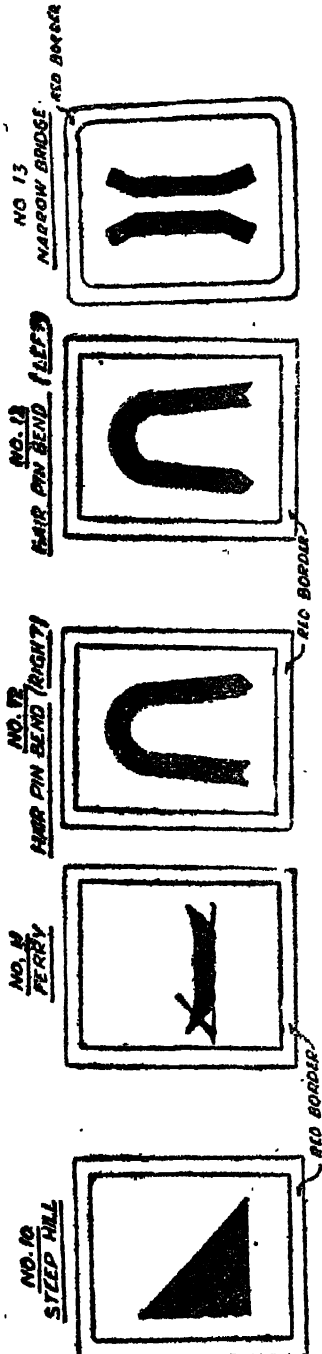
NO. 9
SIDE ROAD (RIGHT)



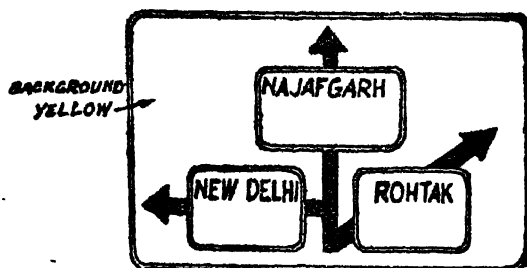
NO. 9
SIDE ROAD (LEFT)



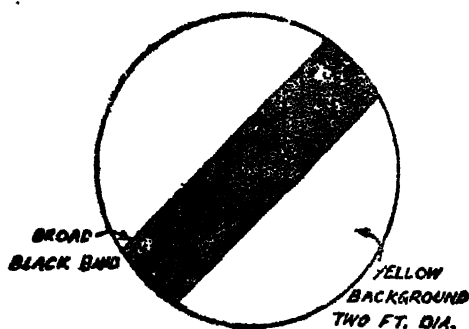
PART C.—INFORMATORY SIGNS.



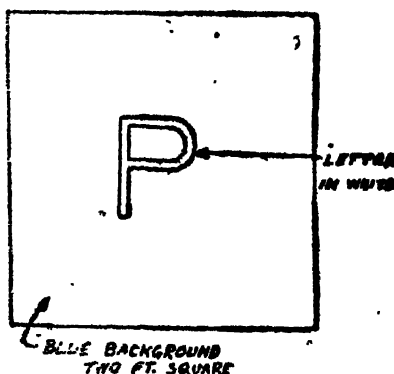
NO. 2
ROAD JUNCTION APPROACH.



NO. 3
END OF SPEED LIMIT.



NO. 4
PARKING SIGN.



THE TENTH SCHEDULE.

(See sections 77 and 78.)

DRIVING REGULATIONS.

1. The driver of a motor vehicle shall drive the vehicle as close to the left hand side of the road as may be expedient, and shall allow all traffic which is proceeding in the opposite direction to pass him on his right hand side.
2. Except as provided in regulation 3, the driver of a motor vehicle shall pass to the right of all traffic proceeding in the same direction as himself.
3. The driver of a motor vehicle may pass to the left of a vehicle the driver of which having indicated an intention to turn to the right has drawn to the centre of the road and may pass a tram-car or other vehicle running on fixed rails, whether travelling in the same direction as himself or otherwise, on either side :
Provided that in no case shall he pass a tram-car at a time or in a manner likely to cause danger or inconvenience to other users of the road or pass on the left hand side a tram-car, which when in motion would be travelling in the same direction as himself, while the tram-car is at rest for the purpose of setting down or taking up passengers.
4. The driver of a motor vehicle shall not pass a vehicle travelling in the same direction as himself—
 - (a) if his passing is likely to cause inconvenience or danger to other traffic proceeding in any direction, or
 - (b) where a point of corner or a hill or an obstruction of any kind renders the road ahead not clearly visible.
5. The driver of a motor vehicle shall not, when being overtaken or being passed by another vehicle, increase speed or do anything in any way to prevent the other vehicle from passing him.
6. The driver of a motor vehicle shall slow down when approaching a road intersection a road junction or a road corner, and shall not enter any such intersection or junction until he has become aware that he may do so without endangering the safety of persons thereon.
7. The driver of a motor vehicle shall on entering a road intersection, if the road entered is a main road designated as such, give way to the vehicles proceeding along that road, and in any other case give way to all traffic approaching the intersection on his right hand.

8. The driver of a motor vehicle shall, when passing or meeting a procession or a body of troops or police on the march or when passing workmen engaged on road repair, drive at a speed not greater than fifteen miles an hour.

9. The driver of a motor vehicle shall—

- (a) when turning to the left, drive as close as may be to the left hand side of the road from which he is making the turn and of the road which he is entering ;
- (b) when turning to the right, draw as near as may be to the centre of the road along which he is travelling and cause the vehicle to move in such a manner that—
- (i) as far as may be practicable it passes beyond, and so as to leave on the driver's right hand, a point formed by the intersection of the centre lines of the intersecting roads ; and
- (ii) it arrives as near as may be at the left hand side of the road which the driver is entering.

THE ELEVENTH SCHEDULE.

(See section 79.)

SIGNALS.

1. When about to turn to the right or to drive to the right hand side of the road in order to pass another vehicle or for any other purpose, a driver shall extend his right arm in a horizontal position outside of and to the right of his vehicle with the palm of the hand turned to the front.

2. When about to turn to the left or to drive to the left hand side of the road a driver shall extend his right arm and rotate it in an ante-clockwise direction.

3. When about to slow down, a driver shall extend his right arm with the palm downward and to the right of the vehicle and shall move the arm so extended up and down several times in such a manner that the signal can be seen by the driver of any vehicle which may be behind him.

4. When about to stop a driver shall raise his right forearm vertically outside of and to the right of the vehicle, palm to the front.

5. When a driver wishes to indicate to the driver of a vehicle behind him that he desires that driver to overtake him, he shall extend his right arm and hand horizontally outside of and to the right of the vehicle and shall swing the arm backwards and forwards in a semi-circular motion.

N.B.—The following extract from ordinance of XXIII of 1942 should also be noticed :—

“Cl. 3. (6) The Motor Vehicles Act, 1939, shall have effect subject to the following modifications, namely :—

(a) Notwithstanding anything contained in section 62 of that Act a permit under that section may be granted, and shall be granted in any case in which the Provincial Government so directs, to be effective for a period exceeding four months ;

(b) Notwithstanding anything contained in Chapter IV of that Act, but without prejudice to the provisions of section 60, the transport authority which granted a permit may at any time cancel the permit or may suspend it for such period as it thinks fit, if in the opinion of the transport authority it is no longer in the public interest that the service should continue and the vehicle or vehicles covered by the permit can be more usefully employed elsewhere ; and the transport authority shall cancel or suspend a permit issued by it if so required by the Provincial Government ;

(c) If in any particular case the Provincial Government thinks fit so to order, the authority empowered to grant a permit under Chapter IV of that Act shall not, in deciding to grant or refuse a permit, be bound to take into consideration representations made by any person, authority or association other than the applicant, or to follow the procedure laid down in section 57, and may accept an application for a stage carriage permit or a public carrier's permit though made less than six weeks before the date on which it is desired that the permit shall have effect ;

(d) The Provincial Government may exempt from all or any of the provisions of Chapter IV of that Act, all or any transport vehicles used or required for use in connexion with work considered by the Provincial Government to be work connected with the defence of British India or the prosecution of war.” (Ordinance XXIII of 1942 cl. 3.)

THE NATIONAL SERVICE (EUROPEAN BRITISH SUBJECTS) ACT (XVIII OF 1940).

[Amended by Ordinances V of 1940, VI of 1941 and II of 1945.]

[9th April, 1940.]

An Act to make certain provisions relating to service by European British Subjects¹ [in the armed forces of the Crown and in civilian employment].

WHEREAS it is expedient to make certain provisions relating to service by European British subjects in the armed forces of, or in a civil capacity under, the Crown ; It is hereby enacted as follows :—

Short title, extent and commencement.

1. (1) This Act may be called THE NATIONAL SERVICE (EUROPEAN BRITISH SUBJECTS) ACT, 1940.

LEG. REF.

¹ Substituted by Ordinance 5 of 1940.

(2) It extends to the whole of British India, and applies also to European British subjects in any part of India.

(3) It shall come into force at once.

Definitions.

2. In this Act unless there is anything repugnant in the subject or context,—

(a) “competent authority” means, with reference to any person liable under this Act to be called up for ¹[national service], the Officer Commanding the military district, or Independent Area, or Sind Area or Delhi Area, as the case may be, in which that person is for the time being resident;

(b) “European British subject” means any subject of His Majesty of European descent in the male line born, naturalised or domiciled in the British Islands or in any Dominion as defined in the Statute of Westminster, 1931, or in any Colony except Ceylon;

(c) “prescribed” means prescribed by rules made under this Act;

(d) “national service” means service in the armed forces of the Crown or ²[in any civilian capacity in pursuance of a notice issued under section 7].

Liability to be called up for enquiry.

3. (1) Every male European British subject for the time being in India, not being—

(a) a person in holy orders, or a regular minister of any religious denomination, or

(b) member of His Majesty’s regular Naval, Military or Air Forces, or a member of any Reserve of any such force who is liable under his terms of service in such Reserve to be called up for service at any time and not only on partial or general mobilisation, or

(c) a servant of the Crown, or

(d) a person not included in clause (c) who is serving in the service of a federal railway of an Indian State railway or a minor railway as defined in the Government of India Act, 1935, shall be liable under this Act to be called up for ²[* * * *] national service.

(2) A person liable to be called up for ²[national service] under this Act shall remain so liable until he has completed his fiftieth year and no longer.

4. (1) The competent authority may, after consultation with the National Service Advisory Committee constituted

Calling up for enquiry.

under section 5, cause to be served on any person, for the time being liable under this Act to be called up for ²[national service], a written notice (hereinafter referred to in this Act as a ²[preliminary notice] stating that he is called up for enquiry into his fitness and availability for national service and requiring him to present himself to such person and at such place and at such time (nor earlier than the seventh day after the date of the service of the notice) as may be specified in the notice, and to submit himself to examination by the National Service Advisory Committee constituted under section 5.

(2) Where a notice under sub-section (1) has been duly served on any person, the competent authority may, at any time while that person remains liable under this Act to be called up for ²[national service], cancel the notice and cause to be served on him a further notice varying the original notice.

(3) A ²[preliminary notice] served on any person shall cease to have effect if, before the date on which he is thereby required to present himself, he ceases to be liable under this Act to be called up for ²[national service].

(4) Such travelling and other allowances as may be prescribed shall be paid by the competent authority to any person required to present himself in accordance with any notice under this section.

LEG. REF.

¹ Substituted by Ordinance V of 1940.

² Substituted, omitted and substituted by Ordinance V of 1940.

4-A. (1) If any question arises with respect to a person on whom it is

Determination of question whether a person is liable to be called up for national service.

proposed to serve a notice under sub-section (1) of section 4, or with respect to a person on whom a notice under sub-section (1) of section 4 has been served, whether such person is liable under this Act to be called up for national service, the competent authority shall, unless the question has proved capable of settlement by agreement, apply or cause an application to be made to the District Magistrate or to an officer specially empowered in this behalf by the Central Government in the area in which such person is for the time being present to have the matter determined, and such Magistrate or other officer, after hearing both parties to the question or giving them a reasonable opportunity of being heard, shall summarily determine the matter, and the decision of such Magistrate or other officer shall be final.

(2) A claim with respect to a person on whom a notice under sub-section (1) of section 4 has been served that he is not liable under this Act to be called up for national service shall be presented by the claimant to the competent authority, not later than the date on which the person concerned is required by the said notice to present himself for examination by the National Service Advisory Committee, and shall be accompanied by a statement of such claim in writing to the competent authority, and no such claim may be made at any other time or in any other manner.

(3) In determining any question referred to in sub-section (1) the fact that a person has registered himself as a European British subject under the provisions of the Registration (Emergency Powers) Act, 1940, or that he has, after a determination under section 4 of that Act, been registered as a European British subject under the provisions of that Act, shall be conclusive proof that such person is a European British subject for the purposes of this Act. (*Inserted by Ordinance VI of 1941*).

5. (1) The Central Government shall constitute for such areas and in such places as it thinks fit committees (in this Act referred to as National Service Advisory Committees) to exercise the functions assigned to such committees by this Act.

(2) Each National Service Advisory Committee shall consist of not less than four members of whom one shall be an officer of one of His Majesty's Forces in India, appointed by the competent authority, and the others shall be European British subjects, not being servants of the Crown appointed by the Central Government.

(3) The Chairman of the Committee shall be appointed by the Committee.

(4) A National Service Advisory Committee shall have power to co-opt as additional members for such time or purpose as it thinks fit any persons qualified for appointment to the Committee by the Central Government.

(5) A National Service Advisory Committee may meet at such times and places as it thinks fit and shall meet when required to do so by the Central Government or by the competent authority.

¹[(6) The Chairman of the Committee and any one other member of the Committee shall constitute a quorum].

¹[(7)] A National Service Advisory Committee shall have the powers of a Civil Court for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery of documents, and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

¹[(8)] A National Service Advisory Committee may order any person

called up for enquiry under sub-section (1) of section 4 to submit himself to be examined by a medical officer of the armed forces, and if he questions the decision of that officer, to appear before a medical board convened under military regulations.

Functions of National Service Advisory Committees.

6. The following shall be the functions of National Service Advisory Committees, namely:—

(a) when consulted by the competent authority, to advise that authority on the exercise of that authority's powers under sub-section (1) of section 4;

[(b) to examine the case of any person ordered under section 4 to present himself for enquiry, and to report to the competent authority—

(i) whether such person is fit for service in the armed forces or is fit for service in a civilian capacity only, or in both,

(ii) whether such person is or is not available for national service (*i.e.*, can be spared without detriment to the public interest from his existing employment),

(iii) where such person claims that he conscientiously objects to performing military service, whether the claim made is or is not established.] (*Substituted by Ordinance V of 1940*).

(c) when consulted by the Central Government, to advise the Central Government on any matter arising out of this Act which the Central Government may refer or is required by this Act to refer to the Committees.

[6-A. (1) If any person liable under this Act to be called up for national

Conscientious objection to military service.

service claims that he conscientiously objects to performing military service, he shall, upon receipt of the preliminary notice issued under sub-section (1) of section 4 and not later than the date specified in that notice as the date on which he is to present himself for submission to examination by the National Service Advisory Committee, prefer such claim, in such form and with such particulars as may be prescribed, to the competent authority and the competent authority shall submit the claim to the National Service Advisory Committee.

(2) The National Service Advisory Committee shall record in writing a finding, with the reasons therefor, whether the claim is or is not established, and a copy of such finding shall be supplied to the claimant.

(3) If the National Service Advisory Committee finds that such claim is established the claimant shall not be liable to be called up for service in the armed forces of the Crown.

(4) Any claimant aggrieved by a finding of the National Service Advisory Committee that such claim is not established may, within seven days from the date on which he receives the copy of the finding, appeal to the Tribunal constituted under section 9, and, if that Tribunal reverses the finding of the National Service Advisory Committee, the claimant shall not be liable to be called up for service in the armed forces of the Crown.] (*Inserted by Ordinance V of 1940*).

[7. (1) The competent authority may cause to be served on any person,

Calling-up for service.

who is liable under this Act to be called up for national service and whose case has been examined and reported on by the National Service Advisory Committee, a written notice (hereinafter referred to in this Act as a calling up notice) stating that he is called up for service in such one of His Majesty's armed forces as may be specified in the notice, or for service in such civilian capacity whether under the Crown or otherwise as may be so specified, and requiring him to present himself at such place and time (not earlier than the seventh day after the date of the service of the notice) and to such authority as may be so specified; and, subject to the following provisions of this Act, the person upon whom the notice is served shall, when the notice states that he is called up for service in

one of His Majesty's Forces, be deemed as from the day so specified to have been duly entered or enlisted for service in the force so specified, and, when the notice states that he is called up for service in a civilian capacity, be legally bound as from the day so specified to obey any directions given by the authority so specified as to his entering employment in a civilian capacity.

(2) A notice under sub-section (1) calling up a person for service in a civilian capacity shall be issued by the competent authority only at the request of, or otherwise in consultation with, an officer (or officers) empowered by the Central Government for the purposes of this sub-section to authorize such issue, and the authority specified in such notice as that to which the person called up shall present himself shall be such authority as that officer (or those officers) may direct.

(3) Where a calling-up notice has been duly served on any person, the competent authority may, at any time while that person remains liable under this Act to be called up for national service, cancel the notice and cause to be served on him a further notice varying the original notice.

(4) A calling-up notice served on any person shall cease to have effect if, before the date on which he is thereby required to present himself, he ceases to be liable under this Act to be called up for national service.

(5) Such travelling and other allowances as may be prescribed shall be paid by the competent authority to any person required to present himself in accordance with a calling-up notice.] (*Substituted by Ordinance V. of 1940*).

[7-A. (1) Where a calling-up notice is served under section 7 upon any person who has been reported by the National Service Advisory Committee to be not available for national service, a copy of the notice shall at the same time be served upon his employer, and that person himself or the employer of that person may, at any time before the seventh day from the service of the notice, appeal against the order to the Tribunal constituted under section 9.

(2) Where a calling-up notice is served under section 7 upon any person who has been reported by the National Service Advisory Committee to be available for national service, a copy of the notice shall be served at the same time on his employer, if any, and that person himself or the employer, if any, of that person may, at any time before the seventh day from the service of the notice, appeal against the order to the Tribunal constituted under section 9.

(3) Any person, on whom a calling-up notice under section 7, is served, may, without prejudice to the provisions of sub-section (1) and sub-section (2), at any time before the seventh day from the service of the notice, appeal to the Tribunal constituted under section 9 on the ground that he is not fit for the service for which he is called up.

(4) Pending the disposal of an appeal under this section, the notice under section 7 shall be deemed to be suspended, and if the Tribunal decides that such person is not available for national service or is not fit for the service specified in the notice, as the case may be, the notice shall be cancelled.] (*Substituted by Ordinance V of 1940*).

[7-B. (1) When any person is called up under section 7 for service in a specified civilian capacity, his terms of service in such capacity shall be laid down by the competent authority in each case, subject to such conditions may provide for the preservation of any rights which the person called up may have under any provident or superannuation fund or other scheme for the benefit of employees maintained in connexion with the employment he relinquishes.

(2) Such person, himself, or the employer under whom he enters employment in pursuance of the notice issued under section 7, may appeal to the Tribunal constituted under section 9 against any decision of the competent authority under sub-section (1), and the decision of the said Tribunal shall be final; but pending the disposal of any such appeal the notice under section 7 shall, unless the competent authority otherwise directs, continue to be of full force and effect.] (*Substituted by Ordinance V of 1940*).

[7-C. When any person called up under section 7 for service in one of His Majesty's Forces has any rights under any provident or superannuation fund or other scheme for the benefit of employees maintained in connection with the employment he relinquishes, he shall continue so long as he remains in His Majesty's Forces ¹[or in any other employment under the Crown to which he may be temporarily assigned while serving in those forces] to have in respect of such fund or scheme such rights as may be prescribed.] (*Substituted by Ordinance V of 1940*).

8. (1) It shall be the duty of any employer by whom a person who has been ²[called up under this Act for national service], or by whom a European British subject who has been called out for service in the Reserve of His Majesty's Regular Naval, Military or Air Forces at any time after the 2nd day of September, 1939, and before the termination of hostilities, or by whom a person subject to this Act who with the consent of his employers was between the 2nd day of September, 1939, and the coming into force of this Act, granted an emergency commission or enlisted in His Majesty's armed forces or accepted for training as a cadet at an officer's training school, was employed, to reinstate him in his employment ³[at the termination of his national service or service in the armed forces or training as a cadet where such training is not followed by service in the armed forces, as the case may be], in an occupation and under conditions not less favourable to him than those which would have been applicable to him ⁴[had his employment not been so interrupted].

³[Provided that if the employer refuses to reinstate such person, or denies his liability to reinstate such person or if for any reason the reinstatement of such person] is represented by the employer to be impracticable, either party may refer the matter to a tribunal constituted under section 9 and that tribunal shall after consideration pass an order either exempting the employer from the provisions of this section or requiring him to re-employ such person ⁴[* *] on such terms as it thinks suitable, or requiring him to pay to such person ⁴[* *] a sum in compensation for failure to re-employ not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer; and if any employer fails to obey the order of the tribunal, he shall be punishable with a fine which may extend to one thousand rupees; and the Court by which an employer is convicted under this section may order him (if he has not already been so required by the tribunal) to pay the person whom he has failed to re-employ a sum not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer, and any amount so required by the tribunal to be paid or so ordered by the Court to be paid shall be recoverable as if it were a fine imposed by such Court:

Provided further that in any proceedings under this section it shall be a defence for an employer to prove that the person formerly employed by him did not apply to the employer for reinstatement within a period of two months [from the termination of his national service, or service in the armed forces or

LEG. REF.

¹ Inserted by Ordinance II of 1945.

² Substituted by Ordinance V of 1940.

³ Substituted by Ordinance VI of 1941.

⁴ The words "or member" omitted by Ordinance VI of 1941.

training as a cadet where such training is not followed by service in the armed forces, as the case may be.] (*Substituted* by Ordinance VI of 1941).

[(2) The duty imposed by sub-section (1) upon an employer to reinstate in his employment a person such as is described in that sub-section shall attach to an employer who before such person is actually called up or taken into service terminates his employment in circumstances such as to indicate an intention to evade the duty imposed by that sub-section, and such intention shall be presumed until the contrary is proved if the termination of employment takes place after the issue of a notice under sub-section (1) of section 4 upon such person.] (*Added* by Ordinance VI of 1941).

[(3) The duty imposed by sub-section (1) upon an employer to reinstate in his employment a person such as is described in that sub-section shall not be extinguished or affected by the fact that such person is, while serving in the capacity by virtue of which such duty was incurred by the employer, temporarily assigned to any employment under the Crown; nor shall any such assignment be deemed to have terminated or interrupted his service in the capacity by virtue of which such duty was incurred by the employer.] (*Added* by Ordinance II of 1945).

9. (1) The Central Government shall constitute for such areas and in such places as it thinks fit tribunals to hear and decide any matters referred to it under the proviso to section 8¹[and any appeals made to it under sub-sec. (4) of section 6-A or section 7-A or section 7-B.]

(2) Each tribunal shall consist of three members to be nominated by the Central Government, of whom one who shall be chairman of the tribunal shall be a member of a Civil Service of the Crown not lower in status than a District and Sessions Judge, one shall be a military officer not below the rank of Brigadier, and one shall be a European British subject, not being a servant of the Crown.

(3) No person serving as a member of a National Service Advisory Committee constituted under section 5 shall while so serving be a member of a tribunal.

(4) A tribunal may meet at such times and places as it thinks fit and shall meet when required to do so by the competent authority.

[(5) The Chairman of the Tribunal and any one other member of the Tribunal shall constitute a quorum.] (*Inserted* by Ordinance V of 1940).

²[(6)] A tribunal shall have the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery and production of documents, and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

10. (1) Whoever wilfully fails to comply with any notice issued under section 4³[or section 7] or with any order given under¹[sub-section (8) of section 5, or with any direction given by the authority specified in a notice issued under section 7 as to his entering employment in a civilian capacity] shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

[(2) Whoever, having entered civilian employment in pursuance of a direction given by the authority specified in a notice issued under section 7, leaves that employment without the permission of the competent authority shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.]

(3) Whoever, being an employer under whom any person enters employment in a civilian capacity in pursuance of a notice issued under section 7, fails to comply in all respects with the terms of service laid down, under section 7-B in respect of such person, shall, without prejudice to any civil liability incurred by such failure, be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.] (Old sub-section (2) *renumbered* as sub-section (4) and these new sub-sections (2) and (3) *added* by Ord. V of 1940.

[(4)] No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

11. Any notice to be served on any person for the purposes of this Act may be sent by post addressed to that person at his last known address.
Service of notices.

[11-A. No suit or other proceeding shall lie in any Court in respect of anything done or in good faith intended to be done under this Act.] (*Inserted* by Ordinance V of 1940).

12. (1) The Central Government may, by notification in the official Gazette make rules for the purpose of giving effect to the provisions of this Act.
Power to make rules.

(2) Without prejudice to the generality of the foregoing power, the Central Government may make rules prescribing the forms of the notices referred to in sub-section (1) of section 4¹ [and sub-section (1) of section 7], the amount and manner of payment of the allowances referred to in sub-section (4) of section 4 [and sub-section (5) of section 7, the form of and the particulars to be contained in a claim preferred under section 6-A, the conditions referred to in sub-section (1) of section 7-B, the rights to be prescribed under section 7-C.] and the procedure to be followed [in appeals under sub-section (4) of section 6-A or section 7-A or section 7-B or references under the proviso to section 8 to a Tribunal]. (Portions within square brackets *substituted* by Ordinance V of 1940).

[(3) In making any rule under this section the Central Government may provide that a contravention of the rule shall be punishable with imprisonment for any term not exceeding six months or with fine not exceeding one thousand rupees, or with both.] *Added* by Ordinance V of 1940).

Act not to apply to certain persons. 13. Nothing in this Act shall apply to any person—

- (a) for the time being confined in a prison or a lunatic asylum, or
- (b) who is under the age of eighteen or over the age of fifty.

THE INDIAN NAVAL ARMAMENT ACT (VII OF 1923).

[N.B.—*Amended by Acts VIII of 1931 and II of 1937.*]

5th March, 1923.

[N.B.—*Throughout this Act for "Local Government" the words "Central Government" have been substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.*]

An Act to give effect in British India to the Treaty for the Limitation of Naval Armament.

WHEREAS it is expedient to give effect in British India to the² [Treaty for the Limitation of Naval Armament and for the Exchange of Information concerning Naval Construction signed in London on behalf of His Majesty on the twenty-fifth day of March, 1936]; It is hereby enacted as follows:—

LEG. REF.

¹ Inserted by Ordinance V of 1940.

² Substituted by Act II of 1937.

Short title, extent and commencement.

1. (1) This Act may be called THE INDIAN NAVAL ARMAMENT ACT, 1923.

(2) It extends to the whole of British India, and applies also to all subjects and servants of His Majesty in other parts of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "competent Court" means the High Court or such other Court having unlimited original civil jurisdiction as the Central Government may declare to be a competent Court for the purposes of this Act;

(b) "ship" means any boat, vessel, battery or craft, whether wholly or partly constructed, which is intended to float or is capable of floating, on water, and includes all equipment belonging to any ship; and

¹[(c) "the Treaty" means the treaty for the Limitation of Naval Armament and for the Exchange of Information concerning Naval Construction signed in London on behalf of His Majesty on the twenty-fifth day of March, 1936.]

3. No person shall, except under and in accordance with the conditions of a license granted under this Act,—

Restriction on building or equipping vessels of war.

(a) build any vessel of war, or alter, arm or equip any ship so as to adapt her for use as a vessel of war; or

(b) despatch or deliver, or allow to be despatched or delivered, from any place in British India any ship which has been, either wholly or partly, built, altered, armed or equipped as a vessel of war in any part of His Majesty's Dominions or in a State in India otherwise than under and in accordance with any law for the time being in force in that part or State.

4. (1) A license under this Act for any of the purposes specified in section 3 may be granted by the Central Government, and shall not be refused unless it appears to the

Licences.

Central Government that such refusal is necessary for the purpose of securing the observance of the obligations imposed by the treaty; and, where a licence is granted subject to conditions, the conditions shall be such only as the Central Government may think necessary for the purpose aforesaid.

(2) An application for a licence under this section shall be in such form and shall be accompanied by such designs and particulars as the Central Government may, by general or special order, require.

²[(3) Any person who, in pursuance of a licence granted under sub-section (1) before the commencement of the Indian Naval Armament (Amendment) Act, 1937, is engaged in building any vessel of war or in altering, arming or equipping any ship so as to adapt her for use as a vessel of war, or is about to despatch or deliver, or allow to be despatched or delivered, from any place within British India any ship which has been so built, altered, armed or equipped, either entirely or partly, within British India, shall upon written demand, furnish to the Central Government such designs and particulars as may be required by the Central Government for the purpose of securing the observance of the obligations imposed by the Treaty].

5. (1) If any person contravenes any of the provisions of section 3 ³[or fails to comply with the provisions of sub-section (3) of section 4] he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees or with both.

LEG. REF.
¹ Substituted by Act II of 1937.
² Sub-sec. 3 of sec. 4 inserted by Act II

of 1937.
³ Inserted by Act II of 1937.

(2) Where an offence punishable under sub-section (1) has been committed by a company or corporation, every director and manager of such company or corporation shall be punishable thereunder unless he proves that the act constituting the offence took place without his knowledge and consent.

(3) Nothing contained in section 517 or section 518 or section 520 of the Code of Criminal Procedure, 1898, shall be deemed to authorise the destruction or confiscation under the order of any Criminal Court of any ship which is liable to forfeiture under this Act or of any part of such ship.

6. Any ship which has been, either wholly or partly, built, altered, armed, or equipped, as a vessel of war in British India in contravention of section 3, or in any other part of His Majesty's Dominions or any State in India in contravention of any like provision of law in force in that part or State, shall, if found in British India, be liable to forfeiture under this Act.

Seizure detention and search of ships. 7. (1) Where a ship is liable to forfeiture under this Act,—

(a) any Presidency Magistrate or Magistrate of the first class, or
(b) any commissioned officer on full pay in the military, naval or air service of His Majesty, ¹[* * *] or

(c) any officer of customs or police-officer not below such rank as may be designated in this behalf by the Central Government, may seize such ship and detain it, and, if the ship is found at sea within the territorial waters of British India, may bring it to any convenient port in British India.

(2) Any officer taking any action under sub-section (1) shall forthwith report the same through his official superiors to the Central Government.

(3) The Central Government shall, within thirty days of the seizure, either cause the ship to be released or make or cause to be made, in the manner hereinafter provided, an application for the forfeiture thereof, and may make such orders for the temporary disposal of the ship as it thinks suitable.

8. (1) An application for the forfeiture of a ship under this Act may be made by, or under authority from, the Central Government to any competent Court within the local limits of whose jurisdiction the ship is for the time being

(2) On receipt of any such application, the Court shall cause notice thereof and of the date fixed for the hearing of the application to be served upon all persons appearing to it to have an interest in the ship, and may give such directions for the temporary disposal of the ship as it thinks fit.

(3) For the purpose of disposing of an application under this section, the Court shall have the same powers and follow, as nearly as may be, the same procedure as it respectively has and follows for the purpose of the trial of suits under the Code of Civil Procedure, 1908, any order made by the Court under this section shall be deemed to be a decree, and the provisions of the said Code in regard to the execution of decrees shall, as far as they are applicable, apply accordingly.

(4) Where the Court is satisfied that the ship is liable to forfeiture under this Act, it shall pass an order forfeiting the ship to His Majesty:

Provided that, where any person having an interest in the ship proves to the satisfaction of the Court that he has not abetted, or connived at, or by his negligence facilitated, in any way, a contravention of section 3 in respect of the ship, and such ship has not been built as a vessel of war, it may pass such other order as it thinks fit in respect of the ship or, if it be sold, of the sale proceeds thereof:

LEG. REF.

1 Words "or any Gazetted Officer of the Royal Indian Marine Service" omitted by A.O., 1937.

Provided, further, that in no case shall any ship which has been altered, armed or equipped as a vessel of war be released until it has been restored, to the satisfaction of the Central Government, to such condition as not to render it liable to forfeiture under this Act.

(5) The Central Government or any person aggrieved by any order of a Court, other than a High Court, under this section may, within three months of the date of such order, appeal to the High Court.

9. Where a ship has been forfeited to His Majesty under section 8, it may be disposed of in such manner as the Central Government [* * *] directs:

Disposal of forfeit. Provided that, where the ship is sold under this section, due regard shall be had to the obligations imposed by the Treaty.

10. If, in any trial, appeal or other proceeding under the foregoing provisions of this Act, any question arises as to whether a ship is a vessel of war, or whether any alteration, arming or equipping of a ship is such as to adapt it for use as vessel of war, the question shall be referred to and determined by the Central Government whose decision shall be final and shall not be questioned in any Court.

11. (1) Where a ship which has been seized or detained under section 7 or section 8 and has not been released by competent authority under this Act proceeds to sea, the master of the ship shall be punishable with fine which may, extend to one thousand rupees and the owner and any person who sends the ship to sea shall be likewise so punishable unless such owner or person proves that the offence was committed without his knowledge and consent.

Penalties for proceeding to sea after seizure. (2) Where any ship so proceeding to sea takes to sea, when on board thereof in the execution of his duty any officer empowered by this Act to seize and detain the ship, the owner and master shall further each be liable, on the order of the Court trying an offence punishable under sub-section (1), to pay all the expenses of and incidental to such officer being taken to sea, and shall further be punishable with fine which may extend to one hundred rupees for every day until such officer returns or until such time as would enable him after leaving the ship to return to the port from which he was taken.

(3) Any expenses ordered to be paid under sub-section (2) may be recovered in the manner provided in the Code of Criminal Procedure, 1898, for the recovery of a fine.

12. (1) Any person empowered by this Act to seize and detain any ship may, at any reasonable time by day or night, enter any dockyard, shipyard or other place and make inquiries respecting any ship which he has reason to believe is liable to forfeiture under this Act, and may search such ship with a view to ascertaining whether the provisions of this Act have been or are being duly observed in respect thereof, and every person in charge of or employed in such place shall on request be bound to give the person so empowered all reasonable facilities for such entry and search and for making such inquiries.

(2) The provisions of sections 101, 102 and 103 of the Code of Criminal Procedure, 1898, shall apply in the case of all searches made under this section.

13. No Court inferior to that of a Presidency Magistrate or Magistrate of the first class shall proceed to the trial of any offence punishable under this Act, and no Court shall proceed to the trial of any such offence except on complaint made by, or under authority from, the Central Government.

Courts by which and conditions subject to which offences may be tried.

LEG. REF.

Governor-General in Council" omitted by

Words "subject to the control of the A.O., 1937."

CR C. M. I-127

14. No prosecution, suit or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act.

THE SCHEDULE.

[Omitted by Act II of 1937.]

NAVAL RESERVE FORCES (INDIAN) DISCIPLINE ACT, 1939.
See **INDIAN NAVAL RESERVE FORCES (DISCIPLINE) ACT, 1939.**

THE INDIAN NAVY (DISCIPLINE) ACT (XXXIV OF 1934.)

[Rep. in part by Act I of 1938. Amended by the Indian Naval Reserve Forces (Discipline) Act, 1939. Acts XXIX of 1940; XXX of 1940; XXV of 1942 and Ordinances IX of 1941; XXIII of 1942; L of 1942; XI of 1943; XVII of 1944. See also Act XXXV of 1939.]

[8th September, 1934.]

An Act to provide for the application of the Naval Discipline Act to the Indian Navy.

WHEREAS by section 66 of the Government of India Act it is among other things enacted that provision may be made by the Indian Legislature for the application to the naval forces raised by the Governor-General in Council of the Naval Discipline Act subject to such modifications and adaptations as may be made by the said Legislature to adapt the Act to the circumstances of India;

AND WHEREAS it is expedient to make such provision;

It is hereby enacted as follows:—

Short title and commencement.

1. (1) This Act may be called THE INDIAN NAVY (DISCIPLINE) ACT, 1934.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definition.

2. In this Act, unless there is anything repugnant in the subject or context,—

“the Indian Navy” means the naval forces and ships raised and provided by the Central Government.

Application of the Naval Discipline Act to the Indian Navy. 3. (1) The Naval Discipline Act shall apply to the Indian Navy as if that Act were in the form in which it is set forth in the First Schedule to this Act.

(2) In the application to the Indian Navy of the Naval Discipline Act as so set forth,—

(a) “the Indian Navy” has the same meaning as in this Act, and

(b) references to His Majesty’s Navy and His Majesty’s ships shall be deemed to include the forces and ships constituting the Indian Navy.

Repeals.

4. [Rep. by Act I of 1938.]

THE FIRST SCHEDULE.

(See Section 3.)

THE NAVAL DISCIPLINE ACT.

(29 and 30 Vict. C. 109.)

(As modified for application to the Indian Navy.)

An Act to make Provision for the Discipline of the Navy.

WHEREAS it is expedient to amend the law relating to the Government of the Navy, whereon, under the good Providence of God, the wealth, safety, and strength of the Kingdom chiefly depend:

Be it enacted by the King’s Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.

ARTICLES OF WAR.

Public Worship.

Facilities for the performance of religious duties.

1. All officers in command of ships of the Indian Navy shall give reasonable facilities for the performance of religious duties by the officers and members of the crews of their respective ships to each man according to his religion.

Misconduct in the presence of the enemy.

Penalty for misconduct in action.

2. Every flag officer, captain, commander or officer commanding subject to this Act who upon signal of battle, or on sight of a ship of an enemy which it may be his duty to engage shall not,

(1) use his utmost exertion to bring his ship into action;

(2) or shall not during such action, in his own person and according to his rank, encourage his inferior officers and men to fight courageously;

(3) or who shall surrender his ship to the enemy when capable of making a successful defence, or who in time of action shall improperly withdraw from the fight, shall, if he has acted traitorously, suffer death; if he has acted from cowardice, shall suffer death, or such other punishment as is hereinafter mentioned; and if he has acted from negligence or through other default, he shall be dismissed from His Majesty's service, with or without disgrace, or shall suffer such other punishment as is hereinafter mentioned.

3. Every officer subject to this Act who shall forbear to pursue the chase of any enemy pirate, or rebel, beaten or flying, or shall not relieve and assist a known friend in view to the utmost of his power, or who shall improperly forsake his station, shall, if he has therein acted traitorously, suffer death; if he has acted from cowardice, suffer death or such other punishment as is hereinafter mentioned; if he has acted from negligence or through other default, shall be dismissed from His Majesty's service, with disgrace, or shall suffer such other punishment as is hereinafter mentioned.

4. When any action or any service is commanded, every person subject to this Act who shall presume to delay or discourage the said action or service upon any pretence whatsoever or in the presence or vicinity of the enemy shall desert his post or sleep upon his watch shall suffer death or such other punishment as is hereinafter mentioned.

5. Every person subject to this Act, and not being a commanding officer, who shall not use his utmost exertions to carry the orders of his superior officers into execution when ordered to prepare for action, or during the action, shall, if he has acted traitorously, suffer death; if he has acted from cowardice, shall suffer death, or such other punishment as is hereinafter mentioned; and if he has acted from negligence or through other default be dismissed from His Majesty's service, with disgrace, or suffer such other punishment as is hereinafter mentioned.

Communications with the Enemy.

Penalty for spies.

6. All spies for the enemy shall be deemed to be persons subject to this Act, and shall suffer death or such other punishment as is hereinafter mentioned.

Penalty for corresponding, etc., with the enemy.

7. Every person subject to this Act who shall—

(1) traitorously hold correspondence with or shall give intelligence to the enemy;

(2) or fail to make known to the proper authorities any information he may have received from the enemy;

(3) or who shall relieve the enemy with any supplies, shall suffer death, or such other punishment as is hereinafter mentioned.

Penalty for improper communication with the enemy.

8. Every person subject to this Act who shall, without any treacherous intention, hold any improper communication with the enemy, shall be dismissed with disgrace from His Majesty's service, or shall suffer such other punishment as is hereinafter mentioned.

Neglect of duty.

9. Every person subject to this Act who shall desert his post or sleep upon his watch, or negligently perform the duty imposed on him, shall be dismissed from His Majesty's service, with disgrace or shall suffer such other punishment as is hereinafter mentioned.

Penalty for abandoning post, etc.

Mutiny.

10. Where mutiny is accompanied by violence, every person subject to this Act who

Penalty for mutiny accompanied by acts of violence.

shall join therein shall suffer death or such other punishment as is hereinafter mentioned; and every person subject to this Act who shall not use his utmost exertions to suppress such mutiny shall, if he has acted traitorously, suffer death, or such other punishment as is hereinafter mentioned; if he has acted from cowardice, shall suffer penal servitude or such other punishments as is hereinafter mentioned; if he has acted from negligence he shall be dismissed from His Majesty's service, with disgrace, or suffer such other punishment as is hereinafter mentioned.

11. Where a mutiny is not accompanied by violence, the ringleader or ringleaders of such mutiny shall suffer death, or such other punishment as is hereinafter mentioned; and all other persons who shall join

Penalty for mutiny not accompanied by acts of violence.

in such mutiny, or shall not use their utmost exertions to suppress the same, shall suffer imprisonment or such other punishment as is hereinafter mentioned.

12. Every person subject to this Act who shall endeavour to seduce any other person

Penalty for inciting to mutiny.

subject to this Act from his duty or allegiance to His Majesty, or endeavour to incite him to commit any act of mutiny, shall suffer death or such other punishment as is hereinafter mentioned.

13. Every person, not otherwise subject to this Act, who, being on board any ship of His Majesty, shall endeavour to seduce from his duty or allegiance to His Majesty any person subject to this Act, shall so far as respects such offence be deemed to be a person subject to this Act, and shall suffer death or such other punishment as is hereinafter mentioned.

Penalty for civilians endeavouring to seduce from allegiance.

14. Every person subject to this Act who shall make or endeavour to make any mutinous assembly, or shall lead or incite any other person to join in any mutinous assembly or shall utter any words of sedition or mutiny, shall suffer penal servitude or such other punishment as is hereinafter mentioned.

Penalty for making mutinous assemblies or uttering seditious words.

15. Every person subject to this Act who shall wilfully conceal any traitorous or mutinous words spoken against His Majesty or any words, practice or design tending to the hindrance of the service, shall suffer penal servitude or such other punishment as is hereinafter mentioned.

Penalty for concealing any traitorous or mutinous practice, design, or words.

16. Every person subject to this Act who shall strike or attempt to strike, or draw or lift up any weapon against, or use or attempt to use any violence against his superior officer whether or not such superior officer is in the execution of his office, shall be punished with penal servitude or such other punishment as is hereinafter mentioned.

Punishment for striking or attempting to strike, etc., superior officer.

Insubordination.

17. Every person subject to this Act who shall wilfully disobey any lawful command of his superior officer, or shall use threatening or insulting language, or behave with contempt to his superior officer, shall be punished with dismissal with disgrace from His Majesty's service or suffer such other punishment as is hereinafter mentioned.

Penalty for disobedience or using threatening language to superior officer.

18. Every person subject to this Act who shall quarrel or fight with any other person whether such other person be or be not subject to this Act, or shall use reproachful or provoking speeches or gestures tending to make any quarrel or disturbance, shall suffer imprisonment or such other punishment as is hereinafter mentioned.

Penalty for quarrelling, etc., or using reproachful speech or gestures.

Desertion and Absence without Leave.

19. Every person subject to this Act who shall absent himself from his ship, or from the place where his duty requires him to be, with an intention of not returning to such ship or place, or who shall at any time and under any circumstances when absent from his ship or place of duty, do any act which shows that he has an intention of not returning to such ship or place, shall be deemed to have deserted, and shall be punished accordingly; that is to say,

Penalty for desertion.

(1) if he has deserted to the enemy, he shall be punished with death or such other punishment as is hereinafter mentioned;

(2) if he has deserted under any other circumstances he shall be punished with penal servitude or such other punishment as is hereinafter mentioned; and in every such case he shall forfeit, all pay, head money, bounty, salvage, prize money, and allowances that have been earned by him and all annuities pensions, gratuities, medals, and decorations that may have been granted to him and also all clothes and effects which he

may have left on board the ship or at the place from which he has deserted, unless the tribunal by which he is tried or the Central Government shall otherwise direct.

20. Every person subject to this Act who shall endeavour to seduce any other person subject to this Act to desert shall suffer imprisonment or such other punishment as is hereinafter mentioned.

21. Every officer in command of any ship of His Majesty who shall receive or entertain any deserter from His Majesty's naval, military, or air forces after discovering him to be a deserter and shall not with all convenient speed, in the case of a deserter from His Majesty's naval forces, give notice to the commanding officer of the ship to which such deserter belongs, or, if such ship is at a distance, to the Central Government or to the Officer Commanding the Indian Navy, or, in case of a deserter from His Majesty's military or air forces, give notice to the Central Government or the commanding officer of the regiment or unit to which such deserter belongs the officer so offending shall be dismissed from His Majesty's service, or shall suffer such other punishment as is hereinafter mentioned.

22. If any person subject to this Act (without being guilty of desertion) improperly leaves his ship or place of duty, he shall be liable to imprisonment or to such other punishment as is hereinafter mentioned, and to such other punishment by forfeiture of wages or of other benefits as the Central Government from time to time by regulations prescribes.

23. Every person subject to this Act (who without being guilty of desertion or of improperly leaving his ship or place of duty), shall be absent without leave shall be liable in time of war to imprisonment or such other punishment as is hereinafter mentioned and at other times to imprisonment or detention for any period not exceeding ten weeks or such other punishment as the circumstances of the case may require and to such other punishment by forfeiture of wages or of other benefits as the Central Government from time to time by regulations prescribes.

24. If any person subject to this Act is absent without leave for a period of one month (whether he is guilty of desertion or of improperly leaving his ship or place of duty or not), but is not apprehended and tried for his offence, he shall be liable to forfeiture of wages and other benefits as the Central Government from time to time by regulations prescribes, and the Central Government may by an order containing a statement of the absence without leave direct that the clothes and effects (if any) left by him on board ship or at his place of duty be forfeited and the same may be sold, and the proceeds of the sale shall be disposed of as the Central Government may direct; and every order under this provision for forfeiture or sale shall be conclusive as to the fact of the absence without leave as therein stated of the person therein named; but in any case the Central Government may, if it seems fit on sufficient cause being shown at any time after forfeiture and before sale, remit the forfeiture, or after sale pay or dispose of the proceeds of the sale or any part thereof to or for the use of the person to whom the clothes or effects belonged, or his representatives.

25. If any person not subject to this Act assists or procures any person subject to this Act to desert or improperly absent himself from his duty, or conceals, employs or continues to employ any person subject to this Act, who is a deserter or improperly absent from his duty, knowing him to be a deserter or so improperly absent, he shall for every such offence of assistance, procurement, concealment, employment or continuance of employment, be liable, on conviction in a summary trial before a Magistrate empowered under section 260 of the Code of Criminal Procedure, 1898, or before any person or persons or Court exercising like authority in any part of His Majesty's dominions, to a penalty not exceeding two hundred rupees; and every such penalty shall be applied as the Central Government directs.

26. If any person not subject to this Act by words or otherwise persuades any person subject to this Act to desert or improperly absent himself from his duty, he shall for every such offence be liable, on conviction in a summary trial before a Magistrate empowered under section 260 of the Code of Criminal Procedure, 1898, or before any person or persons or Court, exercising like authority in any part of His Majesty's dominions, to a penalty not exceeding two hundred rupees; and every such penalty shall be applied as the Central Government directs.

Miscellaneous offences.

27. Every person subject to this Act who shall be guilty of any profane oath, cursing, execration, drunkenness, uncleanness or other scandalous action in derogation of God's honour and corruption of good manners, shall be dismissed from His Majesty's service, with disgrace, or suffer such other punishment as is hereinafter mentioned.

Penalty for profane swearing and other immoralities,

28. Every officer subject to this Act who shall be guilty of cruelty, or of any scandalous or fraudulent conduct shall be dismissed with disgrace from His Majesty's service; and every officer subject to this Act who shall be guilty of any other conduct unbecoming the character of an officer shall be dismissed, with or without disgrace, from His Majesty's service.

29. Every person subject to this Act who shall either designedly or negligently or by any default lose, strand, or hazard or suffer to be lost, stranded, or hazarded, any ship of His Majesty or in His Majesty's service or lose or suffer to be lost any aircraft of His Majesty or in His Majesty's service, shall be dismissed from His Majesty's service, with disgrace, or suffer such other punishment as is hereinafter mentioned.

30. The officers of all ships of His Majesty appointed for the convoy and protection of any ships or vessels shall diligently perform their duty without delay according to their instructions in that behalf; and every officer who shall fail in his duty in this respect, and shall not defend the ships and goods under his convoy without deviation to any other objects, or shall refuse to fight in their defence if they are assailed, or shall cowardly abandon and expose the ships in his convoy to hazard, or shall demand or exact any money or other reward from any merchant or master for convoying any ships, or vessels entrusted to his care, or shall misuse the masters or mariners thereof, shall make such reparation in damages to the merchants, owners, and others as the Court of Admiralty may adjudge, and also shall be punished criminally according to the nature of his offence, by death or such other punishment, as is hereinafter mentioned.

31. Every master or other officer in command of any merchant or other vessel under the convoy of any ship of His Majesty shall obey the commanding officer thereof in all matters relating to the navigation or security of the convoy; and shall take such precautions for avoiding the enemy as may be directed by such commanding officer, and if he shall fail to obey such directions, such commanding officer may compel obedience by force of arms without being liable for any loss of life or of property that may result from his using such force.

32. Every officer in command of any of His Majesty's ships who shall receive on board or permit to be received on board such ship any goods or merchandises whatsoever, other than for the sole use of the ship except gold, silver, or jewels and except goods and merchandise belonging to any merchant, or on board any ship which may be shipwrecked or in imminent danger, either on the high seas or in some port, creek, or harbour, for the purpose of preserving them for their proper owners, or except such goods or merchandise as he may at any time be ordered to take or receive on board by order of the Central Government or his superior officer shall be dismissed from His Majesty's service, or suffer such other punishment as is hereinafter mentioned.

33. Every person subject to this Act who shall wastefully expend, embezzle, or fraudulently buy, sell or receive any ammunition, provisions, or other public stores, and every person subject to this Act, who shall knowingly permit any such wasteful expenditure, embezzlement, sale or receipt, shall suffer imprisonment or such other punishment as is hereinafter mentioned.

34. Every person subject to this Act who shall unlawfully set fire to any dockyard, victualling yard or steam factory yard, arsenal, magazine, building, stores, or to any ship, vessel, hoy, barge, boat, or other craft or furniture thereunto belonging, not being the property of an enemy, pirate, or rebel, shall suffer death or such other punishment as is hereinafter mentioned.

35. Every person subject to this Act who shall knowingly make or sign a false muster or record or other official document, or who shall command, counsel, or procure the making or signing thereof, or who shall aid or abet any other person in the making or signing thereof, shall be dismissed from His Majesty's service, with disgrace, or suffer such other punishment as is hereinafter mentioned.

36. Every person subject to this Act who shall wilfully do any act or wilfully disobey any orders, whether in hospital or elsewhere, with intent to produce or to aggravate any disease or infirmity, or to delay his cure, or who shall feign any disease, infirmity, or inability to perform his duty, shall suffer imprisonment or such other punishment as is hereinafter mentioned.

37. Every person subject to this Act who shall have any cause of complaint, either of

Penalty for endeavouring to stir up any disturbance on account of unwholesomeness of the victuals or other just grounds.

court-martial may think fit to

38. All the papers, charter-parties, bills of lading, passports and other writings whatsoever, that shall be taken, seized, or found abroad any ship or ships which shall be taken as prize shall be duly preserved, and the commanding officer of the ship which shall take such prize shall send the originals entire and without fraud to the Court of Admiralty, or such other Court or commissioners as shall be authorised to determine whether such prize be lawful

capture there to be viewed, made use of, and proceeded upon according to law, upon pain that every person offending herein shall be dismissed from His Majesty's service, or shall suffer such other punishment as is hereinafter mentioned, and in addition thereto shall forfeit and lose his share of the capture.

39. No person subject to this Act shall take out of any prize or ship seized for prize

Penalty for taking money or other effects out of any prize before the same shall be condemned.

whole, without fraud, upon pain that every person offending herein shall be dismissed from His Majesty's service, with disgrace, or suffer such other punishment as is hereinafter mentioned, and in addition thereto forfeit and lose his share of the capture.

40. If any ship or vessel shall be taken as prize, none of the officers, mariners, or other persons on board shall be stripped of their clothes, or in any sort pillaged, beaten, or evil intreated, upon pain that the person or persons so offending shall be dismissed from His Majesty's service, with disgrace, or suffer such other punishment as is hereinafter mentioned.

Penalty for stripping or ill-using persons taken on Board as prize.

Penalty on commanders capturing as prize by collusion or collusively restoring ships or goods.

41. If the commanding officer of any of His Majesty's ships does any of the following things, namely,

(1) by collusion with the enemy takes as prize any vessel, goods, or thing;

(2) unlawfully agrees with any person for the ransoming of any vessel, goods, or thing taken as prize; or

(3) in pursuance of any unlawful agreement for ransoming or otherwise by collusion actually quits or restores any vessel, goods, or thing taken as prize; he shall be liable to dismissal from His Majesty's service, with disgrace, or to such other punishment as is hereinafter mentioned.

42. If any person subject to this Act breaks bulk on board any vessel taken as prize, or

Penalty for breaking bulk on board prize ship with a view to embezzlement.

tioned, and in addition thereto,

43. Every person subject to this Act who shall be guilty of any act, disorder or neglect to the prejudice of good order and naval discipline not hereinbefore specified shall be dismissed from His Majesty's service, with disgrace, or suffer such other punishment as is hereinafter mentioned.

44. Any person subject to this Act committing any offence against this Act, such offence

Crimes to be punished according to laws and customs in use.

not being punishable with death or penal servitude, shall, save where this Act expressly otherwise provides, be proceeded against and punished according to the laws and customs in such cases used at sea.

OFFENCES PUNISHABLE BY ORDINARY LAW.

45. Every person subject to this Act who shall be guilty of an offence punishable under section 302, 304, 304-A, 377, 377 read with 511, 379,

Penalty for offences punishable by ordinary law.

380, 381, 382, or 392, of the Indian Penal Code shall be punishable with the punishment provided in that Code for the offence, ¹[or, except in the case of an offence punishable under the said section 302 or 377, with such punishment as is hereinafter mentioned.]

If any such person shall be guilty of any other criminal offence which is committed in British India would be punishable by the law of British India, he shall, whether the offence be or be not committed in British India, be punished either in pursuance of the first part of this Act as for an act to the prejudice of good order and naval discipline not otherwise specified, or the offender shall be subject to the same punishment as might for the time being be awarded by any ordinary criminal tribunal competent to try the offender if the offence had been committed in British India.

46. For all offences specified or referred to in this Act, if committed by any person subject thereto in any harbour, haven, or creek, or on any lake or river, whether in or out of British India, or anywhere within the jurisdiction of the Admiralty, or at any place on shore out of British India, or in any of His Majesty's dock-yards, victualling yards, steam factory yards, or on any gun wharf, or in any arsenal, barrack or hospital belonging to His Majesty or in any other premises held by or on behalf of the Crown for naval or military purposes, or in any canteen or sailors' home, or any place of recreation placed at the disposal of or used by officers or men of His Majesty's Navy, which may be prescribed by the Central Government, whether in or out of British India, the offender may be tried and punished under this Act; and for all offences hereinbefore specified under the headings, "misconduct in the presence of the enemy," "communications with the enemy," "neglect of duty," "mutiny," "insubordination," "desertion and absence without leave," or "miscellaneous offences," if committed by any person subject to this Act at any place on shore, whether in or out of British India, the offender may be tried and punished under this Act.

46-A. (1) Where an offence under this Act has been committed by any person while subject to this Act, such person may be taken into and kept in custody and tried and punished for such offence although he has ceased to be subject to this Act in like manner as he might have been taken into and kept in custody, tried, or punished if he had continued so subject:

Provisions where offender has ceased to be subject to the Act.

Provided that where a person has since the commission of an offence ceased to be subject to this Act, he shall not be tried for such offence, except in case of offences of mutiny or desertion, unless proceedings against him are instituted within three months after he has ceased to be subject to this Act, but this section shall not affect the jurisdiction of a civil Court in the case of any offence triable by such Court as well as by court-martial.

(2) Where a person subject to this Act is sentenced under this Act to penal servitude, imprisonment, or detention, this Act shall apply to him during the term of his sentence notwithstanding that he is discharged or dismissed from His Majesty's service, or has otherwise ceased to be subject to this Act and he may be kept in custody, removed, imprisoned, made to undergo detention and punished accordingly, as if he had continued to be subject to this Act.

PART II.

GENERAL PROVISIONS.

47. Where the amount of punishment for any offence under this Act depends upon the intent with which it has been committed, and any person is charged with having committed such offence with an intent involving a greater degree of punishment, a court-martial may find that the offence was committed with an intent involving a less degree of punishment, and award such punishment accordingly.

Power of court-martial to find prisoner guilty of lesser offence on charge of greater.

Rebels and mutineers to be deemed enemies.

50. Every officer in command of a fleet or squadron of His Majesty's ships, or of one of His Majesty's ships, or the senior officer present at a port, or an officer having by virtue of sub-sec. (3) of section fifty-six of this Act power to try offences, may, by warrant under his hand, authorise any person to arrest any offender subject to this Act for any offence against this Act mentioned in such warrant; and any such warrant may include the names of more persons than one in respect of several offences of the same nature; and any person named in any such warrant may forthwith, on his apprehension, if the warrant so directs, be taken on board the ship to which he belongs, or some other of His Majesty's ships; and any person so authorised may use force, if necessary, for the purpose of effecting such apprehensions, towards any person subject to this Act.

48. Where any person shall be charged with any offence under this Act he may, upon failure of proof of the commission of the greater offence, be found guilty of another offence of the same class involving a less degree of punishment, but not of any offence involving a greater degree of punishment.

49. All armed rebels, armed mutineers, and pirates shall be deemed to be enemies within the meaning of this Act.

51. Every person subject to this Act who shall not use his utmost endeavours to detect, apprehend and bring to punishment all offenders against this Act, and shall not assist the officers appointed for that purpose, shall suffer imprisonment or such other punishment as is hereinafter mentioned.

PART III.

REGULATIONS AS TO PUNISHMENT.

Punishments.

52. The following punishments may be inflicted in His Majesty's Navy:

- (1) Death:
- (2) Penal servitude:
- (3) Dismissal with disgrace from His Majesty's service:
- (4) Imprisonment or corporal punishment:
- (4-A) Detention:
- (5) Dismissal from His Majesty's service:
- (6) Forfeiture of seniority as an officer for a specified time, or otherwise:
- (7) Dismissal from the ship to which the offender belongs:
- (8) Severe reprimand, or reprimand:
- (9) Disrating a subordinate or petty officer:
- (10) Forfeiture of pay, head money, bounty, salvage, prize money, and allowances earned by, and of all annuities, pensions, gratuities, medals and decorations, granted to, the offender, or of any one or more of the above particulars; also, in the case of desertion, of all clothes and effects left by the deserter on board the ship to which he belongs:

(11) Such minor punishments as are now inflicted according to the custom of the navy, or may from time to time be allowed by the Central Government:

And each of the above punishments shall be deemed to be inferior in degree to every punishment preceding it in the above scale.

Regulations as to infliction of punishments.

53. The following regulations are hereby made with respect to the infliction of punishments in His Majesty's Navy:—

(1) The powers to suspend, remit or commute sentences of punishment shall be the powers conferred by and shall be exercised, in accordance with the provisions of sections 401 and 402, of the Code of Criminal Procedure, 1898, save that such powers ¹[shall be exercisable by the Central Government and not by the Provincial Government] and any sentence so modified shall (subject to the provisions of this Act be valid) and shall be carried into execution, as if it had been originally passed, with such modification by the Court-martial; but so that neither the degree nor the duration of the punishment involved in any sentence be increased by any such modification:

(2) Judgment of death shall not be passed on any prisoner unless four at least of the officers present at the Court-martial, where the number does not exceed five, and in other cases a majority of not less than two-thirds, of the officers present concur in the sentence:

(3) Except in case of mutiny, the punishment of death shall not be inflicted on any prisoner until the sentence has been confirmed by the Central Government:

(4) The punishment of penal servitude may be inflicted for the term of life or for any other term of not less than three years:

(5) The punishment of penal servitude shall in all cases involve dismissal with disgrace from His Majesty's service:

(6) A sentence of dismissal with disgrace shall involve in all cases a forfeiture of all pay, head money, bounty, salvage, prize money, and allowances that have been earned by and of all annuities, pensions, gratuities, medals and decorations that may have been granted to the offender, and an incapacity to serve His Majesty again in any military, naval, air force, or civil service, and may also in all cases be accompanied by a sentence of imprisonment:

(7) The punishment of imprisonment ²[shall, except as provided in section 45, be limited to a term] not exceeding two years and may be accompanied with a sentence of dismissal from His Majesty's service:

(8) A sentence of imprisonment may be accompanied with a direction that the prisoner shall be kept in solitary confinement for any period of such term not exceeding fourteen days at any one time, and not exceeding eighty-four days in any one year, with intervals between the periods of solitary confinement of not less duration than the periods of solitary confinement; and when the imprisonment awarded exceeds eighty-four days, the solitary confinement shall not exceed seven days in any twenty-eight days of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods:

(9) A sentence of imprisonment may be rigorous or simple, or partly rigorous and partly simple, and corporal punishment may be awarded in addition to any sentence of im-

LEG. REF.

¹ Substituted by Act XXV of 1942.

² Substituted by Ordinance XI of 1943,

prisonment whether such imprisonment is or is not to be accompanied with solitary confinement [* * * *]¹

(9-A) The punishment of detention may be inflicted for any term not exceeding two years:

Provided that, until naval detention quarters shall have been set apart and declared to be such by the Central Government by notification in the Official Gazette, no sentence of detention shall be awarded:

(10) The punishment of imprisonment, or detention whether on board ship or on shore, shall involve disrating in case of a petty officer and reduction to the ranks in case of a non-commissioned officer of marines, and shall in all cases be accompanied by stoppage of pay or wages during the term of imprisonment, or detention: Provided that where the punishment awarded is detention for a term not exceeding fourteen days, the sentence may direct that the punishment shall not be accompanied by stoppage of pay or wages, during the term of detention.

(11) In any case of corporal punishment not more than forty-eight lashes shall be inflicted: no officer shall be subject to detention or to corporal punishment: no petty or non-commissioned officer shall be subject to corporal punishment, except in case of mutiny:

All other punishments authorised by this Act may be inflicted in the manner heretofore in use in the navy.

53-A. (1) Where a person other than a European or American is sentenced to penal servitude, the authority sentencing him shall record such sentence and the term thereof and at the same time shall record an order substituting for such sentence a sentence of transportation which may be for life, or of rigorous imprisonment not exceeding fourteen years.

(2) For the purposes of this Act, unless there is anything repugnant in the subject or context, "penal servitude" includes transportation or rigorous imprisonment substituted for penal servitude in accordance with this section.

5. No person, unless he be an offender who has avoided apprehension or fled from justice, shall be tried or punished in pursuance of this Act for any offence committed by him unless such trial shall take place within three years from the commission of such offence or within one year after the return of such offender to India,

Limitation of time for trials.

where he has been absent from India during such period of three years.

55. Subject to the foregoing regulations, where any punishment is specified by this Act as the

Scale of punishment.

penalty for any offence, and it is further declared that another punishment may be awarded in respect of the same offence, the expression "other punishment" shall be deemed to comprise any one or more of the punishments inferior in degree to the specified punishment, according to the scale hereinbefore mentioned; but [transportation shall be deemed equal in degree to penal servitude, and corporal punishment shall be deemed equal in degree to imprisonment and] may in all cases, subject to the foregoing regulations, be inflicted as a substitute for or in addition to imprisonment.

Authorities having power to try offences.

56. (1) Any offence triable under this Act may be tried and punished by court-martial.

(2) Any offence not capital which is triable under this Act, and (except in the cases by this Act expressly provided for) is not committed by an officer, may, under such regulations as the Central Government from time to time issues, be summarily tried and punished by the officer in command of the ship to which the offender belongs at the time either of the commission or of the trial of the offence, subject to the restriction that the commanding officer shall not have power to award penal servitude or to award imprisonment or detention for more than three months.

(3) The power by this section vested in an officer commanding a ship may—

(a) as respects persons on board a tender to the ship, be exercised in the case of a single tender absent from the ship, by the officer in command of such tender, and in the case of two or more tenders absent from the ship in company or acting together, by the officer in immediate command of such tenders; and

(b) as respects persons on board any boat or boats belonging to the ship, be exercised when such boat or boats is or are absent on detached service, by the officer in command of the boat or boats; and

(c) as respects persons subject to this Act on detached service either on shore or otherwise, or such of those persons as are not for the time being made subject to military law by an order under section one hundred and seventy-nine of the Army Act, 1881, be exercised by the officer in immediate command of those persons; and

(d) as respects persons subject to this Act quartered in naval barracks, be exercised by the officer in command of those barracks.

(4) Except in case of mutiny, no man shall be sentenced by the commanding officer to corporal punishment until his offence has been inquired into by one or more officers appointed by such commanding officer and his or their opinion as to the guilt or innocence of the person charged reported to such commanding officer, and the commanding officer shall thereupon act as according to his judgment may seem right.

LEG. REF.

¹ The words "and hard labour or either of

them" omitted by Ordinance XXV of 1942.

² Substituted by Act XXIX of 1940.

57. The Central Government may impose the punishment of forfeiture of time or seniority of not more than twelve months on any subordinate officer.

57-A. (1) Where any officer borne on the books of any of His Majesty's ships in commission is in time of war alleged to have been guilty of a disciplinary offence, that is to say, a breach of section [nine], seventeen, eighteen, twenty-two, twenty-three, twenty-seven, or forty-three of this Act, the officer having power to order a court-martial may, if he considers that the offence is of such a character as not to necessitate trial by court-martial, in lieu of ordering a court-martial order a disciplinary court constituted as hereinafter mentioned.

(2) A disciplinary Court shall be composed of not less than three nor more than five officers, of whom one shall be a commander or of higher rank.

(3) A disciplinary Court shall have power to impose any punishment inferior to detention in the sale hereinbefore contained, but no greater punishment.

(4) The Central Government may from time to time frame general orders for regulating the assembling, constitution and procedure and practice of disciplinary Courts under this section, and may by those regulations apply, with the necessary modifications, to disciplinary Courts the provisions of sections sixty-two to sixty-four and sections sixty-six to sixty-nine of this Act relating to courts-martial, and the regulations shall provide for evidence being taken on oath and empower the Court to administer oaths for that purpose.

PART IV.

COURTS-MARTIAL.

Constitution of Courts-Martial.

58. The following regulations are hereby made with respect to courts-martial :—

(1) A court-martial shall consist of not less than five nor more than nine officers :

(2) No officer shall be qualified to sit as a member of any court-martial held in pursuance of this Act unless he be a flag officer, captain, commander, lieutenant-commander, or lieutenant of His Majesty's navy on full pay :

(3) A court-martial shall not be held unless at least two of His Majesty's ships, not being tenders, and commanded by captains, commanders, lieutenant-commanders, or lieutenants of His Majesty's navy on full pay are together at the time when such court-martial is held :

(4) No officer shall sit on a court-martial who is under twenty-one years of age :

(5) No court-martial for the trial of a flag officer shall be duly constituted unless the president is a flag officer, and the other officers composing the Court are of the rank of captain, or of higher rank :

(6) No court-martial for the trial of a captain in His Majesty's navy shall be duly constituted unless the president is a captain or of higher rank, and the other officers composing the Court are commanders or officers of higher rank :

(7) No court-martial for the trial of a person below the rank of captain in His Majesty's navy shall be duly constituted unless the president is a captain or of higher rank, nor, if the person to be tried is of the rank of commander, unless in addition to the president two other members of the court are of the rank of commander or of higher rank :

(8) The prosecutor shall not sit on any court-martial for the trial of a person whom he prosecutes :

(9) The Central Government shall have power to order courts-martial to be held for the trial of offences under this Act, and to grant commissions to any officer of His Majesty's navy on full pay authorising him to order courts-martial to be held for the trial of such offences.

(10) An officer holding a commission from the Central Government to order courts-martial shall not be empowered to do so if there is present at the place where such court-martial is to be held any officer superior in rank to himself on full pay and in command of one or more of His Majesty's ships or vessels, although such last mentioned officer may not hold a commission to order courts-martial ; and in such a case such last mentioned officer may order a court-martial although he does not hold any commission for the purpose :

(11) If any officer holding a commission from the Central Government to order courts-martial, having the command of a fleet or squadron, and being in foreign parts, die, be recalled, leave his station, or be removed from his command, the officer upon whom the command of the fleet or squadron devolves and so from time to time the officer who shall have the command of the fleet or squadron, shall, without any commission from the Central Government, have the same power to order courts-martial as the first mentioned officer was invested with :

LEG. REF.

i Inserted by Ordinance IX of 1941.

* N.B.—“The Indian Navy (Discipline) Act, 1934, shall have effect as if the Naval Discipline Act as set forth in the First Schedule to that Act—

(a) in sec. 58, in regulations (1) and

(16) for the word “five” the word “three,” in regulation (7) for the words “the president is a captain” the words “the president is a commander,” and in regulation (15) for the word “four” the word “two” had been substituted; (Ordinance XXIII of 1942 Cl. 3).

(12) If any officer holding a commission from the Central Government to order courts-martial, and having the command of any fleet or squadron of His Majesty's ships in foreign parts shall detach any part of such fleet or squadron, or separate himself from any part of such fleet or squadron, he may, by commission under his hand, empower, in the first-mentioned case, the commanding officer of the squadron or detachment ordered on such separate service, and in case of his death or ceasing so to command, the officer to whom the command of such separate squadron or detachment shall belong, and in the secondly-mentioned case the senior officer of His Majesty's ships on the division of the station from which he is absent, to order courts-martial during the time of such separate service, or during his absence from that division of the station (as the case may be), and every such authority shall continue in force until revoked, or until the officer holding it returns to India, or until he comes into the presence of a superior officer, empowered to order courts-martial in the same squadron, detachment, or division of a station, but so that such authority shall revive on the officer holding it ceasing to be in the presence of such a superior officer, and so from time to time as often as the case so requires :

(13) The officer ordering a court-martial shall not sit thereon :

(14) The President of every court-martial shall be named by the authority ordering the same, or by any officer empowered by such authority to name the president :

(15) No commander, lieutenant-commander, or lieutenant shall be required to sit as a member of any court-martial when four officers of a higher rank and junior to the president can be assembled at the place where the court-martial is to be holden (but the regularity or validity of any court-martial or of the proceedings thereof, shall not be affected by any commander, lieutenant-commander or lieutenant being required to sit, or sitting, thereon under any circumstances) ; and when any commander, lieutenant-commander or lieutenant sits on any court-martial the members of it shall not exceed five in number :

(16) Subject to the foregoing regulations, whenever a court-martial shall be held the officer appointed to preside thereat shall summon all the officers next in seniority to himself present at the place where the court-martial shall be held to sit thereon, until the number of nine, or such number, not less than five, as is attainable, is complete ; subject to this proviso, that the admirals and captains being superintendents of His Majesty's dockyards, shall not be summoned to sit on courts-martial unless specially directed to do so by orders from the Central Government.

Proceedings of Courts-Martial.

59. A Court-martial under this Act shall be held on board one of His Majesty's ships or vessels of war, unless the Central Government or the officer who ordered the court-martial in any particular case for reasons to be recorded on the proceedings otherwise direct, in which case the court-martial shall be held at a port at such convenient place on shore as the Central Government or the officer who ordered the court-martial shall direct.

60. A court-martial held in pursuance of this Act, may, if it appears to the Court that an adjournment is desirable, be adjourned for a period not exceeding six days, but except where such an adjournment is ordered shall sit from day to day, with the exception of Sundays until sentence is given, unless prevented from so doing by stress of weather or unavoidable accident, and its proceedings shall not be delayed by the absence of any member, so that not less than four are present ; and no member shall absent himself unless compelled so to do by sickness or other just-cause, to be approved of by the other members of the Court, and if any member of a court-martial shall absent himself therefrom, in contravention of this section, he shall be dismissed from His Majesty's service, or shall suffer such other punishment as may be awarded by a court-martial.

61. In the absence of the Judge advocate of the fleet or his deputy, and in default of any appointment in this behalf by the Central Government, or by the officer commanding the Indian Navy, the officer who is to be the president of the court-martial shall appoint a person to officiate as deputy Judge advocate at the trial ; and the Judge advocate of the fleet for the time being, or his deputy, or the person officiating as deputy Judge advocate, at any trial shall administer an oath to every witness appearing at the trial.

62. As soon as the Court is assembled, the names of the officers composing the Court shall be read over to the person charged, who shall be asked if he objects to being tried by any member of the Court ; if the person charged shall object to any member, the objection shall be decided by the Court ; if the objection shall be allowed, the place of the member objected to shall be filled up by the officer next in seniority who is not on the court-martial subject to the regulations hereinbefore contained.

The person charged may then raise any other objection which he desires to make respecting the constitution of the court-martial, and the objection shall then be decided by the Court which decision shall be final, and the constitution of the court-martial shall not be afterwards impeached, and it shall be deemed to have been in all respects duly constituted.

63. Before the Court shall proceed to try the person charged, the judge advocate of the fleet, or his deputy, or the person officiating as deputy Judge advocate of the fleet shall administer to every member of the Court the following oath : that is to say,

Oaths to be administered to members of courts-martial.

'I do swear, that I will duly administer justice according to law, without partiality, favour, or affection; and I do further swear, that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

So help me God':

Provided that an affirmation to the same effect in such terms as the Central Government may prescribe in this behalf may be substituted for such oath.

Oaths to be administered to Judge advocate, etc.

64. As soon as the said oath shall be administered to the members of the court-martial the president shall administer to the Judge advocate of the fleet or his deputy, or the person officiating as deputy judge advocate the following oath:

'I do swear that I will not upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of the court-martial, unless thereunto required in due course of law.

So help me God':

Provided that an affirmation to the same effect in such terms as the Central Government may prescribe in this behalf may be substituted for such oath.

Power to Central Government to apply general orders framed by Admiralty for practice of courts-martial.

65. The Central Government may apply to the Indian Navy such general orders altering and regulating the procedure, and practice of courts-martial as may from time to time be framed by the Admiralty and approved by His Majesty in Council subject to such modifications as the Central Government may deem necessary to adapt them to the circumstances of the Indian Navy:

Provided that no modifications shall be made which involves any racial discrimination.

66. Every person, civil, naval, and military, or belonging to the air force who may be required

Summoning witnesses.

to give evidence before a court-martial shall be summoned by writing under the hand of a Secretary to the Central Government or by the deputy judge advocate, or the person appointed to officiate as deputy judge advocate at the trial; and all persons so summoned and attending as witnesses before any court-martial shall, during their necessary attendance in or on such Court, and in going to and returning from the same, be privileged from arrest, and shall if unduly arrested, be discharged by the Court out of which the writ or process issued by which such witness was arrested, or if such Court be not sitting, then by any Judge of the Superior Courts of Westminster or Dublin, or the Court of Session in Scotland, or of the Courts of law in the East or West Indies or elsewhere, according as the case shall require, upon its being made to appear to such Court or judge, by any affidavit in a summary way, that such witness was arrested in going to or returning from or attending upon such court-martial; and all witnesses so duly summoned as aforesaid who make default in attending on such Courts or attending refuse to be sworn or make affirmation, or being sworn or having made affirmation refuse to give evidence or to answer all such questions as the Court may legally demand of them, or prevaricate in giving their evidence, shall, upon certificate thereof under the hand of the president of such court-martial, be liable to be attached in the Court of Queen's Bench in London or Dublin, or the Court of Session, or Sheriff, depute or Stewards depute, or their respective substitutes within their several shires and stewardries in Scotland or Courts of law in the East or West Indies, or in any of His Majesty's colonies, garrisons, or dominions in Europe or elsewhere, respectively, upon complaint made, in like manner as if such witness after having been duly summoned and subpoenaed had neglected to attend on a trial in any proceeding in the Court in which such complaint is made, or had refused to be sworn, or on being sworn had refused to give evidence, or to answer all such questions as the Court may legally demand, or had prevaricated in giving evidence, or, if the court-martial shall think fit, in case any such person, who is subject to this Act, being called upon to give evidence at any court-martial, shall refuse or neglect to attend to give his evidence upon oath or affirmation, or shall prevaricate in his evidence, or behave with contempt to the Court, such court-martial may punish every such offender by imprisonment, or if the offender is a person liable to be sentenced to detention under this Act, by detention not longer than three months in case of such refusal, neglect, or prevarication, nor longer than one month in the case of such contempt; and every person not subject to this Act who may be so summoned to attend shall be allowed and paid his reasonable expenses for such attendance, under the authority of the Central Government or of the president of the court-martial on a foreign station.

67. Every person who, upon any examination upon oath or upon affirmation before any court-martial held in pursuance of this Act, shall make any statement

Penalty on persons giving false evidence.

which is false and which he either knows or believes to be false or does not believe to be true, shall be deemed to have committed the offence of giving false evidence; and every such offence,

whosoever committed shall be triable and punishable in British India.

68. Where it shall appear upon the trial by court-martial of any person charged with an offence

Where persons are insane at the time of offence or trial.

that such person is insane, the Court shall find specially the fact of his insanity, and shall order such person to be kept in strict custody in such place and in such manner as the Court shall deem fit until the directions of the Central Government thereupon are

known, and it shall be lawful for the Central Government to give orders for the safe custody of such person during His Majesty's pleasure in such place and in such manner as it shall think fit.

69. Every judge advocate, or deputy judge advocate, or person officiating as deputy judge advocate, shall transmit with as much expedition as may be the original proceedings, or a complete and authenticated copy thereof, and the original sentence of every court-martial attended by him, to the Officer Commanding the Indian Navy or senior Officer, who shall transmit them to the Central Government for the time being; and any person tried by a court-martial shall be entitled on demand to a copy of such proceedings and sentence (upon payment for the same at the rate of three annas per folio of seventy-two words), but no such demand shall be allowed after the space of three years from the date of the final decision of such Court.

69-A. A Navy List or Gazette purporting to be published by authority and either to be printed by a Government printer or to be issued by His Majesty's Stationery Office, shall be evidence of the status and rank of the officers therein mentioned and of any appointment held by such officers until the contrary is proved.

PART V.

PENAL SERVITUDE AND PRISONS.

Penal Servitude.

70. Where a person is in pursuance of this Act convicted by a court-martial and either is sentenced or has his sentence commuted to penal servitude, such conviction and sentence shall be of the same effect as if such person had been convicted by a civil Court in British India of an offence punishable by penal servitude and sentenced by that Court to penal servitude, and all enactments relating to a convict so sentenced shall, so far as circumstances admit, apply accordingly; and the said convict shall be removed to some prison in which a convict so sentenced by a civil Court in British India can be confined either permanently or temporarily, and the order of the Central Government or of the Officer Commanding the Indian Navy, or of the Officer ordering the court-martial by whom such person was convicted, shall be a sufficient warrant for the transfer of the said person to such prison to undergo his sentence according to law, and until he reaches such prison for detaining him in naval custody, or in any civil prison or place of confinement.

* * * * *

72. In case any such offender shall be conveyed to any prison, not being a naval prison appointed by virtue of this Act, an allowance such as the Central Government shall from time to time direct shall be made to the Governor, Keeper, or Superintendent of the gaol or prison for the subsistence of such offender while he is detained therein, and such allowance shall be paid by order of the Central Government upon production by the said Governor, Keeper or Superintendent of a declaration to be made by him before a Magistrate of the number of days during which the offender has been so detained and subsisted in such gaol or prison.

73. Whenever sentence shall be passed by a court-martial on an offender already under sentence either of detention, imprisonment, or penal servitude passed upon him under this Act for a former offence, the Court may award sentence of detention, imprisonment or penal servitude for the offence for which he is under trial to commence at the expiration of the detention, imprisonment, or penal servitude to which he has been previously sentenced, although the aggregate of the terms of detention, imprisonment or penal servitude, may exceed the term for which any of those punishments could be otherwise awarded.

Provided that nothing in this section shall cause a person to undergo imprisonment or detention for any period exceeding in the aggregate two consecutive years, and so much of any term of imprisonment or detention imposed on a person by a sentence in pursuance of this section as would prolong the total term of his punishment beyond that period shall be deemed to be remitted.

Prisons.

74. (1) Every term of penal servitude, imprisonment, or detention in pursuance of this Act shall be reckoned as commencing on the day on which the sentence was awarded, and the place of imprisonment or detention, whether the imprisonment or detention was awarded as an original or as a commuted punishment, shall be such place as may be appointed by the Court or the commanding officer, awarding the punishment, or which may from time to time be appointed by the Central Government and may in the case of imprisonment, be one of the naval prisons appointed under this Act, or naval detention quarters, or any common gaol, house of correction, or military prison or detention barrack, and may in the case of detention be any naval detention quarters or a military detention barrack within His Majesty's dominions.

(2) Where by reason of a ship being at sea or off a place at which there is no proper prison or naval detention quarters, a sentence of imprisonment, or detention, as the case may be, cannot be duly executed, then, subject as hereinafter mentioned an offender under sentence of imprisonment or detention, as the case may be, may be sent with all reasonable speed to some place at which there is a proper prison or naval detention quarters, or, in the case of an offender under sentence of detention, to some place at which there are naval detention quarters, in which the sentence can be duly executed, and on arrival there the offender shall undergo his sentence, in like manner as if the date of such arrival were the day on which the sentence was awarded, and that notwithstanding:

that in the meanwhile he has returned to his duty or become entitled to his discharge; and the term of imprisonment or detention, as the case may be, shall be reckoned accordingly, subject however to the deduction of any time during which he has been kept in confinement in respect of the said sentence.

(3) Where in pursuance of this Act a person is sentenced to imprisonment or detention the order of the Central Government or of the Officer Commanding the Indian Navy, or of the officer ordering the court-martial by which such person was sentenced, or, if he was sentenced by the commanding officer, of a ship, the order of such commanding officer shall be a sufficient warrant for the sending of such person to the place of imprisonment or detention, there to undergo his sentence according to law, and until he reaches such place of imprisonment or detention for detaining him in naval custody, or in the case of a person sentenced to imprisonment in any civil prison or place of confinement.

74-A. Where a person has been sentenced to penal servitude or imprisonment or detention, the Central Government or officer who by virtue of sub-section (3)

Power to suspend sentences. of section seventy-four of this Act has power to issue an order of committal (hereinafter in this section referred to as "the committing authority") may, in lieu of issuing such an order, order that the sentence be suspended until an order of committal is issued, and in such case—

(a) Notwithstanding anything in this Act, the term of the sentence shall not be reckoned as commencing until an order of committal is issued;

(b) The case may at any time, and shall at intervals of not more than three months, be reconsidered by the Central Government or committing authority, or an officer holding such command as the Central Government may by regulation prescribe, and, if on any such reconsideration it appears to the Central Government or committing authority or officer that the conduct of the offender since his conviction has been such as to justify a remission of the sentence the Central Government or committing authority or officer shall remit the whole or any part of it;

(c) Subject to regulations made by the Central Government, the Central Government or committing authority, or an officer holding such command as the Central Government may by regulation prescribe, may at any time whilst the sentence is suspended issue an order of committal and thereupon the sentence shall cease to be suspended.

(d) Where a person subject to this Act, whilst a sentence on him is so suspended, is sentenced to penal servitude or imprisonment or detention for any other offence, then, if he is at any time, committed either under the suspended sentence or under any such subsequent sentence, and whether or not any such subsequent sentence has also been suspended, the committing authority may direct that the two sentences shall run either concurrently, or consecutively so, however, as not to cause a person to undergo imprisonment or detention for a period exceeding the aggregate of two consecutive years, and where the sentence for such other offence is a sentence of penal servitude, then, whether or not that sentence is suspended, any previous sentence of imprisonment or detention which has been suspended shall be avoided.

When a person has been sentenced to penal servitude or imprisonment or detention and an order of committal has been issued, the Central Government or the committing authority, or an officer holding such command as the Central Government may by regulation prescribe, may order the sentence to be suspended, and in such case the person whose sentence is suspended shall be discharged and the currency of the sentence shall be suspended until he is again committed under the same sentence, and the foregoing paragraphs (b), (c) and (d) of this section shall apply in like manner as in the case where a sentence has been suspended before an order of committal has been issued.

Where a sentence is suspended, under this section, whether before or after committal, the Central Government or, subject to any regulation or direction which may be issued by the Central Government the committing authority or officer by whom the sentence is suspended may, notwithstanding anything in section fifty-three of this Act, direct that any penalty which is involved by the punishment of penal servitude or imprisonment or detention either shall be or shall not be remitted or suspended.

75. Whenever it is deemed expedient it shall be lawful for the Central Government the Officer

Commanding the Indian Navy, or senior naval officer present by any order in writing from time to time to change the place of confinement of any offender imprisoned or sentenced to be imprisoned or detained in pursuance of this Act or of any offender undergoing or sentenced to undergo detention, and the gaoler or other person having the custody of such offender shall immediately on the receipt of such order remove such offender to the gaol, prison or house of correction, or, in the case of an offender undergoing or sentenced to undergo detention, to the naval detention quarters mentioned in the said order, or shall deliver him over to naval custody for the purpose of the offender being removed to such prison, or naval detention quarters; and every gaoler or keeper of such last-mentioned prison, gaol, or house of correction or naval detention quarters shall, upon being furnished with a copy of such order of removal, attested by a secretary to the Central Government for the time being receive into his custody and shall confine pursuant to such sentence or order every such offender.

76. The gaoler or other person removing any offender in pursuance of such order, shall be allowed for the charges of such removal a sum not exceeding twelve annas a mile, and when any offender, is not confined in a naval prison or naval detention quarters the gaoler or other person in whose custody any such offender may be shall receive such

Expenses of removal or subsistence of prisoners.

an allowance as the Central Government shall from time to time direct for every day that such offender is in his custody to be applied towards his subsistence and such sum shall be paid to the said gaoler or other person under the authority of the Central Government upon the application in writing made to the Central Government by the District Magistrate or Presidency Magistrate within whose jurisdiction such gaol, prison or house of correction shall be situate, with a copy of the sentence or order under which the offender is confined.

* * * * *

78. Whenever any offender is undergoing imprisonment or detention in pursuance of this Act,

Proviso for discharge or removal of prisoners.

it shall be lawful for the Central Government or where an offender is undergoing imprisonment or detention by order of his commanding officer, for such commanding officer or the Central Government to give an order in writing directing that the offender be discharged; and it shall also be lawful for the Central Government and any officer commanding any of His Majesty's ships, by order in writing, to direct that any such offender be delivered over to naval custody for the purpose of being brought before a court-martial, either as a witness, or for trial or otherwise, and such offender shall accordingly, on the production of any such order, be discharged, or be delivered over to such custody.

79. The time during which any offender under sentence of imprisonment or detention is detained

Proviso as to time of detention in naval custody.

in naval custody shall be reckoned as imprisonment or detention under his sentence for whatever purpose he is so detained; and the Governor, gaoler, keeper, or superintendent who shall deliver over any such offender shall again receive him from naval custody so that he may undergo the remainder of his punishment.

80. If any person imprisoned or undergoing detention by virtue of this Act shall become insane,

In case of insanity prisoners to be removed to some lunatic asylum.

and a certificate to that effect shall be given by two physicians or surgeons, the Central Government shall, by warrant, direct the removal of such person to such lunatic asylum or other proper receptacle for insane persons in British India as [it] may judge proper for the unexpired term of his imprisonment or detention; and if any such person shall in the same manner be certified to be again of sound mind, the Central Government may issue a warrant for his being removed to such prison or place of confinement or in the case of a person sentenced to detention, such naval detention quarters as may be deemed expedient, to undergo the remainder of his punishment, and every gaoler or keeper of any prison, gaol, or house of correction shall receive him accordingly. This section shall not apply to persons imprisoned in England.

81. (1) The Central Government may set apart any buildings or vessels or any parts thereof,

The Central Government may set apart buildings and ships as naval prisons.

as naval prisons or naval detention quarters, and any buildings or vessels, or parts of buildings or vessels, so set apart as naval prisons or naval detention quarters, as the case may be, shall be deemed to be naval prisons or naval detention quarters respectively within the meaning of this Act.

(2) The Central Government shall have the same power and authority in respect to naval prisons and naval detention quarters respectively as one of His Majesty's Principal Secretaries of State has in relation to military prisons and detention barracks respectively under section one hundred and thirty-three of the Army Act, 1881, and that section shall apply as if it were herein re-enacted with the substitution of "the Central Government" for "a Secretary of State" and of "naval" for "military," and of "naval detention quarters" for "detention barrack" and rules and regulations may be made accordingly by the Central Government.

82. If any person shall convey or cause to be conveyed into any such naval prison or any such

Penalties on aiding escape or attempt to escape of prisoners and on breach of prison regulations.

naval detention quarters any arms, tools, or instruments, or any mask or other disguise to facilitate the escape of any prisoner or person undergoing detention or by any means whatever shall aid any prisoner or person undergoing detention to escape or in an attempt to escape from such prison or naval detention quarters, whether an escape be actually made or not, such person shall be punished with imprisonment, which may be either rigorous or simple for any term not exceeding two years, or suffer penal servitude for any term not exceeding fourteen years; and if any person shall bring or attempt to bring into such prison or naval detention quarters, in contravention of the rules, any spirituous or fermented liquor, he shall for every such offence be liable to a penalty not exceeding two hundred rupees, and not less than one hundred rupees; and if any person shall bring into such prison or naval detention quarters or to or for any prisoner or person undergoing detention without the knowledge of the officer having charge or command thereof any money, clothing, provisions, tobacco, letters, papers, or other articles not allowed by the rules of the prison or naval detention quarters, so be in the possession of a prisoner or person undergoing detention, or shall throw into the said prison or naval detention quarters any such articles, or by desire of any

prisoner or person undergoing detention, without the sanction of the said officer, shall carry out of the prison or naval detention quarters any of the articles aforesaid, he shall for every such offence be liable to a penalty not exceeding fifty rupees; and if any person shall interrupt any officer of such prison or naval detention quarters in the execution of his duty, or shall aid or excite any person to assault, resist, or interrupt any such officer, he shall for every such offence be liable to a penalty not exceeding fifty rupees or if the offender be a prisoner or person undergoing detention, he shall be punished with imprisonment, which may be either rigorous or simple, for any time not exceeding six calendar months in addition to so much of the time for which he was originally sentenced as may be then unexpired, and every such penalty shall be applied as the Central Government shall direct, any law, statute, charter or custom to the contrary notwithstanding.

83. Every governor, gaoler, and keeper of any prison, gaol, or house of correction or of any naval detention quarters, and every officer having the charge or command of any place, ship, or vessel for imprisonment, who shall, without lawful excuse, refuse or neglect to receive or confine, remove, discharge, or deliver up any offender against the provisions of this Act, or any of them, shall incur for every such refusal or neglect a penalty not exceeding one thousand rupees, and every such penalty shall be applied as the Central Government shall direct, any law, statute, charter, or custom to the contrary notwithstanding.

PART VI.

SUPPLEMENTAL PROVISIONS.

84. This Act may be cited for all purposes as the Naval Discipline Act.

Short title.

85. Except as otherwise, provided, this Act shall be in force within the United Kingdom; and as regards the United Kingdom, the enactments described in the schedule to this Act shall be repealed from and after one calendar month from the passing hereof; and as regards elsewhere this Act shall be in force, and the said enactments shall be repealed, from and after six calendar months from the passing hereof.

Extent and repeal.

Definition of terms.

86. In the construction of this Act, unless there be something in the context or subject-matter repugnant to or inconsistent with such Construction.

"Admiralty," or "the Lords of the Admiralty," shall mean the Lord High Admiral for the time being of the United Kingdom of Great Britain and Ireland, and when there shall be no such Lord High Admiral in office any two or more of the Commissioners for executing the office of Lord High Admiral of the United Kingdom;

"Officer" shall mean an officer belonging to one of His Majesty's ships, and shall include a subordinate and a warrant officer, other than a warrant officer, Class II of the Royal Marines, and shall include also [an officer holding any such position in the Indian Naval Reserve forces, during and in respect of the time when he is subject to the provisions of this Act] but shall not extend to petty and non-commissioned officers;

When the words "superior officer" are used in this Act they shall be held to include all officers, warrant officers, petty and non-commissioned officers.

87. Every person in or belonging to His Majesty's Navy, and borne on the books of any one of His Majesty's ships in commission and every member of [the Indian Naval Reserve Forces to the extent specified in sec. 4 of the Indian Naval Reserve Forces (Discipline) Act, 1939.] shall be subject to this Act; and all other persons hereby or by any other Act made liable thereto shall be triable and punishable under the provisions of this Act.

Person subject to this Act.

88. His Majesty's land and air forces when embarked on board any His Majesty's ships, shall be subject to the provisions of this Act to such extent and under such regulations as His Majesty, His heirs and successors, by any Order or Orders in Council shall at any time or times direct.

Land and air forces embarked as passengers.

89. All other persons ordered to be received or being passengers on board any of His Majesty's ships shall be deemed to be persons subject to this Act, under such regulations as the Central Government may from time to time direct.

Other persons embarked as passengers.

90. With respect to vessels in His Majesty's service in time of war, whether belonging to His Majesty or not, which are not wholly manned by naval ratings, but being either armed or under the command of an officer in His Majesty's naval service, the following provisions shall take effect if in any case the Central Government thinks fit so to direct, and where such direction is given the same shall be specified in the ship's articles:

LEG. REF.

¹ Substituted by the Indian Naval Forces (Discipline) Act, 1939.

² Substituted by *Ibid.*

SEC. 90: TEMPORARY AMENDMENT UNDER DEFENCE OF INDIA ACT (XXXV OF 1939).—The Indian Navy (Discipline) Act, 1934, shall have effect as if for sec. 90 of the

- (1) Every person borne on the books of any such vessel shall be subject to this Act :
- (2) Any offence committed by any such person shall be tried and punished as the like offence might be tried and punished if committed by any person in or belonging to His Majesty's Navy and borne on the books of any of His Majesty's ships in commission ;
- (3) Every such offender who is to be tried by court-martial shall be placed under all necessary restraint until he can be tried by court-martial :
- (4) On application made to the Central Government or to the Officer Commanding the Indian Navy or senior officer of any of His Majesty's ships or vessels of war abroad authorised to assemble and hold courts-martial, the Central Government, Officer Commanding the Indian Navy, or senior officer (as the case may be) shall assemble and hold a court-martial for the trial of the offender :
- (5) The officer commanding every such vessel shall have the same power in respect of all other persons borne on the books thereof, or for the time being on board the same, as the officer commanding one of His Majesty's ships as for the time being in respect of the officers and crew thereof or other persons on board of the same : Provided that in the absence of the officer commanding such vessel the officer commanding the ship or vessel or station in which such person may for the time being be held in custody shall have such power as aforesaid :
- (6) The Officer Commanding the Indian Navy and senior naval officer in his Majesty's service shall have the same powers over the officers and crew of every such vessel as they have for the time being over the officers and crew of any of His Majesty's ships.

90-A. (1) Where an officer or non-commissioned officer, not below the rank of sergeant, is a member of a body of His Majesty's military forces acting with or is attached to, any body of His Majesty's naval forces under such conditions as may be ¹[or may have been prescribed] by regulations made by the Admiralty and Army Council, then, for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers, he shall, in relation to such body of His Majesty's naval forces as aforesaid, be treated, and may exercise all such powers (other than powers of punishment), as if he were a naval officer or petty officer, as the case may be.

(1-A) Where an officer or non-commissioned officer, not below the rank of sergeant, is a member of a body of His Majesty's air force acting with any body of His Majesty's naval forces ²[under such conditions as may be or may have been prescribed] by regulations made by the Admiralty and Air Force and such officer or non-commissioned officer is not borne on the books of any of His Majesty's ships in commission, then, for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers, he shall, in relation to such body of His Majesty's naval forces as aforesaid, be treated, and may exercise all such powers (other than powers of punishment), as if he were a naval officer or petty officer, as the case may be.

(2) Where any naval officer or seaman is a member of a body of His Majesty's naval forces acting with or is attached to any body of His Majesty's military forces ³[under such conditions as may be or may have been prescribed] by regulations made by the Admiralty or Army Council, then, for the purposes of command and discipline, and for the purposes of the provisions of this Act relating to superior officers, the officers and non-commissioned officers, not below the rank of sergeant, of such military body shall, in relation to him be treated, and may exercise all such powers (other than powers of punishment), as if they were naval officers and petty officers.

(2-A) Where any naval officer or seaman is a member of a body of His Majesty's naval forces acting with any body of His Majesty's air force ⁴[under such conditions as may be or may have been prescribed] by regulations made by the Admiralty and Air Council, then, for the purposes of command and discipline and for the purposes of the provisions of this Act relating to superior officers, the officers and non-commissioned officers, not below the rank of sergeant of such body of the air force shall,

LEG. REF.

¹ Substituted by Ordinances L of 1942.

² Inserted by Act XXX of 1940.

Naval Discipline Act as set forth in the First Schedule to the first named Act the following section had been substituted, namely:—

"90. (1) If any person who would not otherwise be subject to this Act enters into an engagement with the Central Government to serve His Majesty—

(a) in a particular ship, or

(b) in such particular ship or in such ships as the Officer Commanding the Indian Navy, or any officer empowered in this behalf by the Officer Commanding the Indian Navy, may from time to time determine, and agrees to become subject to this Act upon entering into the engagement, that person shall, so long as the engagement re-

mains in force, and notwithstanding that for the time being he may not be serving in any ship, be subject to this Act, and the provisions of this Act shall apply in relation to that person, as if while subject to this Act, he belonged to His Majesty's navy and were borne on the books of one of His Majesty's ships in commission.

(2) The Central Government may by order direct that, subject to such exceptions as may in particular cases be made by or on behalf of the Officer Commanding the Indian Navy, persons of any such class as may be specified in the order shall while subject to this Act by virtue of this section, be deemed to be officers or petty officers, as the case may be, for the purposes of this Act or of such provisions of this Act as may be so specified; and any such order may be varied or revoked by a subsequent order".

—Act XXXV of 1939 sec. 6.

in relation to him, be treated, and may exercise all such powers (other than powers of punishment) as if they were naval officers and petty officers.

(3) The relative rank of naval and military and air force officers, petty officers, and non-commissioned officers shall for the purposes of this section, be such as is provided by the King's Regulations and Admiralty Instructions for the time being in force.

90-B. (1) Any person in or belonging to His Majesty's Navy and any officer or man of the

Provisions respecting naval officers and seamen in ships of self-governing dominions.

Royal Marine, who, by order of the Admiralty or of the Commanding-in-Chief or the Senior Naval Officer present on a foreign station, is serving in a ship of or belonging to the naval forces of a self-governing Dominion or of India (provided such ship is not at the time placed at the disposal of the Admiralty), or in a naval establishment of a self-governing Dominion or of India or who is on board such ship or in such establishment as aforesaid awaiting passage or conveyance to any destination shall, for all purposes of command and discipline, be subject to the laws and customs for the time being applicable to the ships and naval forces of such self-governing Dominion or of India.

(2) For the purposes of this section, the expression "self-governing Dominion" includes the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa and Newfoundland.

90-C. (1) Any person in or belonging to the Indian Navy, who, by order of the Central Govern-

Persons serving in a ship of the Royal or Dominion Navy to be subject to the laws and customs thereof.

ment [or of any Naval officer authorised by the Central Government in this behalf] is serving in a ship belonging to His Majesty's Navy or to the naval forces of a self-governing Dominion [or Burma] or in a naval establishment of His Majesty's Navy or a self-governing Dominion [or Burma] or who is on board any such ship or in any such establishment awaiting passage or conveyance to any destination shall for all purposes of command and discipline, be subject to the laws and customs for the time being applicable, to the Royal Navy or the Ships and naval forces of the self-governing Dominion [or Burma] as the case may be.

(2) For the purposes of this section, the expression "self-governing Dominion" includes the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and Newfoundland.

91. When any one of His Majesty's ships shall be wrecked or lost or destroyed, or taken by

Crews of ships lost or destroyed.

the enemy, such ship shall, for the purposes of this Act, be deemed to remain in commission until her crew shall be regularly removed into some other of His Majesty's ships of war, or until a court-martial shall have been held, pursuant to the custom of the Navy in such cases, to inquire into the cause of the wreck, loss, destruction, or capture of the said ship.

92. When no specific charge shall be made against any officer or seaman or other person in

All the officers and crew of ship may be tried by one court;

the fleet for or in respect or in consequence of such wreck, loss, destruction, or capture, it shall be lawful to try all the officers and crew, or all the surviving officers and crew of any such ship, together before one and the same Court, and to call upon all or any of them when upon their trial to give evidence on oath or affirmation before the Court touching any of the matters then under inquiry but no officer or seaman or other person shall be obliged to give any evidence which may tend to criminate himself.

93. When deemed necessary by the Central Government or any officer authorised to order

or by separate Court.

courts-martial, separate courts-martial shall be held for the trial of some one or more of such officers and crew for or in respect or in consequence of the wreck, loss, destruction, or capture of any such ship.

94. For any offence or offences committed by any officer

For subsequent offences, separate Court.

or seaman, or officers and seamen, after the wreck, loss, destruction or capture of any such ship, a separate Court-martial shall be held for the trial of such offender or offenders.

95. When any ship of His Majesty shall be wrecked, lost, or otherwise destroyed, or taken

Pay of crews of ships lost or taken.

by the enemy, if it shall appear by the sentence of a court-martial that the crew of such ship did, in the case of a ship wrecked or lost, do their utmost to save her or get her off, and in the case of a ship taken by the enemy did their utmost to defend themselves, and that they have, since the wreck, destruction, loss, or capture of such ship, behaved themselves well, and been obedient to their officers, then all the pay of such crews, or of such portions of such crews as have behaved themselves well and been obedient to their officers shall be continued until the time of their being discharged or removed into other ships of His Majesty, or dying.

96. If the ship of any officer ordered to command any two or more of His Majesty's ships shall

When ship of senior officer is lost he may dispose of officers and crew of lost ship.

ship under his command or to distribute them among the other ships under his command, if more than one, and such officer shall, until he meets with some other officer senior to himself, have the same power and authority in all respects as if his ship had not been wrecked, lost, or destroyed.

97. It shall not be lawful for any person to arrest any petty officer or seaman, non-commissioned

Restriction on arrest of seamen, etc. for debt.

before the issuing of the warrant, process, or writ, the plaintiff, in the suit or some person on his behalf has made an affidavit in the Court out of which it is issued, that the debt justly due to the plaintiff (over and above all costs) was contracted at a time when the debtor did not belong to His Majesty's service, nor unless a memorandum of such affidavit is marked on the back of the warrant, process, or writ.

98. If any petty officer or seaman, non-commissioned officer or marines or marine, is arrested

Discharge from arrest.

superior officer, investigate the case on oath or otherwise, and if satisfied that the arrest was made in contravention of the provisions of the last foregoing section, may make an order for the immediate discharge of the party arrested, without fee, and may award to the complainant the costs of his complaint, to be taxed by the proper officer, for the recovery whereof he shall have the like remedy as the plaintiff in the suit would have on judgment being given in his favour, with costs.

98-A. (1) A person subject to this Act shall be liable to contribute to the maintenance of his

Liability of seamen, etc., for maintenance of wives and children.

wife and of his children, legitimate or illegitimate to the same extent as if he were not so subject; but execution in respect of any such liability or of any decree or order in respect of such maintenance shall not issue against his person, pay, arms, ammunition, equipments, instruments, or clothing.

(2) Where—

(a) It appears to the satisfaction of the Central Government or any person deputed by [it] for the purpose that a person subject to this Act has deserted or left in destitute circumstances, without reasonable cause, his wife or any of his legitimate children under fourteen years of age; or

(b) any decree or order is made under any law for payment by a man who is or subsequently becomes subject to this Act either of the cost of the maintenance of his wife or child, or of the cost of any relief given to his wife or child by way of loan, and a copy of such decree or order is sent to the Central Government or any person deputed by [it] for the purpose; the Central Government or any person so deputed may direct to be deducted from the pay of the person so subject to this Act, and to be appropriated towards the maintenance of his wife or children, or in liquidation of the sum adjudged to be paid by such decree or order, as the case may be, in such manner as the Central Government or the person so deputed may think fit, a portion of such pay, at [its or his] discretion, but the amount deducted shall not exceed the amount fixed by the decree or order (if any) and shall not be higher rate than the rates fixed by rules made in this behalf by the Central Government:

Provided that no such deductions, from pay in liquidation of a sum adjudged to be paid by a decree or order as aforesaid shall be ordered unless the Central Government or the person deputed by [it] is satisfied that the person against whom the decree or order was made has had a reasonable opportunity of appearing himself, or has appeared by a duly authorised legal representative, to defend the case before the Court by which the decree or order was made, and a certificate purporting to be a certificate of the commanding officer of the ship on which he was or is serving, or on the books of which he was or is borne, that the person has been prevented, by the requirements of the service from attending at a hearing of any such case shall be evidence of the fact unless the contrary is proved.

Where any arrears have accumulated in respect of sums adjudged to be paid by any such decree or order as aforesaid whilst the person against whom the decree or order was made was serving under this Act, whether or not deductions in respect thereof have been made from his pay under this section, then after he has ceased so to serve an order of committal shall not be made in respect of those arrears unless the Court is satisfied that he is able, or has, since he has ceased so to serve, been able, to pay the arrears or any part thereof and has failed to do so.

(3) Where a proceeding under any law is instituted against a person subject to this Act for the purpose of enforcing against him any such liability as above in this section mentioned, the process may be served on the commanding officer of the ship on which he is serving or on the books of which such person is borne, or where, by reason of the ship being at sea or otherwise, it is impracticable to serve the process on such commanding officer, the process may, after not less than three weeks' notice to the Central Government, be served by being sent to a Secretary to the Central Government for transmission to such commanding officer, but such service shall not be valid unless there is left therewith in the hands of such commanding officer or Central Government such sum of money,

if any (to be adjudged as costs incurred in obtaining the decree or order if made against the person on whom the process is issued), as may be fixed by the Central Government as being necessary to enable him to attend the hearing of the case and to return to his ship or quarters, and such sum may be expended by the commanding officer for that purpose, and no process whatever under any law in any proceeding in this section mentioned shall be valid against a person subject to this Act if served after such person is under orders for service on a foreign station.

The production of a certificate of the receipt of the process purporting to be signed by such commanding officer as aforesaid shall be evidence that the process has been duly served unless the contrary is proved.

Where, by a decree or order sent to the Central Government or officer in accordance with sub-section (2) of this section, the person against whom the decree or order is made is adjudged to pay as costs incurred in obtaining the decree or order any sum so left with the process as aforesaid, the Central Government may cause a sum equal to the sum so left to be paid in liquidation of the sum so adjudged to be paid as costs, and the amount so paid by the Central Government shall be a public debt from the person against whom the decree or order was made, and without prejudice to any other method of recovery may be recovered by a reduction from his pay, in addition to those mentioned in sub-section (2) of this section.

(4) This section shall not apply to persons subject to this Act where such persons are officers.

(5) In this section the expression "pay" includes all sums payable to a man in respect of his services other than allowances in lieu of lodgings, rations, provisions, and clothing.

PART VII.

SAVING CLAUSE.

* * * * *
100. Nothing in this Act shall take away, abridge, or control, further or otherwise than as expressly provided by this Act, any right, power, or prerogative of His Majesty the King in right of His Crown, or in right of His Office of Admiralty or any right or power of the Admiralty.

101. Nothing in this Act contained shall be deemed or taken to supersede or affect the authority or power of any Court or tribunal of ordinary civil or criminal jurisdiction, or any officer thereof, in His Majesty's dominions, in respect of any offence mentioned in this Act which may be punishable or cognizable by the common or statute law, or to prevent any person being proceeded against and punished in respect of any such offence otherwise than under this Act.

PART VIII.

PRINTING CLAUSE.

102. (1) Every enactment and word which is directed by any Act amending this Act to be substituted for or added to any portion of this Act shall form part of this Act in the place assigned to it by the Amending Act, and this Act and all Acts which refer thereto shall, after the commencement of the amending Act, be construed as if that enactment or word had been originally enacted in this Act in the place so assigned, and, where it is substituted for another enactment or word, had been so enacted in lieu of that enactment or word, and as if this Act had been enacted with the omission of any enactment or word which is directed by the amending Act to be repealed or omitted from this Act, and the expression "this Act" shall be construed accordingly.

(2) A copy of this Act with every such enactment and word inserted in the place so assigned and with the omission of any portion of this Act directed by any such amending Act, as aforesaid to be repealed or omitted from this Act, shall be prepared and certified by the Clerk of the Parliament and deposited with the rolls of Parliament, and His Majesty's printers shall print in accordance with the copy so certified all copies of this Act which are printed after the commencement of such amending Act.

(3) A reference in any enactment, Order in Council, or other document, to the Naval Discipline Act shall, unless the context otherwise requires, be construed as a reference to this Act as amended by any enactment for the time being in force.

THE SCHEDULE.

ENACTMENTS REPEALED.

11 Geo 4 & 1 Will. 4 c. 20, in part.	An Act to amend and consolidate the laws relating to the pay of the Royal Navy. <i>Section eighty.</i>	} in part; namely:—
10 & 11 Vict. c. 62, in part.	An Act for the establishment of naval prisons, and for the prevention of desertion from Her Majesty's navy. <i>Section eleven.</i>	
27 & 28 Vict. c. 119	.. The Navy Discipline Act, 1864.	
28 & 29 Vict. c. 115	.. The Naval Discipline Act Amendment Act, 1865.	

THE SECOND SCHEDULE.

[Repealed by Act I of 1938].

THE NAVAL DISCIPLINE ORDINANCE (VII OF 1945).

An Ordinance to make certain previous provisions for the discipline of persons subject to the Indian Army Act, 1911, or the Indian Air Force Act, 1932, when embarked on a naval vessel.

WHEREAS an emergency has arisen which makes it necessary to make certain provisions for the discipline of persons subject to the Indian Army Act, 1911 (VIII of 1911), or the Indian Air Force Act, 1932 (VIII of 1932), when embarked on a naval vessel;

NOW, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935 (26, Geo. 5, c. 2), the Governor-General is pleased to make and promulgate the following Ordinance:

1. (1) This Ordinance may be called the NAVAL DISCIPLINE

Short title and commencement. ORDINANCE, 1945.

(2) It shall come into force at once.

2. Any person subject to the Indian Army Act, 1911 (VIII of 1911), or the Indian Air Force Act, 1932, (XIV of 1932), when embarked on board any ship of His Majesty's Navy shall be subject to the provisions of the Naval

Discipline of military and air force personnel on board naval vessels.

Discipline Act (29 and 30, Vict. c. 109), and when embarked on board any ship to the Indian Navy, to the provisions of the Naval Discipline Act as applied to the Indian Navy by the Indian Navy

(Discipline) Act, 1934 (XXXIV of 1934) to such extent and under such regulations as the Central Government shall at any time or times direct.

THE NORTHERN INDIA FERRIES ACT (XVII OF 1878).**CONTENTS.****PREAMBLE.****I.—PRELIMINARY.****SECTIONS.**

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22. Penalty for taking unauthorised toll, and for causing delay.

23. Penalty for breach of rules made under secs. 12 and 19.

24. Cancellation of lease on default or breach of rules.

25. Penalties on passengers offending.

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27. Fines payable to lessees.

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36. [Repealed.]

[Amended by Acts 38 of 1920; 3 of 1886; 23 of 1937; 2 of 1901 and Reg. 7 of 1901; Punj. Act, 20 of 1883; U. P. Act 14 of 1883; C. P. Act I of 1883; Assam Act 8 of 1926.]

[9th November, 1878.

An Act to regulate Ferries in Northern India.

WHEREAS it is expedient to regulate ferries in the Punjab, the North-Western Provinces, Oudh, Central Provinces, Assam, and Ajmer and Merwara; It is hereby enacted as follows:—

I.—PRELIMINARY.

Short title.

1. This Act may be called THE NORTHERN INDIA FERRIES ACT, 1878.

Local extent.

It extends only to the territories respectively administered by the Lieutenant-Governors of the Punjab and the North-Western Provinces and the Chief Commissioners of Oudh, the Central Provinces, Assam, and Ajmer and Merwara.

Commencement.

It shall come into force² in each of the said territories on such date as the Provincial Government may, by notification in the Official Gazette, fix in this behalf.

2. [*Repealed.*] *Repealed by the Repealing Act (I of 1938), S. 2 and Sch.*

3. In this Act the word "ferry" includes also a bridge of boats, pontoons or rafts, a swing-bridge, a flying-bridge and a temporary bridge, and the approaches to, and landing-places of, a ferry.

Interpretation-clause.

II.—PUBLIC FERRIES.

Power to declare, establish, define and discontinue public ferries.

4. The Provincial Government may from time to time—

(a) declare what ferries shall be deemed public ferries, and the respective districts in which, for the purposes of this Act, they shall be deemed to be situate;

(b) take possession of a private ferry and declare it to be a public ferry;

(c) establish new public ferries where, in its opinion, they are needed;

(d) define the limits of any public ferry;

(e) change the course of any public ferry; and

(f) discontinue any public ferry which it deems unnecessary.

Every such declaration, establishment, definition, change or discontinuance shall be made by notification in the official Gazette:

³[Provided that, when a river lies between two provinces, the powers conferred by this section shall, in respect of such river, be exercised jointly by

LEG. REF.

¹ At present corresponds to the Punjab, the N.W.F.P., the U.P., the C.P., Assam and Ajmer-Merwara.

² The Act was brought into force in the Punjab on 1st April, 1881, *See* Punjab Gazette, Pt. I, p. 139; the U. P. on the 1st January, 1879, *see* North-Western Provinces and Oudh Gazette, 1878, Pt. I, p. 2035; Assam on 1st April, 1879, *see* Assam Gazette, 1879, Pt. I, p. 187.

In the Act as applicable to Ajmer-Merwara—

(a) in section 4 for the words "the Commissioner of the Division in which such ferry is situate" the words "the Deputy Commissioner" shall be substituted.

(b) in sections 8 and 11 for the word "Commissioner" the words "Deputy Commissioner" shall be substituted.

(c) in section 12 for the words "the Commissioner of a division" the words "the Deputy Commissioner" shall be substituted,

the words "within such division" in clause (a) shall be omitted, and for the word "Commissioner" where it occurs for the second and third time the words "Deputy Commissioner" shall be substituted.

(d) in sections 15, 16, 19, 24 and 31, for the words "the Commissioner of the division" the words "the Deputy Commissioner" shall be substituted. (Act VI of 1945.)

³ For list of ferries declared to be public ferries in the Punjab, *see* Punjab Local Rules and Orders; for the North-West Frontier Province, *see* Gazette of India, 1915, Pt. I, p. 92.

⁴ For notifications transferring ferries from one district to another, *see* Punjab Local Rules and Orders.

⁵ For notifications ordering the discontinuance of ferries, *see* Punjab Local Rules and Orders.

⁶ Substituted for the original proviso by the Devolution Act (XXXVIII of 1920), sec. 2 and First Schedule.

the Provincial Governments of those provinces by notifications in their respective official Gazettes¹* * *].

Provided also that, when any alteration in the course or in the limits of a public ferry is rendered necessary by changes in the river, such alteration may be made, by an order under his hand, by the ²Commissioner of the Division in which such ferry is situate, or by such other officer as the Provincial Government may, from time to time, appoint by name or in virtue of his office in this behalf.

5. Claims for compensation for any loss sustained by any person in consequence of a private ferry being taken possession of under section 4 shall be inquired into by the Magistrate of the district in which such ferry is situate, or such officer as he appoints in this behalf, and submitted for the consideration and orders of the Provincial Government.

6. The immediate superintendence of every public ferry shall, except as provided in section 7 ³[and section 7-A] be vested in the Magistrate of the district in which such ferry is situate, or in such other officer as the Provincial Government may, from time to time, appoint by name or in virtue of his office in this behalf,

and such Magistrate or officer shall, except when the tolls at such ferry are leased, make all necessary arrangements for the supply of boats for such ferry, and for the collection of the authorised tolls leviable thereat.

7. The Provincial Government may direct that any public ferry situate within the limits of a town be managed by the officer or public body charged with the superintendence of the municipal arrangements of such town;
[and thereupon the ferry shall be managed accordingly.]

⁴7-A. The Provincial Government may direct that any public ferry, wholly or partly within the area subject to the authority of a District Council or a District Board or a Local Board in the Province be managed by that Council or Board, and thereupon that ferry shall be managed, accordingly.

⁵[8. The tolls of any public ferry may, from time to time, be let by public auction for a term not exceeding five years with the approval of the ⁶Commissioner, or by public auction, or otherwise than by public auction, for any term with the previous sanction of the Provincial Government.

The lessee shall conform to the rules made under this Act for the management and control of the ferry, and may be called upon by the officer in whom the immediate superintendence of the ferry is vested, or, if the ferry is managed by a municipal or other public body under section 7 or section 7-A.

LEG. REF.

¹ The words "and in any case where the said Local Governments fail to agree as regards the exercise of any such power, they shall exercise such power subject to the control of the Governor-General in Council" repealed by A.O., 1937.

² In the North-West Frontier Province, for "Commissioner of the Division" read "Revenue Commissioner." See sec. 6 (1) (f) of Regulation VII of 1901.

³ These words in sec. 6 were added by the Punjab District Boards Act (XX of 1883), sec. 79 in the Punjab; in the U. P. by the U. P. Local Boards Act (XIV of 1883), sec. 65; in the C. P. by C. P. Act I of 1883,

sec. 44; and in Assam by Assam Act VIII of 1926, sec. 43.

⁴ Substituted by the A.O., 1937 for "and may further.....paid, accordingly".

⁵ Substituted by *ibid.*, for old sec. 7-A. The section is inapplicable to Ajmer-Merwara.

⁶ This section was substituted for the original sec. 8 by the Northern India Ferries (Amendment) Act (III of 1886), sec. 1.

⁷ In the N.W.F.P. References to "Commissioner" or "Commissioner of a Division" are to be construed as referring to Revenue Commissioner. See the N.W.F.P. Law and Justice Reg. (VII of 1901), sec. 1 (f).

then by that body, to give such security for his good conduct and for the punctual payment of the rent as the officer or body, as the case may be, thinks fit.

When the tolls are put up to public auction, the said officer or body, as the case may be, or the officer conducting the sale on his or its behalf, may, for reasons recorded in writing, refuse to accept the offer of the highest bidder, and may accept any other bid, or may withdraw the tolls from auction.]

9. All arrears due by the lessee of the tolls of a public ferry on account of his lease may be recovered from the lessee or his surety (if any) by the Magistrate of the district in which such ferry is situate as if they were arrears of land-revenue.

10. The Provincial Government may cancel the lease of the tolls of any public ferry on the expiration of six months' notice in writing to the lessee of its intention to cancel such lease.

When any lease is cancelled under this section, the Magistrate of the district in which such ferry is situate shall pay to the lessee such compensation as such Magistrate may, with the previous sanction of the Provincial Government award.

11. The lessee of the tolls of a public ferry may surrender his lease on the expiration of one month's notice in writing to the Provincial Government of his intention to surrender such lease, and on payment to the Magistrate of the district in which such ferry is situate of such compensation as such Magistrate, subject to the approval of the Commissioner, may in each case direct.

12. Subject to the control of the Provincial Government the Commissioner of a division, or such other officer as the Provincial Government may, from time to time, appoint in this behalf, by name or in virtue of his office, may, from time to time, make rules consistent with this Act—

(a) for the control and the management of all public ferries within such division and for regulating the traffic at such ferries;

³[(b) for regulating the time and manner at and in which, and the terms on which, the tolls of such ferries may be let by auction, and prescribing the persons by whom auctions may be conducted;]

(c) for compensating persons who have compounded for tolls payable for the use of any such ferry when such ferry has been discontinued before the expiration of the period compounded for; and

(d) generally to carry out the purposes of this Act; and, when the tolls of a ferry have been let under section 8, such Commissioner or other officer may, from time to time, (subject as aforesaid), make additional rules consistent with this Act—

(e) for collecting the rents payable for the tolls of such ferries;

(f) in cases in which the communication is to be established by means of a bridge of boats, pontoons or rafts, or a swing-bridge, flying-bridge, or temporary bridge, for regulating the time and manner at and in which such bridge shall be constructed and maintained and opened for the passage of vessels and rafts through the same, and

(g) in cases in which the traffic is conveyed in boats, for regulating (1)

LEG. REF.

¹ In the North-West Frontier Province, references to "Commissioner" or "Commissioner of a division" are to be construed as referring to the Revenue Commissioner. See the North-West Frontier Province Law and Justice Regulation (VII of 1901) sec. 1 (f).

² These words are repealed in the North-

West Frontier Province. See sec. 3 of the North-West Frontier Province Law and Justice Regulation (VII of 1901).

³ This clause of sec. 12 was substituted for the original cl. (b) by the Northern India Ferries Amendment Act (III of 1886), sec. 1 (2).

the number and kind of such boats and their dimensions and equipment; (2) the number of the crew to be kept by the lessee for each boat; (3) the maintenance of such boats continually in good condition; (4) the hours during which, and the intervals within which, the lessee shall be bound to ply; and (5) the number of passengers, animals and vehicles, and the bulk and weight of other things, that may be carried in each kind of boat at one trip.

The lessee shall make such returns of traffic as the Commissioner or other officer as aforesaid may, from time to time, require.

13. ²[Except with the sanction of the Magistrate of the district or of

Private ferry not to ply within two miles of public ferry without sanction.

such other officer as the Provincial Government may, from time to time, appoint in this behalf, by name or in virtue of his office, no person shall establish, maintain or work a ferry to or from any point

within a distance of two miles from the limits of a public ferry]:

Provided that, in the case of any specified public ferry, the Provincial Government may, by notification in the official Gazette, reduce or increase the said distance of two miles to such extent as it thinks fit:

Provided also that nothing hereinbefore contained shall prevent persons plying between two places, one of which is without, and one within, the said limits, when the distance between such two places is not less than three miles, or apply to boats ³[which do not ply for hire, or] which the Provincial Government expressly exempts from the operation of this section.⁴

Person using approaches, etc., liable to pay toll.

14. Whoever uses the approach to, or landing place of, a public ferry is liable to pay the toll payable for crossing such ferry.

15. ⁵Tolls, according to such rates as are, from time to time, fixed by the

Tolls.

Provincial Government, shall be levied on all persons, animals, vehicles and other things crossing any river by a public ferry and not employed or transmitted on the public service:

Provided that the Provincial Government may, from time to time declare that any persons, animals, vehicles or other things shall be exempt from payment of such tolls.

Where the tolls of a ferry have been let under section 8, any such declaration, if made after the date of the ⁶[lease], shall entitle the lessee by such abatement of the rent payable in respect of the tolls as may be fixed by the Commissioner of the division or such other officer as the Provincial Government may, from time to time, appoint, in this behalf by name or in virtue of his office.

LEG. REF.

The original clause was as follows:—

“(b) for regulating the time and manner at and in which, the terms on which, and the persons by whom, the tolls of such ferries may be let by auction.”

¹See footnote 1, p. 1033, *supra*.

²Para. 1 of sec. 13 was substituted for the original para. 1 by the Northern India Ferries (Amendment) Act, 1886 (III of 1886), sec. 2 (1).

The original paragraph was as follows:—

“No person shall, except with the sanction of the officer charged with the superintendence of a public ferry, keep a ferry-boat for the purpose of plying for hire to or from any point within a distance of two miles from the limits of such public ferry.”

³These words in sec. 13 were added by Act III of 1886, sec. 2 (2).

⁴An explanation has been added to sec. 13 by C. P. Act XXIII of 1937 in the Central

Provinces.

⁵So much of sec. 15 is repealed as provides for the exemption from tolls of any person, animals, vehicles or other things exempted by sec. 3 of the Indian Tolls (Army) Act (II of 1901).

For list of tolls leviable on ferries in the Punjab and for exemption from such tolls in certain cases, see Punjab Local Rules and Orders. For exemption in respect of the Nowshera bridge of boats, see *Gazette of India*, 1906, Pt. II, p. 519.

⁶In sec. 15 “lease” was substituted for “auction” by the Northern India Ferries (Amendment) Act, 1886 (III of 1886), sec. 1.

SEC. 14: APPROACH, MEANING OF, includes an approach from the highway to the landing place. It is not limited to the distance between the landing place and the river bank. 144 I. C. 662=1933 L. 890.

16. The lessee or other person authorised to collect the tolls of any public ferry shall affix a table of such tolls, legibly written or printed in the vernacular language and, also if the Commissioner of the division so directs, in English in some conspicuous place near the ferry,

and shall be bound to produce, on demand, a list of the tolls, signed by the Magistrate of the district or such other officer as he appoints in this behalf.

List of tolls.

Tolls, rents, compensation and fines are to form part of revenues of province.

¹[17. All tolls, rents, compensation and fines under this Act (other than tolls received by any lessee) shall form part of the revenues of the Province.]

18. The Provincial Government may, if it thinks fit, from time to time, fix rates at which any person may compound for the tolls payable for the use of a public ferry.

Compounding for tolls.

III.—PRIVATE FERRIES.

19. The Commissioner of the division may, with the previous sanction of the Provincial Government from time to time, make rules for the maintenance of order and for the safety of passengers and property at ferries other than public ferries.

Power to make rules.

20. The tolls charged at such ferries shall not exceed the highest rates for the time being fixed under section 15 for similar public ferries.

Tolls.

IV.—PENALTIES AND CRIMINAL PROCEDURE.

21. Every lessee or other person authorised to collect the tolls of a public ferry, who neglects to affix and keep in good order and repair the table of tolls mentioned in section 16,

or who wilfully removes, alters or defaces such table, or allows it to become illegible,

or who fails to produce on demand the list of the tolls mentioned in section 16,

and every lessee who neglects to furnish any return required under section 12,

shall be punished with fine which may extend to fifty rupees.

22. Every such lessee or other person as aforesaid and any person in possession of a private ferry asking or taking more than the lawful toll, or without due cause delaying any person, animal, vehicle or other thing, shall be punished with fine which may extend to one hundred rupees.

Penalty for taking unauthorised toll and for causing delay.

Penalty for breach of rules made under sections 12 and 19.

or with both.

23. Every person breaking any rule made under section 12 or section 19 shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees,

24. When any lessee of the tolls of a public ferry makes default in the payment of the rent payable in respect of such tolls, or has been convicted of an offence under section 23 or, having been convicted of an offence under section 21, or section 22, is again convicted of an offence under either of those sections,

LEG. REF.
¹ Substituted for the original section by A.O., 1937.

² See foot-note 1 at p. 1033, *supra*.

SEC. 22.—Under this section it is an offence for a lessee to ask or take more than the lawful toll. It is no offence to ask for or take less. See 65 P.R. 1887 (Cr.).

the Magistrate of the district may, with the sanction of the ¹Commissioner of the division, cancel the lease of the tolls of such ferry, and make other arrangements for its management during the whole or any part of the term for which the tolls were let.

Penalties on passengers offending.

25. Every person crossing by any public ferry, or using the approach to, or landing place thereof, who refuses to pay the proper toll, and every person—

who, with intent to avoid payment of such toll, fraudulently or forcibly crosses by any such ferry without paying the toll, or

who obstructs any toll-collector or lessee of the tolls of a public ferry or any of his assistants in any way in the execution of their duty under this Act, or

who, after being warned by any such toll-collector, lessee or assistant not to do so, goes or takes any animals, vehicles or other things into any ferry-boat, or upon any bridge at such a ferry, which is in such a state or so loaded as to endanger human life or property, or

who refuses or neglects to leave, or remove any animals, vehicles or goods from, any such ferry-boat or bridge, on being requested by such toll-collector, lessee or assistant to do so, shall be punished with fine which may extend to fifty rupees.

²[26. Whoever establishes, maintains or works a ferry in contravention of the provisions of section 13 shall be punished with fine which may extend to five hundred rupees, and with a further fine which may extend to one hundred rupees for every day during which the ferry is maintained or worked in contravention of those provisions.]

Penalty for maintaining private ferry within prohibited limits.

27. Where the tolls of any public ferry have been let under the provisions hereinbefore contained, the whole or any portion of any fine realised under section 25 or section 26 may, notwithstanding anything contained in section 17, be at the discretion of the convicting Magistrate or Bench of Magistrates, paid to the lessee.

28. Whoever navigates, anchors, moors or fastens any vessel or raft, or stacks any timber, in a manner so rash or negligent as to damage a public ferry shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both: and the toll-collector or lessee of the tolls of such ferry, or any of his assistants may seize and detain such vessel, raft or timber pending the inquiry and assessment hereinafter mentioned.

Power to arrest without warrant.

29. The police may arrest without warrant any person committing an offence against section 25 or section 28.

30. Any Magistrate or Bench of Magistrates having summary jurisdiction under Chapter XVIII of the ³Code of Criminal Procedure, may try any offence against this Act in manner provided by that Chapter.

31. Every Magistrate or Bench of Magistrates trying any offence under this Act may inquire into and assess the value of the damage (if any) done or caused by the offender to the ferry concerned, and shall order the amount of such value to be paid by him in addition to any fine imposed upon him under

LEG. REF.

¹ In the North-West Frontier Province for "Commissioner of the division" read "Revenue Commissioner". See sec. 6 (1) (f) of the North-West Frontier Province Law and Justice Regulation (VII of 1901).

² Sec. 26 was substituted for the original sec. 26 by the Northern India Ferries (Amendment) Act (III of 1886), sec. 2.

³ See now the Code of Criminal Procedure (V of 1898), Ch. 22.

this Act; and the amount so ordered to be paid shall be leviable as if it were a fine, or, when the offence is one under section 28, by the sale of the vessel, raft or timber causing the damage, and of any thing found in or upon such vessel or raft.

The ¹Commissioner of the division may, on the appeal of any person deeming himself aggrieved by an order under this section, reduce or remit the amount payable under such order.

V.—MISCELLANEOUS.

32. When the lease of the tolls of any ferry is surrendered under section 11 or cancelled under section 24, the Magistrate of the district may take possession of all boats and their equipment and all other material and appliances used by the lessee for the purposes of such ferry, and use the same (paying such compensation for the use thereof as the Provincial Government may in each case direct) until such Magistrate can conveniently procure proper substitutes therefor.

33. When any boats or their equipment or any materials or appliances suitable for setting up a ferry, are emergently required for facilitating the transport of officers, or troops of Her Majesty on duty, or of any other persons on the business of Her Majesty, or of any animals, vehicles or baggage belonging to such officers, troops or persons or of any property of Her Majesty, the Magistrate of the district may take possession of and use the same (paying such compensation for the use thereof as the ²[Central Government where the transport is in connection with the affairs of the Central Government, and the Provincial Government in other cases] may in each case direct) until such transport is completed.

34. No suit to ascertain the amount of any compensation payable, or abatement of rent allowable, under this Act shall be cognizable by any Civil Court.

35. The Provincial Government may, from time to time, delegate,³ under such restrictions as it thinks fit, any of the powers conferred on it by this Act to any ¹Commissioner of a division or Magistrate of a district, or to such other officer as it thinks fit, by name or by virtue of his office.

36. [Validation of proceedings since repeal of Regulation VI of 1891 in Punjab.] Rep. by the Amending Act, 1891 (XII of 1891).

THE INDIAN OATHS ACT (X OF 1873).⁴

Year.	No.	Short title.	Amendments.
1873	X	The Indian Oaths Act.	Repealed in part, XII of 1873; XII of 1876; VI of 1900, S. 48; I of 1938; amended, VI of 1919, S. 2; X of 1927; XXXVX of 1934; XXXIX of 1939.

LEG. REF.

¹ In the North-West Frontier Province for "Commissioner" and "Commissioner of the division" read "Revenue Commissioner." See sec. 6 (1) (f) of the North-West Frontier Province Law and Justice Regulation (VII of 1901).

² Substituted by A.O., 1937, for "Local Government."

³ For notification delegating to District Magistrates the power to compound for

tolls payable at public ferries, see Punjab Local Rules and Orders.

⁴ For the Statement of Objects and Reasons, see Gazette of India, 1873, Pt. V, p. 17; for proceedings in Council, see *ibid.*

SECS. 34 AND 35.—Suit for refund of money wrongfully recovered by one side or the other—Jurisdiction of Civil Court not barred. 144 I.C. 662=1933 L. 890.

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13. Proceedings and evidence not invalidated by omission of oath or irregularity.
14. Persons giving evidence bound to state the truth.
15. [*Repealed.*]
16. Official oaths abolished.

SCHEDULE.—[*Repealed.*]

[8th April, 1873.]

An Act to consolidate the law relating to judicial oaths, and for other purposes.

WHEREAS it is expedient to consolidate the law relating to judicial oaths, affirmations and declarations, and to repeal the law relating to official oaths, affirmations and declarations:

Preamble.

It is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be called THE INDIAN OATHS ACT, 1873.

LEG. REF.

1872, Supplement. p. 889; *ibid.*, 1873, Supplement, pp. 3, 233, 235 to 246, 281, 395 and 410; *ibid.*, 1873, Extra Supplement, pp. 1 to 8.

For civil rules of practice made by the High Court of Madras under this Act, the Code of Civil Procedure (Act XIV of 1882) and certain other Acts, for observance by subordinate Civil Courts in that presidency except the Small Cause Court at Madras, see Fort St. George Gazette, 1905, Supplement, p. 1.

Act X of 1873 has been declared in force in—

the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (III of 1872), sec. 3, as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (III of 1899), B. and O. Code, Vol. I;

the Arakan Hill District by the Arakan Hill District Laws Regulation, 1916 (I of 1916), sec. 2. Bur. Code, Vol. I;

Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), sec. 4 (1) and Sch. I, Bur. Code, Vol. I;

British Baluchistan by the British Baluchistan Laws Regulation, 1913 (II of 1913), sec. 3 Bal. Code;

Angul District (with an exception) by the Angul Laws Regulation, 1913 (III of 1913),

sec. 3 B. and O. Code, Vol. I;

Pargana of Manpur by the Manpur Laws Regulation, 1926 (II of 1926), sec. 2.

It has further been declared, by notification under sec. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts, namely:—

The Districts of Hazaribagh, Lohardaga and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum. The District of Lohardaga then included the Palamu District, separated in 1894; Lohardaga is now called the Ranchi District, see Calcutta Gazette, (1899, Pt. I, p. 44)—See Gazette of India, 1891, Pt. I, p. 504.

The North-Western Provinces Tarai—See Gazette of India, 1876, Pt. I, p. 505.

The Scheduled Districts in Ganjam and Vizagapatam—See Fort St. George Gazette, 1898, Pt. I, p. 666 and Gazette of India, 1898, Pt. I, p. 869.

It has been extended, by notification under sec. 5 of the same Act, to the Scheduled District of Coorg.—See Gazette of India, 1876, Pt. I, p. 417.

SEC. 1.—Oaths Act cannot abrogate the provisions of the Evidence Act. 1926 N. 194; 90 I.C. 378. Form of oath—When binding. See L.R. 5 A. 147 (Rev.). Power of Court to go into evidence when party.

Local extent. It extends to the whole of British India, and, so far as regards ¹[British subjects to all Indian States].

[Commencement.] Repealed by the Repealing Act, 1876 (XII of 1876).

2. [Repeal of enactments.] Repealed by the Repealing Act, 1873 (XII of 1873).

3. Nothing herein contained applies to proceedings before courts-martial, or to oaths, affirmations or declarations prescribed ²[by or under any Instruction under the Royal Sign Manual of His Majesty or] by any law which ³[no legislature or authority in British India has power to repeal].

II.—Authority to administer Oaths and Affirmations.

4. The following Courts and persons are authorized to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law:—

(a) all Courts and persons having by law or consent of parties authority to receive evidence;

(b) the Commanding officer of any military ⁴[naval], ⁵[or air force] station ¹[or ship] occupied by troops in the service of Her Majesty:

Provided—

(1) that the oath or affirmation be administered within the limits of the station, and

(2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in British India.

LEG. REF.

¹ Substituted for “subjects of Her Majesty to the territories of Native Princes and States in alliance with Her Majesty” by A. O., 1937.

² Inserted by the Act VI of 1919, sec. 2,* see the Indian Articles of War Act (V of 1869); the Indian Volunteers Act (XX of 1869); and the Indian Marine Act (XIV of 1887).

³ Substituted by A.O., 1937, for “under the provisions of the Indian Councils Act, 1861, the Governor-General in Council has not power to repeal”.

⁴ Inserted by Act XXXV of 1934, sec. 2 and Sch.

⁵ Inserted by Act X of 1927, sec. 2 and Sch.

agrees to abide by opponent's oath. 1924 A. 126. An application for an oath under the Act must be one without any conditions, such as if the Court does not hold the evidence to be sufficient then defendants should take an oath. It is not open to a party to ask the Court to adjudicate and if the Court adjudicates against them then ask the Court to start a separate proceeding under the Oaths Act. 138 I.C. 606=1932 A.L.J. 481=1932 A. 404. Evidence given under special oath is conclusive only as against the person who offers to be bound by it. 82 I. C. 359=26 Bom.L.R. 713=25 Cr.L.J. 1287=1924 Bom. 511. Oath affecting third person—Whether admissible—Failure to take oath on the day fixed—Decision by Court without calling for further evidence. 88

I.C. 448=23 A.L.J. 513. Where the complainant offers to be bound by the statement made by the accused, if he made the statement after walking several steps towards the Ganges and the accused made the statement under these conditions, the statement being made on oath was conclusive proof of the facts set forth in it. L.R. 5 A. 147 (Rev.). A party may have a perfectly true case and yet for peculiar reasons be unwilling to bind his conscience by a particular form of oath. The refusal to take the oath in such cases can be considered merely as a piece of evidence and as not proving the falsity of that party's claim. (22 B. 680, relied on). 32 P.L.R. 716. Agreement by parties to abide by the statement of the referee—Re-examination of referee proper. See 48 A. 276=1926 A. 266.

SEC. 4: CASE-LAW.—All Courts are authorized to administer oaths and affirmation. 34 P.R. 1916 (Cr.); 36 I.C. 171. Though the Act extends to the territories of Native Princes and States in alliance with His Majesty so far as regards the subject of His Majesty, the Vyara Court in the Baroda State cannot be treated as a Court within the meanings of secs. 4 and 14 of the Act, in relation to proceedings which were held before that Court entirely under the law of that State, and which had nothing to do with any proceedings in British India or under the law in force in British India. 47 Bom. 907=25 Bom.L.R. 772=25 Cr.L.J. 333=1924 Bom. 51.

III.—Persons by whom Oaths or Affirmations must be made.

Oaths or affirmations to be made by— 5. Oaths or affirmations shall be made by the following persons:—

- (a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence;
- (b) interpreters of questions put to, and evidence given by, witnesses; and
- (c) jurors.

³[Provided that where the witness is a child under twelve years of age, and the Court or person having authority to examine such witness is of opinion that, though he understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and the provisions of section 6 shall not apply to such witness, but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.]

Nothing herein contained shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

LEG. REF.

¹ Inserted by Act XXXIX of 1939, sec. 2.

SEC. 5: APPLICABILITY.—Sec. 5 was intended to apply to an accused person while he is under trial. 101 I.C. 657=54 C. 52=28 Cr.L.J. 481=1927 C. 307.

SCOPE OF SECTION.—Court deliberately abstaining from administering an oath or affirmation to the only eye-witness to the murder on the ground that she was only 6 to 7 years of age. 6 P.L.J. 147=61 I.C. 705.

EFFECT OF.—In every case where a witness is a competent witness, the provisions of secs. 5 and 6 should be complied with. 6 P. L.J. 147. Under sec. 5, the omission to take any oath or any other irregularity in the form in which it is administered does not invalidate the proceedings. The High Court declined to interfere with the order of a Municipal Commissioner who was the editor of a newspaper, who had, prior to the disposal of the case, made very strong remarks on the case in the newspaper of which he was editor, holding that there was nothing illegal in his order, though he would have exercised a wise discretion if he had refused to sit as one of the Commissioners in the case. 21 W.R. (Cr.) 31; 25 W.R. (Cr.) 6.

CHILD.—A child of tender years should be examined as a witness only after the Court has satisfied itself that the child is intellectually sufficiently developed to enable it to understand sufficiently what it has seen, and afterwards inform the Court thereof. If the Court is satisfied that the child has intelligence, it should comply with the provisions of sec. 6. 120 I.C. 514=31 Cr.L.J. 114. See also 6 P.L.J. 147=61 I.C. 705.

Child's evidence is not inadmissible merely because no oath was administered to it. Although sec. 5 is imperative, still sec. 13 governs cases of this sort. 22 I.C. 737. See also 47 L.W. 161=1938 M. 490=(1938) 1 M.L.J. 289; 1941 O.W.N. 1246; 1939 Rang. 402=1939 Rang.L.R. 104; 1937 A.M.L.J. 134; 1935 A.L.J. 618=1935 A. 579; 38 A. 49=16 Cr.L.J. 829; 13 C.W.N. 942=36 C. 808; 6 P.L.J. 147; 2 I.C. 697; 11 A. 183; 10 A. 207; 16 M. 105; 1 Weir 823; 30 M. 32; 6 Cr.L.J. 130.

SECS. 5 AND 6.—If a Court thinks that a child, though of tender years, is capable of informing the Court of what it has seen or heard, it is obligatory on it to administer oath to the child as in the case of any other witness. Where the Court fails to do so on the ground that the child is not capable of realising the significance of an oath, the defect would be cured by sec. 13 of the Oaths Act. 1935 A.L.J. 618=1935 A. 579. See also 1938 Mad. 490=(1938) 1 M.L.J. 289; 1941 O.W.N. 1246; 1939 Rang. 402; 1942 Oudh 193=17 Luck. 376.

SECS. 5, 6 AND 13.—Every person who is examined as a witness shall make an oath or affirmation and there is no exception in the case of a child of tender years. Therefore if a child is adjudged to be a competent witness, an oath or affirmation must be administered to him before he is examined; but an omission whether deliberate or inadvertent to do so does not render his evidence absolutely inadmissible. But it is for the Court to decide what weight may be given to such unsworn testimony of the child whose evidence must always be received with great caution. 1940 Rang.L.R. 104=1939 Rang. 402. See now Amending Act XXXIX of 1934. Where on account of her

Affirmation by natives or by persons objecting to oaths.

6. Where the witness, interpreter or juror is a Hindu or Muhammadan,

or has an objection to making an oath, he shall, instead of making an oath, make an affirmation.

In every other case the witness, interpreter or juror shall make an oath.

IV.—Forms of Oaths and Affirmations.

Forms of oaths and affirmations.

7. All oaths and affirmations made under section 5 shall be administered according to such forms as the High Court may from time to time prescribe.

And until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use.

1[* * * * *]

8. If any party to, or witness in, any judicial proceeding offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

LEG. REF.

1 Expl. to sec. 7 rep. by Act VI of 1900, sec. 48 and Sch. II.

youth, neither an oath nor affirmation was administered to a witness that does not render the evidence of such a witness inadmissible. (*See* Act XXXIX of 1939.) 1937 A.M.L.J. 134; 120 I.C. 514=31 Cr.L.J. 114, noted under sec. 5, *supra*.

Sec. 6.—*See* 19 C. 355; 1939 Rang. 402=1940 Rang.L.B. 104; 38 A. 49=13 A.L.J. 1072=31 I.C. 1005; 20 P.R. 1902 (Cr.)=47 P.L.R. 1902; 11 A. 183; 10 A. 207; 16 M. 105; 1 Weir. 823. Witnesses, interpreters and jurors, who are Hindus or Muhammadans are exempt from taking oath. As repeating of the Kalma, by a Muhammadan witness, is not in accordance with the form prescribed by Chief Court under sec. 7, his refusal to do so cannot be punished under sec. 173, I. P. Code. 20 P.R. 1912 (Cr.). The offence of giving false evidence may be committed, although the person giving has been neither sworn nor affirmed. 19 C. 355. The provisions of secs. 8-11 of the Act do not apply to criminal proceeding. 5 S.L.R. 129=13 I.C. 215=13 Cr.L.J. 23. Nor to proceedings before a Village Police Patel under secs. 14 and 15 of the Bombay Village Police Act, 1867. 58 I.C. 147=45 B. 96=21 Cr.L.J. 723. A person appointed as Local Commissioner for recording evidence in a case cannot administer oath to one of the parties in the circumstances referred to in secs. 8, 9 and 10 because under the Act a Local Commissioner is not a Court. 89 P.R. 1909=3 I.C. 621. Where the oath dictated by the plaintiff was in these terms: "If I lie in saying that I did not strike the balance and had paid the debt may my wife be considered to have been divorced from me." *Held*, that the oath was repugnant to decency and affected a third person and was obnoxious

ly in contravention of sec. 8. 66 P.R. 1910=7 I.C. 479.

SECS. 8 AND 11: SCOPE OF.—*See* 1937 All. 701; 1938 Bom. 465.

Sec. 8.—*See* 13 B. 389=13 Cr.L.J. 23=13 I.C. 215; 5 S.L.R. 129. The word 'affect' in sec. 8 should be taken to mean 'to react upon in any way'. An oath in the name of a third person does not necessarily 'affect' that person. An oath in the form 'I swear by my children' is not one which is prohibited by sec. 8. 1937 A.M.L.J. 94. The "oath or solemn affirmation" referred to in sec. 8 *et seq* is in its nature and essence quite distinct from the oaths and affirmations contemplated by sec. 5. Under sec. 8 the oath or solemn affirmation may be as infinite alike in form and contents as racial custom or the dictates of any religious persuasion may sanction or require. Neither an invocation nor an oath or affirmation in the technical sense of these words is in any way an essential part of the so-called oath or solemn affirmation referred to in sec. 8 of the Act. 54 I.A. 301=2 Luck. 316=1927 P.C. 165=53 M.L.J. 1 (P. C.). Under sec. 8 of the Oaths Act, for an oath to be administered by the Court it is necessary that it should not be against decency and that it should not affect the rights of a third party. Where during the trial the defendant offered to abide by the oath on *talak* of one of the witnesses for the plaintiff and that witness agreed to take the oath, but the defendant resiled from the offer later on. *Held*, that divorcing one's wife was not a very respectable form of oath and militated with decency and that it had also the effect of divorcing the wife who was a third party and that in the circumstances the refusal of the defendant to give an illegal oath did not affect the case at all. 189 I.C. 687=1940 Pesh. 26. Under sec. 8 the initiative should come from the parties and not from the Court. The dis-

9. If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section 8; if such oath or affirmation is made by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation:

missal of a suit was accordingly set aside on the ground that the lower Court might have been influenced by the refusal of the plaintiff to swear touching sacred books. 139 I.C. 886 (1)=56 C.L.J. 77=36 C.W.N. 786. Form of oath—Denial before deity—Purpose of oath is not to call the attention of God to the witness, but the attention of the witness to God. 84 I.C. 314=1924 Oudh 442. All that is necessary for an oath is an appeal to the Supreme Being and thinking Him as the rewarder of truth and the avenger of falsehood. 1924 Oudh 442. See also 84 I.C. 314=1924 B. 511; 52 B. 295=30 Bom.L.R. 447; 26 A.L.J. 7 (P.C.).

SECS. 8 AND 9.—The parties to the suit stated that they constituted a third person J, as a *Munhasir Ilahi* and that they would be bound by his decision but before he was examined, the plaintiff stated that he would not be bound unless a special kind of oath was administered to J. That request was refused, J's statement recorded and in accordance therewith the plaintiff's suit dismissed. Held, that it was open to the plaintiff to resile from the agreement before the statement of J was recorded without assigning any reasons, sec. 8 not being applicable on the ground that the parties had in the first instance never intended to administer any oath at all to J. 146 I.C. 569=1933 A.L.J. 69=1933 A. 184. See also 1931 A.L.J. 393. Where the *mukhtarnamah* gave the *mukhtar* authority to make a compromise, confess judgment or make a reference to arbitration. Held, that the powers were sufficiently wide to include authority to take action under secs. 8, 9 and 10 of the Oaths Act. 8 O.W.N. 880=1931 Oudh 350.

SECS. 8 AND 11.—Where defendant agrees to abide by plaintiff's statement in the witness box but not in the form of any special oath as is referred to in sec. 8, the agreement is binding on him even apart from sec. 11, and he cannot be allowed to resile from it. 164 I.C. 1116=1936 O.W.N. 841. The evidence given by a person to whom the special oath is administered at the instance of a party to a suit is, when the party offering to be bound by the special oath, is suing in a representative capacity, conclusive not only as against him but also the persons whom he is properly representing in that litigation, and the decree following the taking of special oath would, therefore, clearly operate as *res judicata* against the representatives, as well in the absence of allegation and proof that the party acting in a representative capacity has been guilty of fraud or collusion or other vitiating cir-

cumstances. 40 Bom.L.R. 1005=1938 Bom. 465.

SEC. 9.—See 13 B. 389; 13 I.C. 215; 65 I.C. 700; 22 M. 234; 17 M.L.J. 99; 17 M.L.J. 536; 18 A. 46; 20 A. 49; 45 B. 96=22 Bom. L.R. 898; 31 A. 315=2 I.C. 201; 1 Weir. 822. The Act gives the Court a discretion to administer the oath or not and if a party after agreeing to an oath satisfies the Court that there is good ground for retracting, the Court would exercise a wise discretion in refusing to administer the oath but when a party puts forward frivolous reasons for retracting, the Court would be justified in administering the oath notwithstanding the retraction. 49 A. 388=100 I.C. 473=1927 A. 590. See also 1933 A.L.J. 69=1933 A. 184; 35 C.W.N. 130. Where the plaintiff proposed one form of oath for the defendant and the defendant accepted it the plaintiff cannot insist on another form. 7 M.L. T. 197=5 I.C. 939. See also 1928 M. 488. Where a party agrees that he would be bound by the oath of a witness, though the other parties do not agree to be so bound, he will be bound and the case must be tried only as against the others. 27 A.L.J. 1095=118 I.C. 188 (1)=1929 A. 759 (1). Per *Guha, J.*—The principle that an offer can be withdrawn before it is accepted is applicable to an offer made under the Oaths Act. 35 C.W.N. 130=132 I.C. 682=1931 C. 549; 1933 A.L.J. 69=1933 A. 184. It cannot be withdrawn after acceptance. 1933 A.L.J. 588=1933 A. 463. Even if a party resiled from taking oaths, in matters to be proved by oaths, it is not equivalent of its proof. No decree can be passed under the circumstances against the resiling party. The Court then can proceed with the suit in ordinary manner drawing inference from the defaulter's conduct and can impose upon him appropriate costs. 1912 M.W.N. 361=15 I.C. 195. (But see 65 I.C. 700). See also 27 O.C. 217. Where in a suit on a promissory note evidence had been recorded before an agreement to abide by the defendant's oath was entered into by plaintiff. Held, that it was competent to the Court to decide the suit on the evidence already on record. 4 L.W. 258=36 I.C. 1001. An agreement to an oath contained a provision that if owing to the challenger's failure to pay the cost of taking the oath, the same was not taken it should be treated as equivalent to the oath having been taken. Held, that the provision introduced a method of decision which the law did not authorize and can have no legal consequence. (31 M. 1, Ref.) 52 I.C. 619. Where the agreement was to take the oath on a particular day

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

10. If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or, if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission to any person to administer it, and authorise him to take the evidence of the person to be sworn or affirmed and return it to the Court.

but the oath was taken on a later day the burden lies on the person who relies on oath to show that time was not the essence of the contract. 10 L.W. 140=52 I.C. 619. A duly authorized agent holding a special power of attorney enabling him to conduct the suit in a manner he may deem fit and in particular to withdraw or compromise, can make an offer under sec. 9 to be bound by the oath, of the other party and to have the case decided in accordance therewith. 38 A. 131=32 I.C. 348. The word 'party' in sec. 9 includes a duly authorised agent. Where a *vakalatnama* authorises a counsel to get statements recorded, to do *pairavi* in the case and to take such steps as he thought advisable and the client agrees to whatever he might do in the conduct of the case, the authority is sufficient to justify counsel, when no other step is open to him, submitting the case to the test of oath of a man supposed to be honest. 1943 A.L.W. 489. "Party" as including duly authorized representative—Pleader making offer—Client bound. See 114 I.C. 759=1929 Oudh 56; 8 O.W.N. 880=1931 Oudh 350. Guardian *ad litem*—Power to consent to offer of special oath—Leave of Court not obtained—Absence of fraud or negligence—Minor if bound. 34 C.W.N. 310. The expression "any party to any judicial proceeding" in sec. 9 must be interpreted as including the pleader representing him in the case. If a pleader is authorised by the *Vakalatnama* in his favour to do all proper *pairavi* in the case and to represent his client in a litigation and to present all sorts of applications which may become necessary even though no express power to compromise the case on his behalf may have been conferred upon the pleader, still the pleader being a duly authorised person to represent the client would be fully entitled to bind the client by offering to abide by the special oath of the opposite party. For the purposes of sec. 9 all that is necessary is that the pleader or the agent should be considered a duly authorised agent on behalf of his party to conduct the case. 1940 O.W.N. 662=1940 Oudh 314=15 Luck. 686. Where the pleader appearing for the defendants made an offer that the suit might be decided on the oath of the opposite party and it appeared that the pleader acted under instructions from one of the defendants who presumably had been authorized by the rest to take the necessary steps. *Held*, that the parties could not resile from the offer made by the pleader. 34 C.W.N.

310=129 I.C. 408=1930 C. 463. See also 132 I.C. 682=35 C.W.N. 130=1931 Cal. 549. If a pleader has been expressly authorized to make an offer on behalf of his client to be bound by an oath of the other party his action in that respect would be binding on the client. 137 I.C. 810 (2)=33 P.L.R. 470=1932 L. 414. The statement made by one of several defendants in pursuance of an agreement made under the Act is binding as against the parties who had offered to be so bound. Where however the rights and liabilities of the defendants in a particular case are inseparable a decree can be passed even against the defendant, who was not a party to the agreement. 8 O.W.N. 880=1931 O. 350. Where the plaintiff does not offer to be bound by the statement, on oath made by the defendant then the plaintiff's application to offer a special oath to the defendant would not come within the terms of sec. 9 and the Act would not apply. 138 I.C. 606=1932 A.L.J. 481=1932 A. 404. See also 26 A.L.J. 7 (P.C.).

SECS. 9 AND 11.—Offers to be bound by oath when can be resiled from. See 1926 L. 240; 4 Mys.L.J. 217; 35 C.W.N. 130; 1933 A. 463. A party offering to be bound by oath of the other party is entitled to resile at any time before the statement on oath is taken and it is not necessary that the Court should be satisfied that the party had good reasons for resiling. 1935 A.L.J. 212=1935 A. 276. But see 55 All. 298=144 E. C. 719=1933 All. 463; 171 I.C. 12=1937 Nag. 212; 38 P.L.R. 1171=163 I.C. 518.

Sec. 10.—See 13 B. 389; 5 S.L.R. 129; 13 Cr.L.J. 23=15 I.C. 215; 1 Weir. 822. Unless specially authorized a *vakil* cannot agree to a decision, on the oath of the opposite party in a particular form. 20 M.L.J. 386=5 I.C. 514. See also 1940 O.W.N. 662=1940 Oudh 314. Agreement to take oath must specify form of oath and place where the oath has to be administered. 21 M.L.J. 618=9 I.C. 260. Oath should be taken in the presence of parties to be bound by it. 17 I.C. 930. Where the necessary procedure, preliminary to the agreement is not adopted the oath is not binding. The provisions of the Act must be strictly followed. 1919 M.W.N. 272=6 I.C. 604. "Oath or solemn affirmation" may be sufficiently "administered" to a witness within the meaning of sec. 10 when a statement is made by him in the presence of a deity. 54 I.A. 301=2 Luck. 316=1927 P.C. 165=53 M.L.J. 1 (P.C.). A party cannot revoke an offer to abide by the oath of another after

Evidence conclusive as against person offering to be bound.

11. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

the offer is accepted by the other side although the oath is not actually taken. 55 All. 298=144 I.C. 719=1933 A.L.J. 588=1933 A. 463; 43 P.L.R. 38=1941 Lah. 173. But see 153 I.C. 686=1935 A.W.R. 78=1934 A.L.J. 212=1935 All. 276. The offer by a party to a suit as to being bound by a statement on oath of his opponent, on being accepted by the latter, is in the nature of a binding contract. The person who makes the offer cannot, therefore renege from the contract. 1941 Lah. 173. Where defendant agrees to a decree being passed against him in case plaintiff takes oath in presence of six specified persons but only five of such persons are present, he is entitled to object to the administration of the oath in the absence of the sixth person. And the objection being perfectly valid one, no inferences can be drawn against the defendant. 1933 L. 452=145 I.C. 704.

Sec. 11.—The provisions of sec. 11 can only be attracted after the oath has been taken in accordance with the agreement arrived at between parties as mentioned in secs. 9 and 10. (1938) 1 M.L.J. 368=47 L. W. 453=1938 Mad. 385. Also it is necessary that the statement given by a reference should amount to evidence of the fact in dispute between the parties. 103 I.C. 348=1927 A. 676. See 1 Weir 822; 31 A. 315=6 A.L.J. 244=2 I.C. 201; 45 B. 96=22 Bom.L.R. 898=58 I.C. 147; 21 Cr.L.J. 723; 13 B. 389; 5 S.L.R. 129=13 Cr.L.J. 23=13 I.C. 225; 19 A.L.J. 911; 118 P.R. 1919=29 P.W.R. 1919=49 I.C. 1005. All that is necessary to an oath is an appeal to the Supreme being and, thinking Him as the rewarder of truth and the avenger of falsehood. The form of oath is immaterial provided it involves in the mind of the witness the bringing to bear in the witness's mind this apprehension of punishment. 84 I.C. 314=1924 O. 442; 54 I.A. 301=53 M.L.J. 1 (P.C.). Where the party agreeing to abide by the oath of his opponent imposes fresh conditions at the time of taking the oath, the party taking the oath has the right to enforce the agreement originally entered into and if he takes the oath according to the original agreement the evidence will be conclusive against the other party. 12 M.L.T. 613=17 I.C. 339; 98 I.C. 864=1927 L. 99; 49 A. 318=1927 A. 590. See also 1937 Oudh 67; 1933 All. 861; 38 P.L.R. 1171; 1937 Nag. 212. The parties to a suit can validly agree, even apart from the Act, that they will abide by the statement of a witness, including one who is a party to the suit; and they can leave the decision of all points including costs arising in the case to be made according to the statement. 146 I. C. 84=1933 A.L.J. 1127=1933 A. 861 (F.B.). Where the plaintiff after agreeing to abide by the oath of a third person subsequently declined to abide by it, the

Court has no power to dismiss the plaintiff's suit on account of the plaintiff not having taken the oath but must either proceed to administer the oath and decide the case in accordance therewith or accept the plaintiff's refusal to abide by the oath drawing such inference from the refusal as is permissive and then proceed with the trial of the case in accordance with law. 99 I.C. 288=1927 L. 78 (1). This section only provides that as against a person who offers to be bound by the special oath, it will be conclusive proof of the matter stated. 26 Bom.L.R. 713=82 I.C. 359=1924 B. 511. Failure of defendant to take oath owing to plaintiff's absence to hear oath—Evidence when conclusive. See 90 I.C. 77=49 M.L.J. 379. Pre-emption—Offer by guardian of minor defendant to be bound by oath of plaintiff—Extent of minor's liability. See 44 A. 117=64 I.C. 646=1922 A. 160=19 A.L.J. 911. *An oath is binding only on the person who offers to be bound by it.* Where in a suit only one of the plaintiffs agrees to the dismissal of the suit, in case the defendant takes the oath and the defendant does so accordingly, the dismissal is conclusive only against the plaintiff who consented. 50 P.W.R. 1918; 83 P. W.R. 1918=45 I.C. 230. See also 1929 A. 759. The effect of an oath taken under the Oaths Act is merely to furnish conclusive evidence on the matter in issue and a decision on oath is *res judicata*, 36 M. 287=24 M.L.J. 321=18 I.C. 835. The fact that a case was decided on the oath of the defendant is not a sufficient ground for refusing the defendant an opportunity to prove to the satisfaction of the Court that the claim had been brought on a false document, to support an application under sec. 476, Cr. P. Code. 96 I.C. 877=27 Cr.L.J. 1021=1926 A. 577. Where a decree is passed on the evidence of a witness owing to an agreement to be bound by the oath of that witness, such a decree is not a consent decree under sec. 96 (3), C. P. Code. A consent decree means a decree in a suit which has been compromised. An agreement to be bound by the evidence of a witness is not an agreement to compromise. Such a decree is appealable and cannot be questioned by a separate suit. 172 I.C. 421=1938 Nag. 64; I.L.R. (1940) Nag. 310. But the agreement may amount to an adjustment of dispute under O. 23, R. 3, C. P. Code and may create an estoppel. 1937 A.L.J. 1066=171 I.C. 697=1937 A. 701. Sec. 11 cannot be construed as meaning that the evidence given on oath in a proceeding becomes automatically conclusive in all possible proceedings in which the subject-matter of the evidence given on oath may be involved. It can only be evidence in the proceeding in which it is actually being received. In an

12. If the party or witness refuses to make the oath or solemn affirmation

Procedure in case of refusal to make oath.

referred to in section 8, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

V.—Miscellaneous.

13. No omission to take any oath or make any affirmation, no substitution

Proceedings and evidence not invalidated by omission of oath or irregularity.

of any one for any other of them, and no irregularity whatever, in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth,

application under O. 21, R. 100, C. P. Code, for delivery the respondent, challenged the petitioner to take a special oath, and the oath having been taken the application was allowed. The respondent then filed a suit under O. 21, R. 103, and the defendant (petitioner) pleaded that no suit would lie because of the evidence which he has on oath in the proceedings under O. 21, R. 100. *Held*, that though the suit following the order on the claim petition might be a continuation of the same proceedings for some purposes, there was an essential difference between the two; and unless it was clearly present to the minds of the parties that the evidence given on oath in the claim petition was in no manner to be challenged in or by a subsequent suit it must be held that an oath in those proceedings must relate to the claim proceeding themselves and to them alone. The burden lay on the applicant to show that the challenge was intended to have any effect upon any possible civil suit which might be filed under R. 103 of O. 21, C. P. Code. 51 L.W. 449=1940 Mad. 627=(1940) 1 M.L.J. 685.

SEC. 12.—A Court does not act irregularly or illegally in taking into consideration plaintiff's refusal to take oath the defendant agreeing to be bound by it. But no weight should be attached to plaintiff's refusal when defendant also refuses. 7 N.L.R. 50=10 I.C. 472. A mere *refusal to take a particular oath* is not sufficient for deciding the issue against the party refusing it. 32 I.C. 619. *See also* 93 I.C. 830=1926 C. 817. If a party refuses to make the oath, the Court has no power to compel him to make it. The duty of the Court is to record as part of the proceedings, the nature of the oath proposed, the facts that he was asked whether he would make it and that he refused it together with any reason which he may assign for his refusal. 9 Mys.L.J. 362. No doubt the refusal to take a special oath is conduct which the Court is entitled to consider along with other evidence in the case but the refusal should not automatically be allowed to outweigh the positive evidence which has been adduced. Where therefore the plaintiff has produced his account books which the defendant called on him to pro-

duce and he has given all the evidence necessary to support his case, his refusal to take a special oath offered by the defendant which the plaintiff considered derogatory should not be taken as reflecting on the truth of his claim. 142 I.C. 137=1933 N. 52. A challenger should not be permitted to resile after his offer has been accepted by the other party unless good ground is shown to the satisfaction of the Court by the challenger. Apart from authorities, there is no principle of law on which an agreement can be allowed to be broken with impunity without any valid reason. 1938 M.W.N. 110=47 L.W. 453=1938 Mad. 385=(1938) 1 M.L.J. 368. (43 L.W. 681=1936 Mad. 406=70 M.L.J. 449 reversed.) Application of sec. 12 to the case of challenger, would be an extension of the provisions of sec. 12 in a manner which is not justifiable. Where the challenger who was to light the camphor in accordance with the offer made by him, has refused to perform that which he had undertaken to do, he should be taken to have waived that condition. The Court can order any Commissioner to light the camphor but should see that it is extinguished by the other party when taking the oath. (1938) 1 M.L.J. 368.

SEC. 13.—As to scope of section, *see* 1938 M.W.N. 90=(1938) 1 M.L.J. 289. Sec. 13 cures the form of the oath and even an entire omission to take the oath, but does not cure the absence of authority in the officer administering the oath. 116 I.C. 248=31 Bom.L.R. 144=30 Cr.L.J. 593=1929 B. 126. When a Judge or Magistrate has elected to take the statement of a person as evidence, he has no option but to administer either the oath or affirmation to such a person as the case may require. The proper course in such cases is to record the questions and answers put to the witness to ascertain whether he is competent to testify and, if the Court comes to the conclusion that he is competent, an oath or affirmation should be administered. A child is generally competent, if he is old enough to understand that it ought to speak the truth. 2 L.B.R. 322. *See also* 1935 A. 579. As to the effect of omission to record deposition as on solemn oath or affirmation, *see* 18 C.W.N. 1323. As

14. Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject.

Persons giving evidence bound to state the truth.

15. [Amendment of Penal Code, Ss. 178 and 181.] Repealed by Act I of 1938.

16. Subject to the provisions of sections 3 and 5, no person appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath, or to make or subscribe any affirmation or declaration whatever.

Official oaths abolished.

SCHEDULE.

[Repealed by the Repealing Act (XII of 1873).]

OBSCENE PUBLICATIONS ACT (VIII OF 1925).

[The whole of this Act was repealed by Act I of 1938.]

THE OBSTRUCTIONS IN FAIRWAYS ACT (XVI OF 1881).

[Rep. in part by Act X of 1914.]

[15th March, 1881.]

An Act to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.

WHEREAS, it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways leading to ports in British India, and to prevent the creation of such obstructions; It is hereby enacted as follows:

Preamble.

Short title.

1. This Act may be called THE OBSTRUCTIONS IN FAIRWAYS ACT, 1881; ¹[* * * * *].

But nothing herein contained shall apply to vessels ²[belonging to, or hired by a contract made on behalf of, the Crown].

2. Whenever, in any fairway, leading to any port in British India, any vessel is sunk, stranded or abandoned, or any fishing stake, timber or other thing is placed or left, ²[the Central Government] may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,—

(a) cause such thing or any part thereof to be removed; or

(b) if such thing is of such a description or so situate that, in the opinion of the ²[Central Government], it is not worth removing, cause the same or any part thereof to be destroyed.

Central Government entitled to expenses incurred in removing obstruction.

3. Whenever anything is removed under section 2 the ²[Central Government] shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal.

LEG. REF.

¹ Repealed by Act X of 1914.

² Substituted by A.O., 1937.

³ Substituted by A.O., 1937 for 'Government'.

to whether if the jury in a Sessions trial are not sworn, the omission is one which could be covered by sec. 13. See 20 W.R. (Cr.) 19. Where on account of her youth,

neither an oath nor a affirmation was administered to a witness that does not render the evidence of such a witness inadmissible. 1937 A.M.L.J. 134. See also 1938 Mad. 490=(1938) 1 M.L.J. 289; 1939 Rang. 402; 15 Mys.L.J. 217=42 Mvs. H. C. Rep. 295. Sec. 14.—As to application of the section, to child witness, see 76 I.C. 1037=25 Cr.L.J. 317; 1939 N.L.J. 396. Sec. 3.—See Bat. 241=Cr. Rg. 8 of 1886.

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be decided by the District Magistrate or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties; and such decision shall be final.

4. The ¹[Central Government] shall, whenever anything is removed under section 2, publish in the Official Gazette a notification containing a description of such thing, and the time at which and the place from which the same was so removed.

Things removed may, in certain cases, be sold. 5. If, after publishing such notification, such thing is unclaimed, or if the person claiming the same fails to pay the amount due for the said expenses and any customs-duties or other charges properly incurred by the ¹[Central Government] in respect thereof.

the ²[Central Government] may sell such thing by public auction, if it is of a perishable nature, forthwith, and, if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid.

6. On realizing the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same:

Provided that he makes the claim within one year from the date of the sale.

7. For the purposes of this Act, the term "vessel" shall be deemed to include also every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a vessel; and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund.

8. The Central Government may, from time to time, by notification² in the Official Gazette, make rules to regulate or prohibit, in any fairway leading to a port in British India, the placing of fishing stakes, the casting or throwing of ballast, rubbish or any other thing likely to give rise to a bank or shoal, or the doing of any

other act which will, in ³[its] opinion, cause, or be likely to cause, obstruction or danger to navigation.

9. Whoever is guilty of any act or omission in contravention of the rules made under section 8 may be tried for such offence in any district or presidency-town in which he is found, and shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

10. Whenever the maintenance or creation of an obstruction in any fairway, has become lawful by long usage or otherwise, and such obstruction is removed or destroyed under section 2, or its creation is regulated or prohibited under section 8, any person having a right to main-

LEG. REF.

¹Substituted for "Local Government" by A.O., 1937.

²For such notification (1) for Madras, see Madras R. and O.; (2) for Bombay, see

Bombay R. and O.

³Substituted for "his" by A.O., 1937.

SEC. 10.—See the Land Acquisition Act (I of 1894).

tain, or create such obstruction shall be entitled to receive from the ¹[Central Government], reasonable compensation for any damage caused to him by such removal, destruction, regulation or prohibition.

Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes and not otherwise; and for the purposes of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the presidency-town or district in which the port to which such fairway leads is situate.

11. Whenever any obstruction in a fairway leading to a port in British

Certain action of the Government previous to passing of this Act be deemed to have been taken hereunder.

India has been removed or destroyed or whenever the creation of any such obstruction has been regulated or prohibited, by an order of the Central Government or a Provincial Government, previous to the passing of this Act, such removal, destruction, regulation or prohibition shall be deemed to have been

effected under this Act.

Saving of other powers possessed by Central Government.

12. Nothing herein contained shall be deemed to prevent the exercise by the ²[Central Government] of any other powers possessed by it in this behalf.

³[13. All references

Application to fairways in inland waterways.

in this Act to the Central Government shall, in relation to fairways in inland waterways, be construed as references to the Provincial Government concerned.]

OFFENCES ON SHIPS AND AIRCRAFT ACT (IV OF 1940).

[Repealed by Act VI of 1945.]

THE OFFICIAL GAZETTES ACT (XXXI OF 1863):

N.B.—This Act has been declared to have ceased to have effect by the Government of India (Adaptation of Indian Laws) Order, 1937 and has also been expressly repealed by Act I of 1938.

THE INDIAN OFFICIAL SECRETS ACT (XIX OF 1923).⁴

Year	No.	Short title.	Amendments.
1923	XIX	The Indian Official Secrets Act, 1923.	Repealed in part XII of 1927 ; see Act XXIV of 1939.

[2nd April, 1923.

An Act to consolidate and amend the Law in British India relating to official secrets.

WHEREAS the law in British India relating to official secrets is at present contained in two Acts of the Governor-General in Council, namely, the Indian Official Secrets Act, 1889, and the Indian Official Secrets (Amendment) Act, 1904, and one Statute of Parliament, namely, the Official Secrets Act, 1911; and

LEG. REF.

¹ Substituted for 'Secretary of State for India in Council' by A.O., 1937.

² Substituted for "Government" by A.O., 1937.

³ Inserted by A.O., 1937.

⁴ Substituted for 'Secretary of State for see *Gazette of India*, 1912, Pt. V. p. 210; for Report of Select Committee, see *ibid.*, 1923, Pt. V, p. 61.

⁵ Substituted by A.O., 1937.

WHEREAS the Official Secrets Act, 1911, has been amended by the Official Secrets Act, 1920, which statute applies to the United Kingdom and to certain British possessions, but not to British India; and

WHEREAS it is expedient that the law relating to official secrets in British India should be consolidated and amended;

It is hereby enacted as follows:—

Short title, extent and application. 1. (1) This Act may be called THE INDIAN OFFICIAL SECRETS ACT, 1923.

(2) It extends to the whole of British India, and applies also—

(a) to all subjects of His Majesty and servants of the Crown within [any Indian State]; and

(b) to all Indian subjects of His Majesty without and beyond British India.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) any reference to a place belonging to His Majesty includes a place occupied by any department of the Government, whether the place is or is not actually vested in His Majesty;

²[(1-A). Reference to a department of the Government include the departments of any Government in British India and any department of the Crown Representative, and include also the Federal Railway Authority;]

(2) expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document, or information itself or the substance, effect or description thereof only be communicated or received; expressions referring to obtaining or retaining any sketch, plan, model, article, note or document, include the copying or causing to be copied of the whole or any part of any sketch, plan, model, article, note or document; and expressions referring to the communication of any sketch, plan, model, article, note or document include the transfer or transmission of the sketch, plan, model, article, note or document;

(3) "document" includes part of a document;

(4) "model" includes design, pattern and specimen;

(5) "munitions of war" includes the whole or any part of any ship, submarine, aircraft, tank or similar engine, arms and ammunition, torpedo, or mine intended or adopted for use in war, and any other article, material, or device, whether actual or proposed, intended for such use;

(6) "Office under His Majesty" includes any office or employment in or under any department of the Government or of the Government of the United Kingdom or of any British possession;

(7) "photograph" includes an undeveloped film or plate;

(8) "prohibited place" means—

(a) any work of defence, arsenal, naval, military, or air force establishment or station, mine, minefield camp, ship or aircraft belonging to, or occupied by or on behalf of, His Majesty, any military telegraph or telephone so belonging or occupied, any wireless or signal station or office so belonging or occupied and any factory, dockyard or other place so belonging or occupied and used for the purpose of building, repairing, making or storing any munitions of war, or any sketches, plans, model or documents relating thereto, or for the purpose of getting any metals, oil or minerals of use in time of war;

(b) any place not belonging to His Majesty where any munitions of war

LEG. REF.

¹ Substituted by A.O., 1937.

² Sub-sec. (1-A) of sec. 2 inserted by A.O., 1937.

Sec. 2.—*Cf.* sec. 12, I and 2 Geo. V, c. 28.

Sec. 2, Cl. (5).—*Cf.* sec. 9 (2) of 10 and

Cl. C. M.-I-132

11 Geo. V, c. 75.

Sec. 2, Cl. (8).—*Cf.* sec. 3 of 1 and 2

Geo. V, c. 28.

Cl. (8) (a).—*Cf.* sec. 10 of 10 and 11 Geo. V, c. 76.

Cl. (8) (b).—*Cf.* sec. 3 of 1 and 2 Geo. V, c. 28.

or any sketches, models, plans, or documents relating thereto, are being made, repaired, gotten or stored under contract with, or with any person on behalf of, His Majesty, or otherwise on behalf of His Majesty;

(c) any place belonging to or used for the purpose of His Majesty which is for the time being declared by the Central Government, by notification in the Official Gazette, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or damage thereto, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in the Vernacular of the locality;

(d) any railway, road, way or channel, or other means of communication by land or water (including any works or structures being part thereof or connected therewith), or any place used for gas, water or electricity works or other works for purposes of a public character, or any place where any munitions of war or any sketches, models, plans, or documents relating thereto, are being made, repaired, or stored otherwise than on behalf of His Majesty, which is for the time being declared by the Central Government, by notification in the Official Gazette to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in the vernacular of the locality;

(9) "sketch" includes any photograph or other mode of representing any place or thing; and

(10) "Superintendent of Police" includes any police-officer of a like or superior rank, and any person upon whom the powers of a superintendent of Police are for the purposes of this Act conferred by the Central Government. [* * *]

Penalties for spying.

3. (1) If any person for any purpose prejudicial to the safety or interests of the state—

(a) approaches, inspects, passes over or is in the vicinity of, or enters any prohibited place; or

(b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; or

(c) obtains, collects, records or publishes or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy;

he shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of His Majesty or in relation to any secret official code, to fourteen years and in other cases to three years.

(2) On a prosecution for an offence punishable under this section with imprisonment for a term which may extend to fourteen years it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted, if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document, or information

LEG. REF.

1 Words "or by any Local Government" omitted by A.O., 1937.

SEC. 2, CL. (9).—Cf. sec. 13 of 1. and 2 Geo. V, c. 28.

SEC. 3.—Cf. sec. 1 of 1 and 2 Geo. V, c. 28.

SECS. 3 AND 4: CASE-LAW.—The disclosure of Government Department Examination papers, may be an offence under the Indian Official Secrets Act. 1 L.B.E. 153.

relating to or used in any prohibited place, or relating to anything in such a place, or any secret official code or pass word is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the State, such sketch, plan, model, article, note, document or information shall be presumed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the State.

4. (1) In any proceedings against a person for an offence under section

Communications with
foreign agents to be evi-
dence of commission of
certain offences..

3, the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without British India, shall be relevant for the purposes of proving that he has, for a purpose prejudicial to the safety or interests of the State, obtained or attempted to obtain information which is calculated to be or might be, or is intended to be, directly or indirectly, useful to an enemy.

(2) For the purpose of this section, but without prejudice to the generality of the foregoing provision,—

(a) a person may be presumed to have been in communication with a foreign agent if—

(i) he has, either within or without British India, visited the address of a foreign agent, or consorted or associated with a foreign agent, or

(ii) either within or without British India, the name or address of, or any other information regarding, a foreign agent has been found in his possession, or has been obtained by him from any other person;

(b) the expression "foreign agent" includes any person who is or has been or in respect of whom it appears that there are reasonable grounds for suspecting him of being or having been employed by a foreign power, either directly or indirectly, for the purpose of committing an act, either within or without British India, prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or without British India, committed, or attempted to commit, such an act in the interests of a foreign power;

(c) any address, whether within or without British India, in respect of which it appears that there are reasonable grounds for suspecting it of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, may be presumed to be the address of a foreign agent, and communications addressed to such an address to be communications with a foreign agent.

5. (1) If any person having in his possession or control any secret official

Wrongful communication,
etc., of information.

code or pass word or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under His Majesty, or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under His Majesty, or as a person who holds or has held a contract made on behalf of His Majesty, or as a person who is or has been employed under a person who holds or has held such an office or contract,—

(a) wilfully communicates the code or pass word, sketch, plan, model, article, note, document or information to any person other than a person to

whom he is authorized to communicate it, or a Court of Justice or a person to whom it is, in the interests of the State, his duty to communicate it; or

(b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the State; or

(c) retains the sketch, plan, model, article, note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or

(d) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the sketch, plan, model, article, note, document, secret official code or pass word or information;

he shall be guilty of an offence under this section.

(2) If any person voluntarily receives any secret official code or pass word or any sketch, plan, model, article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it, that the code, pass word, sketch, plan, model, article, note, document, or information is communicated in contravention of this Act, he shall be guilty of an offence under this section.

(3) If any person having in his possession or control any sketch, plan, model, article, note, document or information, which relates to munitions of war, communicates it, directly or indirectly, to any foreign power or in any other manner prejudicial to the safety or interests of the State, he shall be guilty of an offence under this section.

(4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Unauthorised use of uniforms; falsification of reports, forgery, personation, and false documents.

6. (1) If any person for the purpose of gaining admission or of assisting any other person to gain admission to a prohibited place or for any other purpose prejudicial to the safety of the State—

(a) uses or wears, without lawful authority, any naval, military, air force, police or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or

(b) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or

(c) forges, alters, or tampers with any passport or any naval, military, air force, police, or official pass, permit, certificate, licence, or other document of a similar character (hereinafter in this section referred to as an official document), or knowingly uses or has in his possession any such forged, altered, or irregular official document; or

(d) personates, or falsely represents himself to be, a person holding, or in the employment of a person holding, office under His Majesty, or to be or not to be a person to whom an official document or secret official code or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code or pass word, whether for himself or any other person knowingly makes any false statement; or

(e) uses, or has in his possession or under his control without the authority of the department of the Government or the authority concerned, any die, seal or stamp of or belonging to, or used, made or provided by, any department of the Government, or by any diplomatic, naval, military, or air force authority appointed by or acting under the authority of His Majesty, or any die, seal or

Sec. 5, Cl. (1) (b).—*Cf.* sec. 2 (1) of 10 & 11 Geo. V, c. 75, and 11 Geo. V, c. 45.

Sec. 5, Cl. (2).—*Cf.* sec. 9 (1) of 10 and 11 Geo. V, c. 75.

Sec. 6.—*Cf.* sec. 1 of 10 and 11 Geo. V, c. 75.

stamp so nearly resembling any such die, seal or stamp, as to be calculated to deceive, or counterfeits any such die, seal or stamp, or knowingly uses, or has in his possession or under his control, any such counterfeited die, seal or stamp; he shall be guilty of an offence under this section.

(2) If any person for any purpose prejudicial to the safety of the State—

(a) retains any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with any directions issued by any department of the Government or any person authorised by such department with regard to the return or disposal thereof; or

(b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code or pass word so issued, or, without lawful authority or excuse, has in his possession any official document or secret official code or pass word issued for the use of some person other than himself, or, on obtaining possession of any official document by finding or otherwise, wilfully fails to restore it to the person or authority by whom or for whose use it was issued, or to a police officer; or

(c) without lawful authority or excuse, manufactures or sells, or has in his possession for sale, any such die, seal or stamp as aforesaid; he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to two years, or with fine or with both.

(4) The provisions of sub-section (2) of section 3 shall apply, for the purpose of proving a purpose prejudicial to the safety of the State, to any prosecution for an offence under this section relating to the naval, military or air force affairs of His Majesty, or to any secret official code in like manner as they apply, for the purpose of proving a purpose prejudicial to the safety or interests of the State, to prosecutions for offences punishable under that section with imprisonment for a term which may extend to fourteen years.

7. (1) No person in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede, any police-officer, or any member of His Majesty's forces engaged on guard, sentry, patrol, or other similar duty in relation to the prohibited place.

(2) If any person acts in contravention of the provisions of this section, he shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

8. (1) It shall be the duty of every person to give on demand to a Superintendent of Police, or other police-officer not below the rank of Inspector, empowered by an Inspector-General or Commissioner of Police in this behalf, or to any member of His Majesty's forces engaged on guard, sentry, patrol, or other similar duty, any information in his power relating to an offence or suspected offence under section 3 or under section 3 read with section 9 and, if so required, and upon tender of his reasonable expenses, to attend at such reasonable time and place as may be specified for the purpose of furnishing such information.

(2) If any person fails to give any such information or to attend as aforesaid, he shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

9. Any person who attempts to commit or abets the commission of an offence under this Act shall be punishable with the same punishment, and be liable to be proceeded against in the same manner as if he had committed such offence.

10. (1) If any person knowingly harbours any person whom he knows or has reasonable grounds for supposing to be a person who is about to commit or who has committed an offence under section 3 or under section 3 read with section 9 or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, he shall be guilty of an offence under this section,

(2) It shall be the duty of every person having harboured any such person as aforesaid, or permitted to meet or assemble in any premises in his occupation or under his control any such persons as aforesaid, to give on demand to a Superintendent of Police or other police-officer not below the rank of Inspector empowered by an Inspector-General or Commissioner of Police in this behalf, any information in his power relating to any such person or persons, and if any person fails to give any such information, he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to one year, or with fine or with both.

11. (1) If a Presidency Magistrate, Magistrate of the first class or sub-divisional Magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, he may grant a search warrant authorising any Police officer named therein, not being below the rank of an officer-in-charge of a police station, to enter at any time any premises or place named in the warrant, if necessary, by force, and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note or document, or anything of a like nature, or anything which is evidence of an offence under this Act having been or being about to be committed which he may find on the premises or place or any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.

(2) Where it appears to a police-officer, not being below the rank of Superintendent, that the case is one of great emergency, and that in the interest of the state immediate action is necessary, he may by a written order under his hand give to any police-officer the like authority as may be given by the warrant of a Magistrate under this section.

(3) Where action has been taken by a police-officer under sub-section (2) he shall, as soon as may be, report such action, in a Presidency town to the Chief Presidency Magistrate, and outside such town to the District or Sub-divisional Magistrate.

*12. Notwithstanding anything in the Code of Criminal Procedure, 1898,—

(a) an offence punishable under section 3 or under section 3 read with section 9 with imprisonment for a term which may extend to fourteen years shall be a cognisable and non-bailable offence;

SEC. 9.—*Cf.* sec. 7 of 10 and 11 Geo. V, c. 75.

SEC. 10.—*Cf.* sec. 7 of 1 and 2 Geo. V, c. 28.

SEC. 11.—*Cf.* sec. 9 of 1 and 2 Geo. V, c. 28.

SEC. 12.—*Cf.* sec. 6 of 1 and 2 Geo. V, c. 28.

N.B.—“Sec. 12 of the Indian Official Secrets Act, 1923, shall have effect as if after clause (a) the following clause had been inserted:—“(aa)* an offence under sec. 5 shall be a cognisable and non-bailable offence.” (See Ordinance XXIII of 1942, cl. 3”.

(b) an offence under clause (a) of sub-section (1) of section 6 shall be a cognizable and bailable offence; and

(c) every other offence under this Act shall be a non-cognizable and bailable offence, in respect of which a warrant of arrest shall ordinarily issue in the first instance.

13. (1) No Court (other than that of a Magistrate of the first class specially empowered in this behalf by the ¹[appropriate Government]) which is inferior to that of a District or Presidency Magistrate shall try any offence under this Act.

Restriction on trial of offences.

(2) If any person under trial before a Magistrate for an offence under this Act at any time before a charge is framed claims to be tried by the Court of Session, the Magistrate shall, if he does not discharge the accused, commit the case for trial by that Court, notwithstanding that it is not a case exclusively triable by that Court.

(3) No Court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from, the ²[appropriate Government] ³[* * *] or some officer empowered by the ²[appropriate Government], in this behalf:

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that such complaint has not been made, but no further or other proceedings shall be taken until such complaint has been made.

(4) For the purposes of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which the same actually was committed or at any place in British India in which the offender may be found.

⁴[(5) In this section, the appropriate Government means—

(a) in relation to any offences under section 5 not connected with a prohibited place or with a foreign power, the Provincial Government; and

(b) in relation to any other offence, the Central Government.]

14. In addition and without prejudice to any powers which a Court may possess to order the exclusion of the public from any proceedings, if, in the course of proceedings before a Court against any person for an offence under this Act or the proceedings on appeal, or in the course of the trial of a person, under this Act, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the State, that all or any portion of the public shall be excluded during any part of the hearing, the Court may make an order to that effect, but the passing of sentence shall in any case take place in public.

15. Where the person guilty of an offence under this Act is a company or corporation, every director and officer of the company or corporation with whose knowledge and consent the offence was committed shall be guilty of the like offence.

Offences by companies, etc.

Repeals.

16. [Repealed by Act XII of 1927.]

LEG. REF.

¹ Substituted for 'Local Government' by A.O., 1937.

² Substituted for 'Governor-General in Council, by *ibid.*
³ s. Words "the Local Government" omitted by *ibid.*

⁴ Sub-sec. (5) of sec. 13 inserted by A.O., 1937.

SEC. 13.—*Cf.* sec. 10 (3) of 1 and 2 Geo. V, c. 28.

SEC. 13 (3).—*Cf.* sec. 3 of 1 and 2 Geo. V, c. 28.

THE OPIUM ACT (I OF 1878).¹

[Act of the Governor-General in Council amended in its application to the Punjab and the North-West Frontier Province].

Year.	No.	Short title.	Where in force.	Effect of Subsequent Legislation.
1878	I	The Opium Act, 1878.	Punjab and the North-West Frontier Province.	Repealed in part by Act IV of 1884. and amended by Act XII of 1891. Amended by Act XXXVIII of 1920 and Act II of 1930, Sch. II.

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20. Disposal of persons arrested or things seized.
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22. [Repealed.]
23. Recovery of arrears of fees, duties, etc.
24. Farmer may apply to Collector or other officer to recover amount due to him by licensee.
25. Recovery of penalties due under bond.

SCHEDULE. [Repealed.]

[9th January, 1878.

An Act to amend the law relating to opium.

Preamble. WHEREAS it is expedient to amend the law relating to opium; It is hereby enacted as follows:—

Short title. 1. This Act may be called THE OPIUM ACT, 1878.

Local extent. It shall extend to such local areas² as the³ [Provincial Government] may, by notification in the Official Gazette, from time to time direct;

Commencement. And it shall come into force in each of such areas on such day as the³ [Provincial Government] in like manner directs in this behalf.

LEG. REF.

¹ For the Statement of Objects and Reasons, see *Gazette of India*, 1877, Pt. V, p. 654; for Proceedings in Council, see *ibid.* Supplement, pp. 3015 and 3030; *ibid.*, 1878 pp. 53 and 80.

² It has been extended by notification in

the *Gazette of India* to the Punjab, from 1st April, 1880, see *ibid.*, 1880, Pt. I, p. 16.

³ Substituted for "Governor-General in Council" by A.O., 1937.

SEC. 1. SCOPE OF THE ACT.—The provisions of Abkari and Opium Acts are not in

2. [Repeal and amendment of enactments] Rep. by the Amending Act, 1891 (XII of 1891), and the Amending Act, 1894 (IV of 1894).

Interpretation clause.

3. In this Act, unless there be something repugnant in the subject or context,—

¹['opium' means—

(i) the capsules of the poppy (*Popaver somniferum* L.);

(ii) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport; and

(iii) any mixture, with or without neutral materials, of any of the above forms of opium,

but does not include any preparation containing not more than 0.2 per cent. of morphine, or a manufactured drug as defined in section 2 of the Dangerous Drugs Act, 1930];

"Magistrate" means, in the Presidency-towns, a Presidency Magistrate; and elsewhere, a Magistrate of the first class or (when specially empowered by the Provincial Government to try cases under this Act) a Magistrate of the second class;

LEG. REF.

¹ Substituted by Act II of 1930, Sch. II.

tended merely to protect the public revenue but are based on public policy. 35 M. 582 = 21 M.L.J. 425.

OPIUM CASES—UNDUE SEVERITY OF SENTENCE—MEASURE OF REWARD.—Rewards in opium cases should not, in the absence of exceptional circumstances, usually exceed Rs. 5 for each $\frac{1}{2}$ tola of opium found. Magistrates should be careful so to limit a reward as to leave no doubt that it can be paid out of the fine and value of the opium combined. L.B.R. (1872-1892) 568. In dealing with opium cases the Courts must be guided by sound principles, and must not, by the imposition of ruinous fines for petty offences, render the administration of the law unbearable. Rewards in such cases must be regulated by the quantity discovered and the amount of the fine which it is reasonable to inflict. L.B.R. (1872-1892) 567.

An agent employed by a farmer or monopoly of drugs under an agreement to sell drugs at a particular shop for the master does not require any licence, his acts being those of the master are perfectly legal. 105 P.R. 1883. But see also 114 P.R. 1881.

SEC. 3: [N. B.—See also notes under secs. 4 and 9.] Morphia is an alkaloid prepared from the poppy and is an intoxicating drug and comes within the definition of opium. 3 L. 230 = 23 Cr.L.J. 580 = 68 I.C. 612, dissenting from 1 L. 443 = 59 I.C. 40 = 23 Cr.L.J. 8. Opium includes chandu. 22 P.R. 1890 (Cr.) and also *Bhondika Bhusa*, 1936 Nag. 240. "Opium" as defined in sec. 3 does not include opium prepared or in course of preparation such as beinsi and beinchi. Hence a person in possession of both beinsi and beinchi is not guilty under sec. 9 but is guilty under sec. 10 (b), Dangerous Drugs Act. 11 R. 436 = 145 I.C. 825 = 1933 R. 258. As to *muddat*, see 13 C.L.R. 336. As to beinchi or refuse of the opium pipe being opium, see L.B.R. (1872-

1892) 617. See also 1933 R. 258; 171 I.C. 694 = A.I.R. 1937 Rang. 346.

JURISDICTION—MAGISTRATE.—The word "specially" in sec. 3 is used in speaking of individuals and in contrast with the word 'generally'. When by a notification of the Government, a class of officials is invested with power to try certain offences, such officials are only 'generally empowered'. Per *Seshagiri Aiyar, J.*—The notification empowering all Second Class Magistrates to try such offences is *ultra vires* of the powers given by the Act, as its effect is to enlarge the definition of Magistrate as given therein. 2 L.W. 233 = 16 Cr.L.J. 268 = 28 I.C. 156. Where a Government notification empowers Second Class Magistrates of a particular locality mentioned in a list appended to it, to try cases under the Opium Act, that meets the requirements of sec. 3. 24 Cr.L.J. 845 = 74 I.C. 958 = 1924 M. 266. A Second Class Magistrate cannot refuse to take up a case of importing opium into British India without a licence, although empowered, under sec. 191, Cr. P. Code and sec. 3 of the Opium Act, to take cognizance of the offence and try the case, merely on the ground that the gravity of the offence required severer punishment than he was competent to inflict. Rat. 375. If the goods once come across the border of the British territory into such territory, if they come for and on account of the accused with his consent—let alone his procurement—the offence of "importing" is complete. Where the accused, a native of Assam, went to Cooch Behar and posted a parcel of opium ostensibly to a friend of his in Assam, but in effect to himself, *held*, that the accused was guilty of having 'imported' opium, though he may also have been the person who 'exported' it from the foreign territory. 36 C.W.N. 456 = 59 C. 1065 = 136 I.C. 137 = 33 Cr.L.J. 267 = 1932 C. 465. The accused, having a licence for possession of opium as a medical practitioner limited to one seer, or eight palams, sent his servants to another place to buy

¹['Import' means to import inter-provincially, as defined in clause (j) of section 2 of the Dangerous Drugs Act, 1930];

¹['Export' means to export inter-provincially, as defined in clause (l) of section 2 of the Dangerous Drugs Act, 1930; and]

"Transport" means to remove from one place to another within the territories administered by the same Provincial Government;

²['Sale' does not include sales for export across customs frontiers as defined by the Central Government, and 'sell' shall be construed accordingly.]

Prohibition of poppy cultivation and possession, etc., of opium.

4. Except as permitted by this Act, or by any other enactment relating to opium for the time being in force, or by rules framed under this Act or under any such enactment, no one shall—

LEG. REF.

¹ Substituted by Act II of 1930, Sch. II.

² Inserted by A.O., 1937.

1887 (Cr.).

four palams of opium from a licensed vendor of opium. The servant purchased the opium and took it to the accused at Madras. *Held*, that the accused was guilty of the offence of *transporting opium* by sending his servant to bring opium to Madras, which was illegal, except under Rules VIII to XIII of the Opium Act, and the licence, which the accused held, did not authorise such transport either expressly or impliedly. 13 M. 191=1 Weir 834. *See also* 13 P.R. 1884 (Cr.). *Quære*.—Whether, if the accused had carried the opium himself the licence to possess the opium would necessarily imply a right to transport it with him and so override the prohibition of transport. 13 M. 191.

SECS. 4 AND 9: SELLING MORE THAN TWO TOLAS OF OPIUM TO ONE PERSON.—A sale of opium of more than 2 tolas to a single person in contravention of the terms of a licence is a breach of r. 48 and is punishable under sec. 9. 21 Cr.L.J. 180=54 I.C. 834=33 P.R. 1919 (Cr.); 10 P.R. 1893 (Cr.). *Beinchi or Pyaungchi which is the refuse of the opium pipe* is, when removed, from the pipe and reserved for further use, a preparation of opium within the meaning of sec. 3 and its possession is illegal under sec. 4, inasmuch as it is not permitted by the rules framed under the Act. L.B.R. (1872-1892) 617. *See also* 11 R. 436=1933 R. 258. With reference to secs. 3 and 9 the *illegal manufacture or preparation of chandu* was an offence under sec. 9. 1884 A.W.N. 213. Where a licensed cultivator transported opium from one district to another without a pass, *held*, that the accused, not being either a farmer, or a licensed vendor, or a wholesale licensed vendor, was not competent to transport opium from one district into another. 13 P.R. 1884 (Cr.); 13 M. 391=1 Weir 834. *See also* 40 P.R. 1887; 35 M. 582 and cases referred to therein. "Opium", as defined in the Opium Act, includes *admixtures* of it. *Kundon* being an admixture of opium, the possession of it is not allowed by the rules under the Act. L.B.R. (1872-1892) 619. Hence, the possession of *kundon* is, under the above section, illegal irrespective of the method by which it was obtained. (*Ibid.* *See also* 8 P.R.

BURDEN OF PROOF.—Under the Act, the possession of opium is *prima facie* illegal, and the person in possession must show that, in fact, his possession is legal. R. III of rules framed under the Act provides that a person may possess 3 tolas of raw opium "provided such opium has been purchased from Government or from a farmer or licensed vendor or medical practitioner". In order, therefore, that a person in possession of opium may have the benefit of r. III, he must show that it was purchased as provided by the rule. 1 Weir 832. If he fails to do so, his possession is illegal by virtue of sec. 4 and he is liable to punishment under sec. 9 (c). (*Ibid.*)

POWER OF INSPECTION of a place with the object of seeing whether *chandu* is manufactured there or not is vested under sec. 4 in officer superior in rank to a chaprasi who also may be authorized by the Local Government. 105 P.L.R. 1904.

ILLEGALITY OF SEARCH is no ground for setting aside a conviction for an offence of illegal possession of opium found in the search. 188 P.L.R. 1907=11 P.R. 1906 (Cr.). *See also* 53 I.C. 153=20 Cr.L.J. 745=2 P.L.T. 626. (Omission to have search witnesses is not fatal to a valid conviction).

SECS. 5 AND 9: LICENCE—BREACH OF CONDITION—LIABILITY OF MASTER FOR SERVANT'S ACTS.—A licensee under the Act is liable for breaches of the condition of his licence by his servant though not committed with his knowledge and permission. 34 A. 319=13 Cr.L.J. 282=14 I.C. 666; 9 A.L.J. 288. *See also* 7 C.P.L.R. 41 (Cr.); 105 P.R. 1883.

OMISSION OF LICENSEE TO KEEP REGULAR ACCOUNTS.—Under R. 49, sub-cl. 3 (f) of the rules framed by the Punjab Government under sec. 5, a retail licensee for the sale of opium is bound to keep correct daily accounts of sales of opium. A contravention of this rule is punishable under sec. 9. 20 Cr.L.J. 419=9 P.R. 1919 (Cr.)=51 I.C. 195. *See also* 1925 O. 350=26 Cr.L.J. 1306=89 I.C. 250; 10 P.R. 1893 (Cr.). Under sec. 10 there is a presumption in prosecutions under sec. 9 that all opium for which the accused person is unable to account satisfactorily, is opium in respect of which he has committed an offence under the Act. 20 Cr. L.J. 419=51 I.C. 195=9 P.R. 1919 (Cr.); Rat. 297.

¹[* * * *].

- ¹(a) possess opium;
- (b) transport opium;
- (c) import or export opium; or
- (d) sell opium.]

5. The Provincial Government, ²[* * *] may, from time to time,

Power to make rules to permit such matters.

by notification in the Official Gazette, make rules consistent with this Act, to permit absolutely or subject to the payment of duty or to any other conditions, and to regulate, within the whole or any specified part of the territories administered by such Government, all or any of the following matters:—

³[* * *]

- ³(a) the possession of opium;
- ³(b) the transport of opium;
- ³(c) the importation or exportation of opium; and
- ³(d) the sale of opium, and the farm of duties leviable on the sale of

opium, by retail:

Provided that no duty shall be levied under any such rule on any opium imported and on which a duty is imposed by or under the law⁴ relating to sea-customs for the time being in force or under ⁵[the Dangerous Drugs Act, 1930.]

6. [*Duty on opium imported by land.*] *Rep. by the Dangerous Drugs Act 1930 (II of 1930), S. 40 and Sch. II.*

7. ⁵[The Provincial Government may, by notification published in the Official Gazette, declare any place to be a warehouse for all or any opium legally imported, whether before

LEG. REF.

¹In sec. 4 cls. (a) and (b) were omitted and cls. (c) to (f) have been re-numbered as cls. (a) to (d) by Act II of 1930, Sch. II.

²Words 'subject to the control of the Governor-General in Council' omitted by A. O., 1937.

³In sec. 5 old clauses (a) and (b) have been omitted and clauses (c), (d), (e) and (f) have been relettered as clauses (a), (b) (c) and (d) respectively; and in the proviso for the word and figure "sec. 6" the words and figures "the Dangerous Drugs Act, 1930" have been substituted by Act II of 1930.

⁴See the Sea Customs Act (VIII of 1878), Chap. VIII.

⁵Sec. 7 substituted for old sec. 7 by A.O., 1937.

REGISTERED CONSUMER—PRESUMPTION.—The ordinary presumption would be that a person producing a certificate and asserting or implying that he was the person named in the certificate *was the registered consumer* to whom the certificate had been granted, and, unless it was proved that the vendor had reason to believe that the person producing the certificate was not the person named in it, the vendor should reasonably be held to be permitted by the rules to sell opium to the person producing the certificate. L.B.R. (1893-1900) 419. *The holder of a cultivator's licence is not prohibited* by R. 9 of the rules framed under sec. 5 read in connection with the other rules, *from consuming* the opium of which he is lawfully possessed under his licence. 12. P.R. 1884

(Cr.). See also 64 I.C. 135=22 Cr.L.J. 743 =24 O.C. 235.

RULES FRAMED UNDER—R. 38 (2)—AMENDMENT—EFFECT OF.—Under the amended R. 38 (2) of the rules framed under the Act, the amount of *chandu* which two or more persons may without a licence at one time possess collectively, is limited to 1 tola. 15 P.R. 1918 (Cr.)=46 I.C. 46=19 Cr.L.J. 686. *A contravention of the conditions of a permit is not penal* and the only penalty therefor is that provided in the permit itself, viz., the cancellation of the licence and the forfeiture of the money paid in pursuance of the licence. There is nothing in sec. 5 which makes the preparation of an incorrect account punishable under sec. 9. 64 I.C. 135 =22 Cr.L.J. 743=24 O.C. 235. R. 4 (iii) (c) *is a rule of evidence*, as to the fact of possession and not a rule as to the conditions of possession and as such is *ultra vires of the section*. A conviction based on the rule is therefore illegal. 27 I.C. 200=16 Cr. L.J. 136.

PATWARI'S OMISSION TO FURNISH CULTIVATOR'S LICENCE—LIABILITY OF CULTIVATOR.—Poppy cultivators, who were without licences only because the *Patwari* has failed to furnish them, are not liable under R. 21. 46 P.R. 1885 (Cr.).

OMISSION TO INFORM PATWARI of outturn of poppy cultivation is no offence. 16 P.R. 1883 (Cr.).

RULE 16: SCOPE OF THE RULE.—The intention of R. 16 of rules framed under sec. 5 is to permit possession of either opium not exceeding 3 tolas or of intoxicating drugs not exceeding that quantity or of both not

or after the payment of any duty leviable thereon, into the territories administered by that Government, or into any specified part thereof, and intended to be exported thence.

So long as the declaration remains in force, the owner of all such opium shall be bound to deposit it in that warehouse.]

8. The Provincial Government¹ [* * *] may, from time to time, by notification in the Official Gazette, make rules consistent

Power to make rules relating to warehouses.

with this Act to regulate the safe custody of opium warehoused under section 7; the levy of fees for such warehousing; the removal of such opium for sale or exportation; and the manner in which it shall be disposed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same.

Penalty for illegal cultivation of poppy, etc.

9. Any person who, in contravention of this Act, or of rules made and notified under section 5 or section 8,—

LEG. REF.

¹ Words 'subject to the control of the Governor-General in Council' omitted by A. O., 1937.

exceeding 3 tolas in the aggregate, 22 P.R. 1890 (Cr.); 15 P.R. 1918=22 P.W.R. 1918 (Cr.); 1930 L. 342=121 I.C. 292. *See also* as to joint possession by several persons. 13 P.R. 1897 (Cr.); 147 P.L.R. 1905=34 P. R. 1905; 31 P.R. 1902 (Cr.); 15 P.R. 1918 (Cr.); 88 P.L.R. 1918; 117 I.C. 212=30 Cr. L.J. 727. *Chundul* is opium dissolved in water and boiled so as to be smoked. A man cannot be said to make a preparation or admixture of opium within the meaning of secs. 5 and 9 and Rr. 35 of the Rules framed under that Act, for which a licence would be required, by merely dissolving in water the opium which he has legally purchased for his own use in smoking. Rat. 284. Sec. 5 (f) gives the Local Government power to make rules to permit absolutely or subject to conditions the sale of opium and to regulate its sale. R. 39 of the rules so framed, *inter alia*, enacts that "such licences shall be in the Form E hereto annexed or in such other form as the Commissioner from time to time prescribes." Sec. 9 (f) makes it an offence to sell opium in contravention of the Act or rules. A holder of a licence in Form E would, if he committed a breach of the licence, be selling in contravention of R. 39 and could be dealt with under sec. 9 of the Act. 1 S.L.R. (Cr.) 70=8 Cr.L.J. 188. The words "or in such other form as the Commissioner from time to time prescribe" in R. 39 are *ultra vires*. The rule-making power is a power delegated by the Government of India to the Local Government and the Local Government cannot delegate it to be Commissioner, *delegata potestas non potest delegari* (*Ibid.*). The conditions of a form of the licence prescribed by the Commissioner are, therefore, not rules under the Opium Act. Breach of the conditions of a Commissioner's licence which is not in Form E but in the form approved of by the Commissioner in Sind is, therefore not a breach of a rule under the Opium Act, even where the breach is committed by a person, and *a fortiori* he is not guilty of an

offence under sec. 9 when the breach is committed by his servant. 1 S.L.R. (Cr.) 70=8 Cr.L.J. 188.

ALLOWING SALE OF OPIUM BY AN UN-AUTHORISED PERSON.—A person who has taken a licence for the sale of opium is guilty of an offence under sec. 9 if he allows another person to sell it on his behalf, when that salesman's name is not endorsed on the licence under the rules framed by the Local Government and published in *N.W.P. and Oudh Government Gazette*, dated 11th June, 1898. 1 A.L.J. 245. There is nothing in any of the rules made by the Bengal Government under sec. 5 which would make the *preparation of incorrect accounts* punishable under sec. 9. 26 C. 571=3 C.W.N. 365. The omission by a licensed cultivator to have the outturn of ~~the~~ cultivation entered upon his licence is not a contravention of R. 9 (f). 10 P.R. 1893 (Cr.). There is nothing in the rules framed under the Opium Act requiring a *poppy cultivator to inform the patwari of the outturn of poppy heads* from the area under cultivation, as in the rules opium is distinguished from poppy heads. 16 P.R. 1883 (Cr.). The act of *selling opium by a licensed vendor in a quantity in excess of that permitted by law* is not a mere breach of the licence, but is an offence under the Rules framed under the Abkari Act, and can be punished under sec. 9. 1 Bom.L.R. 677. *Illegal transport of opium*. See 40 P. R. 1887 (Cr.).

SEC. 9.—For an offence under this section conscious possession by the accused must be established. 129 I.C. 184=1930 C. 668; 1923 R. 152=24 Cr.L.J. 934=75 I.C. 358.

SALE OF MORPHIA BY MEDICAL PRACTITIONER—OFFENCE.—There is a clear distinction between use of morphia in practice by an approved medical practitioner and sale of morphia by him to his patients. A sale by him is punishable under sec. 9. 56 I.C. 657=21 Cr.L.J. 497; 24 C.W.N. 343. *See also* 46 A. 146 (Importing opium—Consignment by a person to himself if offence); 6 Lah. L. J. 206=81 I.C. 154=25 Cr.L.J. 666=1924 L. 529; 36 C.W.N. 456=59 C. 1065=1932 C. 465 (preparation of adulterated opium pills when no offence); 1924 L. 99 (what

1[* * * *]

(a) possesses opium, or
 (b) transports opium, or
 (c) imports or exports opium, or
 (d) sells opium, or
 (e) omits to warehouse opium, or removes or does any act in respect of warehoused opium,

and any person who otherwise contravenes any such rule,

shall, on conviction before a Magistrate, be punished for each such offence with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both;

and, where a fine is imposed, the convicting magistrate shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months, and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced.

LEG. REF.

¹In sec. 9, cls. (a) and (b) have been omitted and cls. (c), (d), (e), (f) and (g) have been re-lettered as cls. (a), (b), (c), (d) and (e) by Act II of 1930.

constitutes preparation for admixture of opium).

POSSESSION OF OPIUM.—A person possessing a black substance with traces of opium hardly more than 1 per cent. cannot be punished for *illegal possession of opium if the thing is unfit to be used as opium*. 35 I.C. 972=17 Cr.L.J. 412=20 C.W.N. 1206.

PREPARATION OR ADMIXTURE OF OPIUM.—MEANING OF.—The preparation of adulterated opium pills is no offence where the amount of opium found, made up into pills and manufactured, is not more than what is allowed by the rules. 81 I.C. 154 (1)=25 Cr.L.J. 666 (1)=1924 Lah. 529. The word 'preparation' in R. 37 (d) of the Rules designates a completed or manufactured article and not an article in process of manufacture, the test being whether the stage has been reached at which it can be used. So also the word "admixture" refers only to a completed article and can only be applied after the mixing has been finished and not earlier. In the intermediate stages an offence has only been committed, if the amount of opium used in the manufacture is more than that permitted by law. 4 Lah. 12 =24 Cr.L.J. 668=73 I.C. 700=1924 L. 99. Opium as defined in sec. 3 does not include opium prepared or in course of preparation such as beinsi and beinchi. Hence a person in possession of both beinsi and beinchi is not guilty under sec. 9, Opium Act, but is guilty under sec. 10 (b), Dangerous Drugs Act. 1933 Cr.C. 997=1933 Ran. 258.

JOINT POSSESSION.—The fact that the accused gave opium to his father and children to eat was of itself insufficient to show, that he alone was not in possession of the quantity discovered in his almirah. 3 P.R. (1918) (Cr.)=19 Cr.L.J. 364=44 I.C. 588. As to possession by two brothers, see 6 L. 311 =88 I.C. 1044=1925 Lah. 477. It cannot be said that there can in no case be joint criminal possession, where an excisable article, or articles the possession of which is an

offence, is recovered from a house or place, jointly possessed by several persons. Each case must be decided on the evidence and it is obvious that as a fact several persons may be in joint criminal possession of an article. Where opium was recovered from a house in which three brothers lived jointly, *held*, that in the circumstances of the case the possession must be considered to be that of only the eldest brother. 40 P.L.R. 12 (2)=174 I.C. 789=A.I.R. 1938 Lah. 320. When at a search conducted by the Excise Inspector, a packet of opium was recovered from a box in a room of the house of which the accused was the master, *he must be held to be the person in possession of opium*. It is not necessary for the prosecution to prove who put it in that box. 133 I.C. 1=32 Cr. L.J. 967=1931 Mad. 490 (2)=61 M.L.J. 854. A wife cannot be held to be in joint possession with her husband of anything found in the house. (*Ibid.*) See also 1935 Pesh. 68=A.I.R. 1937 Rang. 434.

POSSESSION OF OPIUM, WHEN OFFENCE.—The quantity of opium that may be possessed by any person is determined by the rules issued by the Government under the powers conferred by sec. 5. Where the possession of the accused is not contrary to the terms of his licence, he is not guilty of any offence under the Act. 42 I.C. 593=18 Cr.L.J. 977 =41 P.R. 1917 (Cr.). See also 1921 Lah. 169=66 I.C. 993. An *unlawful possession of opium with the intention of eventually exporting it*, does not by itself amount to "exporting" opium under sec. 9 (e) of the Act. 15 P.R. 1916 (Cr.)=17 Cr.L.J. 1194 =34 I.C. 306. *Possession of opium on behalf of a master who is not entitled to possess is not a plea against sec. 9*. 35 I.C. 816=17 Cr.L.J. 384=4 L.W. 373. See also 15 P.R. 1916 (Cr.)=34 I.C. 306. *Liability of visitor of house, see 75 I.C. 358*. A person cannot be convicted for breach of the rules framed under sec. 9 merely for *contemplating such a violation*. 25 I.C. 995=15 Cr.L.J. 667 (Mad.). Where *opium was found in accused's house during his absence*, he is not in possession of opium in the sense required by law. 24 I.C. 156=15 Cr.L.J. 420. *Mere illegality in the exercise of the right of search, e.g., the omission to have*

search witnesses is not in itself sufficient ground for setting aside a conviction. 20 Cr.L.J. 745=53 I.C. 153=2 Pat.L.T. 626 (35 A. 358; 31 C. 557; 26 M. 124; 35 B. 225, Foll.; 53 I.C. 150, Diss.). Possession of opium by vendor outside shop, if offence. *See* 41 P.R. 1917 (Cr.)=42 I.C. 493. The mere possession of the paraphernalia of opium smoking is not in itself an offence under sec. 9 (c). 130 I.C. 367=32 Cr.L.J. 506=1931 R. 14. So also mere preparation of sugar-coated opium pills, though prepared with intent to sell it. 81 I.C. 154=25 Cr. L.J. 666=1924 Lah. 529.

PROOF OF POSSESSION.—Opium was found in an inner room under a bed and in men's boots, where the accused withdrew when the search party entered an outer-room, where she was being shampooed. Evidence showed that she was a mere visitor residing temporarily in the outer-room. *Held*, that her conviction was illegal unless the bed was shown to have been hers; men's boots, of course, could not have belonged to her. 75 I.C. 358=24 Cr.L.J. 934=1923 R. 152. *See also* 3 P.R. 1918 (Cr.); 151 I.C. 66=35 Cr. L.J. 1220.

LIABILITY OF AGENT FOR THE MISTAKE IN THE REGISTER.—Where the authorised agent of the licensee possesses opium actually within the limit of his licence but the register showed it to be more than the limit and the register is not in his hand he cannot be convicted under the section. 23 Cr.L.J. 337=66 I.C. 993=1921 Lah. 169.

POSSESSION BY PASSENGER—BOAT-MAN IS NOT LIABLE.—The fact that a passenger by boat has contraband opium with him is not sufficient to convict the boat-man under sec. 9 (c) of the Act. 59 I.C. 133=22 Cr.L. J. 31 (Cal.).

CONSIGNEE OF RAILWAY RECEIPT—"POSSESSION" OR "IMPORTATION".—*Per Richard-son, J.*—When the consignee of a railway receipt knows that a parcel containing opium has been sent to him, the possession of the railway receipt constitutes possession of the opium under cl. (c) of sec. 9. *Huda, J.*, feeling considerable doubts whether under the circumstances the accused could be said to be in possession within the meaning of the section, *held*, that it amounted to importing under cl. (e). 46 C. 820=23 C.W.N. 671=52 I.C. 389=14 C.W.N. 233=36 I.C. 1016; 32 C. 55.

POSSESSION OF SERVANT, IS NOT THAT OF MASTER.—It is always necessary for the prosecution to prove affirmatively that possession by the servant was on his master's behalf and with his authority to render the latter liable for conviction. 15 P.R. 1916 (Cr.)=17 Cr.L.J. 1194=34 I.C. 306. *See also* 18 Cr.L.J. 633=39 I.C. 1001=3 Pat. L.W. 344. The owner of a house where another has left a locked-up box of opium is in illegal possession of the opium. 12 Cr.L.J. 185=9 I.C. 1019. Where it cannot be said that the place in which the opium was found, is not one to which several per-

sons had equal right of access, however, the case may stand in law, it must be extremely difficult to convict the petitioner on facts. 3 Pat.L.T. 132=66 I.C. 328=23 Cr.L.J. 364.

ILLEGALITY OF SEARCH—EFFECT OF.—Having regard to the several irregularities committed by the Excise Sub-Inspector, his entry into the premises after sunset in contravention of sec. 14, his entry into the premises without search warrant in disregard of sec. 103, Cr. P. Code, and his keeping the investigation in his own hands and not delivering up the opium found to the nearest Police Station, in spite of the peremptory provisions of sec. 20, the conviction could not stand. 53 I.C. 150=20 Cr.L.J. 742 (Pat.). Where the proceedings bristle with irregularities, it is for the prosecution to show that the accused was not prejudiced thereby. (*Ibid.*)

OTHER CASES OF POSSESSION.—The possession of opium to be punishable must be possession with one's knowledge and assent. 13 Cr.L.J. 122=13 I.C. 778. Any possession of opium beyond the prescribed quantity amounts to an offence under the Act and Rules. It cannot be said that, when possession is on behalf of another, it is not possession within the meaning of the Act and Rules. 1 Weir 832. The offence consists in the possession of an amount beyond the prescribed amount, without reference to any question or to any alleged proprietary right to any portion of the opium. 1 Weir 832. Sec. 9 (c) contemplates a criminal or guilty possession. S. C. (Oudh) 236. In the case of a person charged with being in illicit possession of opium under this section, the fact that the opium was found in that portion of his dwelling-house, which was in his sole occupation gives rise to a *prima facie* presumption of his guilty possession. S. C. 236 Oudh. (S. C. 161, Oudh, Foll.). The accused was a shop-keeper, and his neighbour was a licenced opium-seller. The latter not being in the habit of sleeping in his shop used, when he went home, to put the opium with the books and licence in a box, which he locked himself, and of which he kept the key, and to make it over to the accused for safe custody during the night. *Held*, that such custody did not amount to possession by accused of the opium which was locked in the box and that he could not, therefore, be held to be guilty of having opium in his possession in contravention of the Act and the rules. 25 A. 262. The "possession" referred to in sec. 9 is possession with knowledge, and no presumption arises unless and until such possession is proved. 16 C.P.L.R. 13. The fact of the presence of a person in a "chāndu den", where several persons were smoking chāndu, or even of his being found smoking there, could not warrant his conviction for abetment of the offence on the part of the master of the establishment of possessing chāndu to a larger amount than that allowed by law. 1901 A.W.N. 117; 9 P.R. 1881 (Cr.);

Rat. 676; 7 A.L.J. 25. In order to succeed on a *defence of joint possession* in a charge of possession of more than one tola of opium, it must be conclusively shown that the possession of the accused was the joint possession of the accused and others and that he held on behalf and for the use of all. 34 P.R. 1905 (Cr.). Where the *defence of joint possession* of more than one tola of opium is pleaded, it is not only essential to know that a certain number of people are living in the house, but that they all joined in the purchase, and that it was held by one for the use of all. 31 P.R. 1902 (Cr.).

POSSESSION OF OPIUM BY MEMBER OF JOINT HINDU FAMILY.—An accused person, who was convicted of being in unlawful possession of crude opium, contended that the witnesses, called on to attend the search, were not respectable inhabitants of the locality, in which the place searched was situated, and also, for the first time in appeal, that his father, who was alive, being the master of the house, he (the accused) was entitled to an acquittal, in the absence of good evidence as to exclusive possession by a junior member of the joint family. *Held*, that in prosecutions under sec. 9 against a member of a joint family, the prosecution is bound to prove that the opium, found in the common room of the joint family house, was in the exclusive possession and control of the particular member of the joint family charged with its possession, that such a defence could not be discarded simply because it was for the first time put forward in appeal, and that under sec. 103 (1), Cr. P. Code, it was the duty of the Police Officer to call two or more respectable inhabitants of the locality, in which the place searched was situated, to attend and witness the search. 2 O.C. 99.

LIABILITY OF CARTMAN CARRYING OPIUM SEED.—Where accused No. 1 engaged accused No. 2 to carry illicit opium in his cart, *held*, that, in the absence of proof that the accused knew that opium was transported in his cart, he was not guilty. Rat. 378. The mere fact that the accused were two of the crew of the boat in which contraband opium was found, is not sufficient to attribute to them possession within the meaning of sec. 9. 14 C.W.N. 308; 8 C.W.N. 349.

LEGALITY OF ARREST.—For a conviction under this Act it matters not, so far as the legality of a conviction goes, by whom the accused was arrested or found in possession of the opium. U.B.R. (1897-1901), Vol. I, p. 239.

DESIRE OF MAGISTRATE TO INDUCE ACCUSED TO GIVE UP OPIUM.—The desire of the Magistrate to induce an accused person to give up opium smoking is not in itself a sufficient ground for passing on him a sentence of imprisonment. L.B.R. (1872-1892), 370.

POSSESSION BY ONE OF EXCESS QUANTITY PURCHASED FOR SEVERAL PERSONS—LEGALITY OF.—There is no rule allowing a person to possess opium purchased by another person, nor to possess opium in excess of the three

tolas' weight which has been purchased for other persons or which has been handed over to him to carry. The law must be strictly construed and followed or its ends will be easily defeated. U.B.R. (1892-96) Vol. I, p. 137. *See also* 4 P.R. 1884 (Cr.).

SENTENCE.—It was not the intention of the Legislature to punish with severity trifling breaches of Opium Law. In this case a fine of Rs. 50, and in default one month's imprisonment for the illegal possession of one tola of opium was considered to be a very excessive sentence. L.B.R. (1872-1892) 425. Severe punishments for an offence under cl. (c) of this section are unsuitable in cases of possession by a Burman woman of a small quantity for her own use and in cases when Excise Officers abet the commission of such offences. U.B.R. (1892-1896). Vol. I, 135. On a conviction under the section the punishment should, on considerations of fairness and common sense, be moderate in cases of confirmed opium-smokers from Burmese times for the continuance of a habit which has only recently been prohibited by a different Government U.B.R. (1892-1896), Vol. I, 136. The accused was found in illegal possession of four tolas of opium and was sentenced to one month's rigorous imprisonment and to a fine of Rs. 100 and in default to a further period of three months' rigorous imprisonment. *Held*, the punishment was needlessly severe. L.B.R. (1872-1892) 368. When an accused person is convicted of an offence under the Act under the conditions which lead the Magistrate to conclude that he is engaged in traffic in opium on a large scale or in transporting opium in considerable quantities, a substantive term of imprisonment may appropriately be awarded in addition to a substantial fine. When opium is smuggled or sold in large quantities, the profits are probably such that the prospect of a sentence of fine only does not act as a deterrent. U.B.R. (1897-1901), Vol. I, p. 241. [1 U.B.R. (1892-1896) 139, D.]

BURDEN OF PROOF.—Where opium of any kind, and whether or not in excess of the prescribed maximum, is found in the possession of any person and the legality of such possession is challenged by the Crown, the burden of proving that the possession was lawfully obtained lies on the person with whom the opium is found. 17 C.P.L.R. 75; 8 P.R. 1887 (Cr.). '*Beinch*' (or *half-consumed opium*), i.e., the remnant left in an opium pipe after once smoking, is itself a preparation of opium when retained for further use and its possession is therefore illegal under sec. 9. U.B.R. (1892-1896), Vol. I, p. 133. As to meaning of '*opium water*' and effect of possession of the same, *see* 14 Rang. 694=169 I.C. 344=A.I.R. 1937 Rang. 194.

POSSESSION AS BETWEEN MASTER AND SERVANT.—Mere possession by a Burman servant, on behalf of his master, a Chinaman, of three tolas of opium, is not illegal, and the servant cannot be convicted under the

terms of sec. 9 (e). U.B.R. 1909, 2nd Quarter, Opium 1. *See also* 133 I.C. 1=61 M.L.J. 854. If the accused Burman servant had had the custody of no more than three tolas of opium, which his master was entitled to possess, it might have been found that he, although a Burman, had committed no breach of the Opium Rules on the ground that he was not in possession within the meaning of the law. But it is otherwise if the quantity of opium be more than three tolas. U.B.R. (1897-1901), Vol. I, p. 232. There is no provision in the Opium Rules for the possession of more than three tolas of opium by one man, nor for the joint possession of more than that quantity by several persons. (*Ibid.*)

ILLICIT SALE OF OPIUM—EVIDENCE OF SALE.—Several persons were found in a house, and one of them was smoking *chandu*. On the premises were also found three pipes, two iron needles, one pair of tongs and a smoking pillow. The quantity of opium, however, found in the house was within the limit allowed by law. *Held*, that the circumstances were not strong enough to warrant the presumption that *chandu* was being sold on the premises. 7 A.L.J. 25. *See also* 9 P.R. 1881 (C.).

SALE OF OPIUM BY SERVANT OF LICENSEE.—In the absence of any prohibition in a licence to sell opium granted under this Act against the employment of a servant to sell the same, a sale by a servant of the licensee on behalf of his master is not properly a sale of opium without a licence punishable under sec. 9. S. C. 285 Oudh. Sale of smuggled opium by servant of contractor renders both servant and master criminally liable, though master was not present at the time of sale. L.R. 1 A. 58 (Cr.).

TRANSPORTING OPIUM—PASS FROM PROPER AUTHORITIES.—Under Rule VIII of the Opium Rules of 1893, a farmer desiring to transport opium from one taluq to another of the same district must "when the taluqs of the district are farmed to different farmers" obtain a pass for each consignment from the officer in charge of the excise revenue of the district or from the Tahsildar of the Taluq. 1 Weir 833. Where the taluqs of a district are separately farmed, but only one person is the farmer of two of the taluqs a person transporting opium from one of the taluqs to the other with permits signed by the farmer, and being found, in the course of transporting, in a place outside both the taluqs, has transgressed the rule. 1 Weir 833. *See also* 13 P.R. 1884 (Cr.).

IMPORTING OPIUM.—The accused went on business into foreign territory and, while there purchased one anna's worth of opium. He ate a portion of it there, and brought the rest in his turban into British territory. The Magistrate convicted him under sec. 9 (e). The High Court reversed the conviction. Rat. Un. Cr. C. 969=Cr. Rg. 25 of 1898. Where the post office suspecting a parcel to contain opium marks it doubtful and sends

it on to the place of despatch, sec. 9 (e) does not apply as the parcel ceased to be in the post office on accused's account before it left India for Burma. 2 P.R. 1911 (Cr.)=12 Cr.L.J. 116; 9 I.C. 682. Sale by servant of contractor—Conviction of both legal. Sale of smuggled opium by the servant of a contractor renders both the servant and the Master criminally liable, though the master was not present at the time of sale. L.R. 1 A. 58 (Cr.)=9 A.L.J. 288, foll. A person who exports from outside the United Provinces opium to a warehouse inside the United Provinces of which he is really the proprietor or temporary possessor, even under a false name, is, in fact, committing an offence under the Act and importing into the United Provinces, although he is also the person who exported from outside. 46 A. 146=81 I.C. 100=25 Cr.L.J. 612=1924 A. 558.

PROOF NECESSARY FOR CONVICTION.—The accused was charged with purchasing opium from unlicensed persons on the statement made by the accused to an Excise Darogha, who was directed by the Collector to question opium-eaters in order to elicit information for the purpose of prosecuting unlicensed vendors; the accused did not admit the statement. *Held*, that the accused could not be convicted as it had not been ascertained that the offence was actually committed. 19 P.R. 1890 (Cr.). *See also* 112 I.C. 901=30 Cr.L.J. 37=1928 Cal. 324.

BREACH OF CONDITION OF LICENCE—OFFENCE.—An infraction of a condition of a licence cannot be considered an infraction of the rules and punishable under sec. 9 Rat. 860. The terms of a licence issued under rules promulgated under secs. 5 and 8 are not to be regarded as part of the rules themselves; and consequently, an infraction of any of the conditions of a licence issued under the said rules cannot be considered an infraction of the rules and punishable under sec. 9 (f). Rat. 332. While a contravention of the rule is declared punishable under sec. 9 a contravention of the conditions of permit is no offence under sec. 9 (Preparation of incorrect accounts). 64 I. C. 155=24 O.C. 235. *See also* 26 C. 571. The rules made under the Act do not make the neglect to keep accounts an offence punishable under the Act. 1 Weir 831.

FORM OF CHARGE.—In a charge under sec. 9, the rule under which the accused is charged should be specified clearly so that the accused may know precisely with what he is charged and may not be misled in his defence. 10 P.R. 1888 (Cr.); 19 P.R. 1891 (Cr.).

POWER OF MAGISTRATE ISSUING A SEARCH WARRANT TO CONDUCT SEARCH.—A Magistrate who has the power to issue a search-warrant has the power himself to search. A.W.N. (1884), 213.

COMMITMENT FOR AN OFFENCE UNDER SEC. 9 OF THE ACT TO THE SESSIONS.—A Sessions Judge has no jurisdiction over an offence under sec. 9. The conviction under

10. In prosecutions under section 9, it shall be presumed, until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act.

Presumption in prosecutions under section 9.

Confiscation of opium.

11. In any case in which an offence under section 9 has been committed,—

¹[* * * *]

¹(a) the opium in respect of which any offence under the same section has been committed,

¹(b) where in the case of an offence under clause ¹[(b) or (c)] of the same section, the offender is transporting, importing or exporting any opium

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¹Old cl. (a) has been omitted, and in cl. (c) for the letters “(d) or (e)” the letters “(b) or (c)” have been substituted and in cl. (d) for the letter “(f)” the letter “(d)” has been substituted; and cl. (b) and cls. (c) and (d) as so amended have been re-lettered as (a), (b) and (c) respectively by Act II of 1930.

that section must be by a Magistrate. The latter is not, therefore, competent to commit the case to the Sessions. 19 A. 465. See also 24 C. 691; 29 Mad. 372; 15 A. 192 (F. B.); L.B.R. (1872-1892), 400; 113 P.L.R. 1906—as to sentence L.B.R. (1872-1892), p. 330.

Conviction by Sessions Judge for offence substantially different from that found by trial Court is bad. 1 P.R. 1894 (Cr.).

Joint trial of several accused when legal. See 113 P.L.R. 1906.

Abatement of offence conviction for. See 4 P.R. 1884 (Cr.).

SECS. 9 AND 10: SCOPE OF SECTIONS.—The section provides that opium in respect of which an offence under the section is committed must be opium in the possession of the accused, although the possession need not be to the knowledge of the accused. The section is a penal one and must therefore be read plainly; the plain meaning is that if excessive opium is found in a man's possession, he is liable to be punished, unless he is able to account for it satisfactorily. 8 C.W.N. 349.

ILLUSTRATIVE CASES.—Where opium is found in the luggage of a child in charge of an adult, the presumption is that it is in the possession of a person in *loco parentis* to the child until the contrary is proved. The presumption under sec. 10 should be imposed on the accused, only after giving him an opportunity to account for the possession of opium, and if he is then unable to account for it satisfactorily; and the punishment awarded under the Act should not be one beyond what the public interest demands. U.B.R. (1892-1896), Vol. I, p. 139. The holder of a mate's receipt is presumed, till the contrary is proved, to be in possession of the consignment covered by it. U.B.R. 314. Under sec. 10, where the accused is found in *constructive possession of a package containing opium*, he is bound to account

satisfactorily for it and to prove that no offence is committed by him in respect of it. L.B.R. (1897-1901), Vol. I, p. 242. In *constructing* sec. 10, some limitation must be placed upon the general words of the section, namely, “it shall be presumed, until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act”. 14 C.W.N. 710. The effect of secs. 9 and 10 of the *Opium Act* seems to be that, when once it is proved that an accused person has dealt with opium in any of the ways described in sec. 9, the onus of proving that he had a right so to deal with it is thrown upon the accused by sec. 10. But the commission of an act which may be an offence must be proved before the presumption under sec. 10 comes into play, and the presumption cannot be used to establish the fact. 14 C.W.N. 710. Where the accused, after having purchased opium on behalf of his master, did not send it to the master's shop, but falsely said, when asked as to it, that the opium had been stolen. *Held*, these circumstances, though they raise a *suspicion* that the accused sold the opium, are not sufficient to prove that he had done so, and the rule of statutory presumption embodied in sec. 10 does not apply and cannot be used to establish that fact. But as, on the facts proved, the accused might have been convicted of unlawful *transport of opium*, the conviction and sentence were not interfered with. (*Ibid.*) See also 188 P.L.R. 1907=11 P.R. 1906 (Cr.). A *Magistrate is not competent to distribute fines* among persons who may have been concerned in the detection of an offence under the Act. Rule No. 67, so far as it authorizes such payment, is *ultra vires*. 13 P.R. 1894 (Cr.). Where the accused was prosecuted for being in possession of opium in excess of the quantity allowed by law, the accused pleaded that the discovery of the excess quantity was the result of an illegal search. *Held*, the fact that the discovery was the result of an *illegal search* cannot exonerate the accused from his criminal liability. 11 P.R. 1906 (Cr.)=4 Cr. L.J. 290=118 P.L.R. 1907.

SEC. 10: POSSESSION.—The term “possession” implies knowledge on the part of the alleged possessor. A man has not the possession of that, of the existence of which he

exceeding the quantity (if any) which he is permitted to transport, import or export, as the case may be, the whole of the opium which he is transporting, importing or exporting,

* (c) where in the case of an offence under clause ¹[(d)] of the same section, the offender has in his possession any opium other than the opium in respect of which the offence has been committed, the whole of such other opium,

shall be liable to confiscation.

The vessels, packages and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any) of the vessel or package in which such opium may be concealed, and the animals and conveyances used in carrying it, shall likewise be liable to confiscation.

12. When the offender is convicted, or when the person charged with an offence in respect of any opium is acquitted, but the Order of confiscation by Magistrate decides that the opium is liable to confiscation, such confiscation may be ordered by the

Magistrate.

Whenever confiscation is authorised by this Act, the officer ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit.

When an offence against this Act has been committed, but the offender is not known or cannot be found, or when opium not in the possession of any person cannot be satisfactorily accounted for, the case shall be enquired into and determined by the Collector of the district or Deputy Commissioner, or by any other officer authorized by the Provincial Government in this behalf, either personally or in right of his office, who may order such confiscation: Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons (if any) claiming any right thereto, and the evidence (if any) which they produce in support of their claims.

13. The Provincial Government may, ¹[* *] from time to time, by notification in the Official Gazette, make rules² consistent with this Act to regulate—

Power to make rules regarding disposal of things confiscated, and rewards.

(a) the disposal of all things confiscated under this Act; and

(b) the rewards to be paid to officers and informers ³[* * *].

LEG. REF.

*Fide footnote 1, on page 1065, *supra*.

¹The words "with the previous sanction of the Governor-General in Council" were omitted by the Devolution Act (XXXVIII of 1920).

²See List of Rules noted under sec. 5 *supra* which were made also under the powers conferred by this section.

³Words "out of the proceeds of fines, etc." omitted by A.O., 1937.

is unaware. Before an accused person is required to account for opium, there must be proof that such opium has been in his possession or under his control. L.B.R. (1872-1892), p. 573. See also 7 Rang. 11 = 30 Cr.L.J. 753 = 1929 Rang. 121 = 117 I.C. 248; 1930 C. 668 = 129 I.C. 184.

BURDEN OF PROOF.—Where an accused person gives an account of his possession of the opium, which, if true, is satisfactory, and there is no evidence to show that it is untrue the burden of proving how he became possessed of the opium in question does not fall on him. L.B.R. (1872-1892), p. 597. See also

1 Weir 832; 8 P.R. 1887 (Cr.); 3 Bur.L.T. 82; S.C. (Oudh) 161; *ibid.* 236; 8 I.C. 361; 14 C.W.N. 710. Possession must be proved, as opium is not unfrequently maliciously placed in or upon a person's premises by an enemy, who, then, brings down the police to the spot where the opium is found, and as such finding does not prove the possession contemplated by law. S. C. 161, Oudh [F., S. C. 236 Oudh]. Sec. 10 contains no reservation in favour of common carriers. 8 C. W.N. 349. One of the objects of enactments such as sec. 10 is to induce persons like carriers, to exercise special vigilance in carrying on their business, and this would apply as much to a common carrier as to a carrier under a special contract. 8 C.W.N. 349.

SECS. 11 AND 12: SCOPE OF SECTION.—See 13 P.R. 1894 (Cr.); 2 I.C. 546 = 10 Cr.L.J. 85.

LIABILITY TO CONFISCATION WHEN ARISES.—Sec. 11 does not authorise the confiscation of every receptacle such as conveyance in which a small quantity of opium may happen to be found. The liability arises only from the owner of such conveyance

14. Any officer of any of the departments of Excise, Police, Customs, Salt,

Power to enter, arrest and seize, on information that opium is unlawfully kept in any enclosed place.

Opium or Revenue superior in rank to a peon or constable, who may in right of his office be authorized by the Provincial Government in this behalf, and who has reason to believe, from personal knowledge or from information given by any person and taken

down in writing, that opium liable to confiscation under this Act is ¹[* *] kept or concealed in any building, vessel or enclosed place, may, between sunrise and sunset,—

(a) enter into any such building, vessel or place;

(b) in case of resistance, break open any door and remove any other obstacle to such entry;

(c) seize such opium ¹[* * * * *] and any other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium; and

(d) detain and search, and, if he thinks proper, arrest, any person whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force.

LEG. REF.

¹In sec. 14 the word "manufactured" has been omitted; and in cl. (c) the words "and all materials used in the manufacture thereof" have been omitted by Act II of 1930.

using it for the purpose of transporting opium. A person is not liable because his servant uses his private carriage for his stock of opium. 12 Cr.L.J. 103=9 I.C. 587; 15 C.W.N. 296. See also 1 Weir 835. Car possessed under hire purchase agreement transporting contraband opium and ganju—Confiscation—When proper. See (1942) 2 M.L.J. 550. As to searches by excise officers, see 5 L.B.R. 56; 2 I.C. 546=10 Cr.L.J. 85; 105 P.L.R. 1900; 4 L.B.R. 121=7 Cr.L.J. 87; 3 L.B.R. 229=4 Cr.L.J. 190; 13 P.R. 1880. Where no improper conductor can be imported to the owner, he should be heard before an order of confiscation is passed. 91 I.C. 703=80 C.W.N. 240=27 Cr.L.J. 127=1925 C. 1021.

CONFISCATION OF CAR—OWNERS NOT GIVEN OPPORTUNITY TO SHOW CAUSE.—An order of confiscation under sec. 12 in respect of a motor car used in smuggling opium is illegal unless an opportunity is given to the owner of the car to prove that he had no knowledge or reason to believe that it was used for smuggling. 2 Pat.L.R. 63=69 I. C. 635=23 Cr.L.J. 747.

CONFISCATION OF PROPERTY—PROOF.—Where a cartman was hired by the accused and in the cart was found a bag containing opium belonging to the accused, held, that the order for the confiscation of the cart was not legal, in the absence of evidence to show that the cartman knew that the accused's bag contained opium, and, even if he knew that there was opium in the bag, that the accused had no right to transport it. 1 Weir 835.

APPEAL FROM ORDER OF CONFISCATION.—No appeal lies against an order of confiscation passed under sec. 11. 1 Weir 835.

SEC. 14.—In case of assault or criminal force to deter public servant from discharge of his duty the test is whether the officer at the time of the assault was lawfully discharging a duty imposed on him by law as such. Was he doing what it was his duty to do, when he was assaulted. Unless the Excise Officer had been authorised to enter a building and search; unless he had reduced to writing the information received by him as required by sec. 14, he would not be acting in the lawful discharge of a duty imposed on him by law as an Inspector in attempting to make a search and an assault committed on him would not be an assault committed on him in the execution of his duty and therefore the person assaulting such Inspector cannot be convicted under Penal Code, sec. 353. (18 A. 246 and *Queen v. Roxborough*, 21 Cox. C.C. 8, Rel. on.) 146 I.C. 43=1933 S. 174.

SECS. 14 TO 16: SCOPE OF SECTIONS.—SEARCH FOR OPIUM.—Sec. 16 lays down that searches under sec. 14 and 15 shall be made in accordance with the provisions of the Code of Criminal Procedure. 4 L.B.R. 121=14 Bur.L.R. 202=7 Cr.L.J. 87. Under the Excise Act, it would appear from the wording of sec. 38 of that Act, that it is not necessary for an Excise Officer to conduct the search under the provisions of the Code of Criminal Procedure. It is objectionable to be constantly calling the same person to witness the search, and to do so is likely to prejudice the mind of a trying Magistrate against the prosecution. (*Ibid.*) See also 1930 R. 49=7 R. 771=121 I.C. 715; 1927 R. 170=100 I.C. 980. When searches are undertaken under the provisions of the Opium Act, neighbours or respectable house-owners near to the house searched, should be called in to witness the search. A written information is not evidence. If it is desired to make the matter contained in it evidence, a person who could directly testify to such matter should be produced as witness. 4

Power to seize opium in open places. 15. Any officer of any of the said departments may—

(a) seize, in any open place or in transit, any opium or other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium;

(b) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law, and, if such person has opium in his possession, arrest him and any other persons in his company.

16. All searches under section 14 or section 15 shall be made in accordance with the provisions of the Code of Criminal Procedure.¹

17. The officers of the several departments mentioned in section 14 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

Vexatious entries, searches, seizures and arrests. 18. Any officer of any of the said departments who, without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any

building, vessel or place,

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act.

or vexatiously and unnecessarily detains, searches or arrests any person, shall, for every such offence, be punished with fine not exceeding five hundred rupees.

LEG. REF.

¹See now the Code of Criminal Procedure, 1898 (Act V of 1898).

L.B.R. 121=7 Cr.L.J. 87. See also 1931 C. 350=35 C.W.N. 601=131 I.C. 113 [Excise Officer investigating offence is deemed to be a police officer; confession to him is inadmissible as evidence. See also 5 L.B.R. 56=10 Cr.L.J. 86= I.C. 546; 1894 A.W.N. 113; (L.B.R. (1872-1896), Vol. I, p. 135]

* POWER OF ARREST.—Sec. 24 of Act XIII of 1857 does not authorise a police officer unconditionally to arrest a person against whom the information mentioned in that section has been received. It only authorises a police officer to take security from the person informed against, and the power to take such person into custody arises only upon his default in giving security that may be demanded of him. But the power of arrest, under sec. 4 (g), Criminal Procedure Code, is an unqualified power. 24 C. 681 See also 43 C. 1161=20 C.W.N. 1294=35 I.C. 811=17 Cr.L.J. 379; seizure of opium—see 10 Cr.L.J. 86=2 I.C. 546=5 L.B.R. 56.

ONUS OF PROVING knowledge is on the prosecution. 1930 C. 668=129 I.C. 184. The mere fact that opium was found in the accused's claim without proof of any additional facts to establish connection between him and the opium will not suffice to discharge that onus. (*Ibid.*); 59 I.C. 133.

SECS. 14 AND 20.—Sec. 14 read with sec. 20 requires an Excise Inspector, where a search is made in consequence of information received, that the information should

be reduced to writing. 146 I.C. 43=1933 Sind 174.

SECS. 15-19: TIME OF SEARCH.—*Opium which is being carried about from place to place in a boat is 'in transit'*, although the boat is temporarily anchored or otherwise fastened. But sec. 15 does not authorise an officer to enter and search a boat between sunset and sunrise, against the will of the person in charge of it, without a warrant from another officer authorised under sec. 19 of the Act. 5 L.B.R. 56=2 I.C. 546 (F.B.).

SEC. 15.—According to the Opium Act, all searches under sec. 15 are to be in accordance with the provisions of the Code of Criminal Procedure. There is, however, no provision in the Code relating to searches of persons, except sec. 102 (3) which refers to persons in or about a place liable to search. Sec. 103 deals only with 'places to be searched' and it has no application to searches under the Opium Act. Irregularity in the search does not necessarily invalidate the proceedings. It always affords a ground for scrutiny, and if, after careful scrutiny, the Court comes to the conclusion that an excisable article was recovered from the possession of the accused, then the conviction is treated as a sound one. 1941 Rang.L.R. 552=A.I.R. 1941 Rang. 333.

SEC. 16: SEARCH, HOW MADE.—In conducting a search under this Act of premises occupied by the accused, the provisions of sec. 103 of the Code of Criminal Procedure are to be observed. The residents of the locality must be asked to be present and a list of property found should be made. The

19. The Collector of the district, Deputy Commissioner or other officer

Issue of warrants. authorized by the Provincial Government in this behalf, either personally or in right of his office, or a Magistrate, may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to opium, or for the search, whether by day or night, of any building or vessel or place in which he has reason to believe opium liable to confiscation to be kept or concealed.

All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure.*

20. Every person arrested, and thing seized, under section 14 or section

Disposal of person arrested or thing seized.

15, shall be forwarded without delay to the officer in charge of the nearest police-station; and every person arrested and thing seized under section 19 shall be forwarded without delay to the officer by whom the warrant was issued.

Every officer to whom any person or thing is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or thing.

21. Whenever any officer makes any arrest or seizure under this Act, he

Report of arrests and seizures.

shall, without forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate

official superior.

22. [Procedure in case of illegal poppy cultivation.] Repealed by Act II of 1930.

Recovery of arrears of fees, duties, etc.

23. Any arrear of any fee or duty imposed under this Act or any rule made hereunder, and any arrear due from any farmer of opium-

revenue,

may be recovered from the person primarily liable to pay the same to the Provincial Government or from his surety (if any) as if it were an arrear of land revenue.

24. When any amount is due to a farmer of opium-revenue from his

Farmer may apply to Collector or other officer to recover amount due to him by licensee.

licensee, in respect of a licence, such farmer may make an application to the Collector of the district, Deputy Commissioner or other officer authorized by the Provincial Government in this behalf, praying such officer to recover such amount on behalf of the

applicant; and, on receiving such application, such Collector, Deputy Commissioner or other officer may in his discretion recover such amount as if it were an arrear of land-revenue, and shall pay any amount so recovered to the applicant:

Provided that the execution of any process issued by such Collector, [Deputy Commissioner] or other officer for the recovery of such amount shall be stayed if the licensee institutes a suit in the Civil Court to try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer:

Provided also that nothing contained in this section or done thereunder

LEG. REF.

*Vide footnote 1, on page 1068, *supra*.

1 "Deputy Commissioner" was substituted for "Deputy Collector" by the Repealing and Amending Act (XII of 1891), Sch. II.

irregularity of the search will impair the value of the evidence regarding the discovery of opium. U.B.R. (1892-1896) Vol. I, p. 135. But will not affect the validity of an otherwise proper connection. 53 I.C. 153 = 20 Cr.L.J. 745 = 2 P.L.T. 626. The mere

fact that witnesses for search did not come from immediate vicinity but mere residents of a village 2 or 3 miles away, would not justify the Court in rejecting their evidence. A.I.R. 1937 Rang. 434.

ONUS.—If the law declares that under certain conditions the burden of proof shall be shifted from the prosecution to the accused, the presence of all those conditions should be strictly proved. U.B.R. (1892-1896), Vol. I, p. 144.

shall affect the right of any farmer of opium-revenue to recover by suit in the Civil Court or otherwise any amount due to him from such licensee.

25. When any person, in compliance with any rule made hereunder, gives a bond for the performance of any duty or act, such duty or act shall be deemed to be a public duty, or an act in which the public are interested, as the case may be, within the meaning of the Indian Contract Act, 1872, section 74; and, upon breach of the condition of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue.

SCHEDULE.

[ENACTMENTS REPEALED.]

Repealed by Act XII of 1891.

THE INDIAN PASSPORT ACT (XXXIV OF 1920).

[9th September, 1920.]

An Act to take power to require passports of persons entering British India.

WHEREAS it is expedient to take power to require passports of persons entering British India; It is hereby enacted as follows:—

Short title and extent. 1. (1) This Act may be called THE INDIAN PASSPORT ACT, 1920.

(2) It shall extend to the whole of British India, including British Baluchistan, the Sonthal Parganas and the district of Angul.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

“entry” means entry by water, land or air;

“passport” means a passport for the time being in force issued or renewed by the prescribed authority and satisfying the conditions prescribed relating to the class of passports to which it belongs; and

“prescribed” means prescribed by rules made under this Act.

3. (1) The Central Government may make rules requiring that persons entering British India shall be in possession of passports, and for all matters ancillary or incidental to that purpose.

(2) Without prejudice to the generality of the foregoing power such rules may—

(a) prohibit the entry into British India or any part thereof of any person who has not in his possession a passport issued to him;

(b) prescribe the authorities by whom passports must have been issued or renewed, and the conditions with which they must comply for the purposes of this Act; and

(c) provide for the exemption, either absolutely or on any condition, of any person or class of persons from any provision of such rules.

(3) Rules made under this section may provide that any contravention thereof or of any order issued under the authority of any such rule shall be punishable with imprisonment for a term which may extend to three months, or with fine or with both.

(4) All rules made under this section shall be published in the Official Gazette, and shall thereupon have effect as if enacted in this Act.

4. (1) Any officer of police, not below the rank of a sub-inspector, and any officer of the Customs Department empowered by a general or special order of the Central Govern-

Power of arrest.

LEG. REF.

A.O., 1937.

¹ Substituted for ‘Local Government’ by

ment] in this behalf may arrest without warrant any person who has contravened or against whom a reasonable suspicion exists that he has contravened any rule or order made under section 3.

(2) Every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested before a Magistrate having jurisdiction in the case or to the officer in charge of the nearest police-station and the provisions of section 61 of the Code of Criminal Procedure, 1898, shall, so far as may be, apply in the case of any such arrest.

5. The [Central Government] may, by general or special order, direct the removal of any person from British India who, in contravention of any rule made under section 3 prohibiting entry into British India without passport, has entered therein, and thereupon any [officer of the Crown] shall have all reasonable powers necessary to enforce such direction.

PATENTS AND DESIGNS ACT (II OF 1911) (Extracts).

Legal Proceedings.

Piracy of registered design. 53. (1) During the existence of copyright in any design it shall not be lawful for any person—

(a) for the purpose of sale to apply or cause to be applied to any article

LEG. REF.

¹Substituted for 'Local Government' by A.O., 1937.

²Substituted for "officer of Government" by *ibid.*

SEC. 53.—The word "Court" in sec. 53 refers to the District Court; and a suit under sec. 53 must be instituted in the District Court. 188 I.C. 871=A.I.R. 1940 Pesh. 19. Sec. 53 is self-contained in itself, and the two parts of sec. 53 (2) are disjunctive. The plaintiff must make his election of remedies under the section before the final hearing of the suit. 38 Bom.L.R. 823=A.I.R. 1936 Bom. 408. It is not necessary, in order to entitle a plaintiff to relief on the ground of infringement of copyright in design, that the infringing design should be an exact copy or reproduction of the registered design. The words "*fraudulent or obvious imitation*" ought not to be construed as meaning exact reproduction. 181 I.C. 547=41 Bom.L.R. 45=A.I.R. 1939 Bom. 103. The onus of proving that defendant had knowledge of plaintiff's rights or that he applied or caused to be applied such designs to the articles sold by him lies on plaintiff. Sec. 106, Evidence Act, does not apply. 40 C.W.N. 938=A.I.R. 1936 C. 493. Sec. 53 creates three separate acts which are unlawful. The first is to apply the design in the way described; the second is to do anything with a view to enable the design to be applied in the way described in the statement of the first of the offences and the third is to expose or cause to be exposed for sale the article under the conditions specified under head (b). The acts referred to in the Act must, in order to constitute offences under the Act, be committed in British India. 40 Bom.L.R. 661=A.I.R. 1938 Bom. 413. Under sec. 53 (1) (a) it is not the application that has to be fraudulent, but the imitation should be considered as "fraudulent

or obvious" or not. A person is entitled to sue the infringer as soon as the latter causes the design to be applied to his goods and imports the same for sale in British India, though the design is actually applied to the goods in a country outside British India. 181 I.C. 547=41 Bom.L.R. 45=A.I.R. 1939 Bom. 103. The question of actual damage must always be seriously considered when allotting penalties for the various offences under this section. 1933 R. 240.

The equitable remedies in respect of an infringement of a design or not excluded by the statute and in a suit for relief on the ground of infringement, the plaintiff is therefore entitled to ask for delivery up of the goods with the infringing trade mark to him for destruction. 181 I.C. 547=41 Bom.L.R. 45=A.I.R. 1939 Bom. 103.

A certificate of registration, issued by the controller under sec. 45 (1) to the proprietor of a design when registered, is not final and conclusive. There is only a *prima facie* presumption that the person whose name is registered as the proprietor is the proprietor of a new or original design, but the presumption can be rebutted. The certificate is not conclusive, and there is nothing in the Act which prevents the defendant in a suit for damages for infringement of a registered design under sec. 53 of the Act from raising in defence the plea that the design was previously published and was neither new or original. The onus is of course on the defendant who seeks to go behind the certificate of registration to show that the plaintiff is not the proprietor of the registered design in question. 43 Bom.L.R. 280.

A patent may be sustained though each principle or process in it was previously well-known to all persons engaged in the trade to which the patent relates, provided that the mode of combining those processes was new and produced a beneficial re-

in any class of goods in which the design is registered the design or any fraudulent or obvious imitation thereof, except with the licence or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or

(b) knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article.

(2) If any person acts in contravention of this section, he shall be liable for every contravention,—

(a) to pay to the registered proprietor of the design a sum not exceeding five hundred rupees recoverable as a contract debt, or

(b) if the proprietor elects to bring a suit for the recovery of damages for any such contravention, and for an injunction against the repetition thereof, to pay such damages as may be awarded and to be restrained by injunction accordingly:

Provided that the total sum recoverable in respect of any one design under clause (a) shall not exceed one thousand rupees.

(3) When the Court makes a decree in a suit under sub-section (2), it shall send a copy of the decree to the Controller, who shall cause an entry thereof to be made in the register of designs.

54. The provisions of this Act with regard to certificates of the validity of

Application of certain provisions of the Act as to patents to designs.

a patent, and to the remedy in case of groundless threats of legal proceedings by a patentee shall apply in the case of registered designs in like manner as they apply in the case of patents, with the substitution

of references to the copyright in a design for references to a patent; and of references to the proprietor of a design for references to the patentee, and of references to the design for references to the invention.

* * * * *

Offences.

78. If any person uses on his place of business, or on any document issued

Wrongful use of words
"Patent Office."

by him, or otherwise, the words "Patent Office," or any other words suggesting that his place of business

is officially connected with, or is, the Patent Office, he shall be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing offence, with further fine of twenty rupees for each day on which the offence is continued after conviction therefor.

THE PAYMENT OF WAGES ACT (IV OF 1936).

[N.B.—Am. Act XX of 1937, Act XXII of 1937 and Ordinance III of 1940.]

[23rd April, 1936.]

An Act to regulate the payment of wages to certain classes of persons employed in industry.

WHEREAS it is expedient to regulate the payment of wages to certain classes of persons employed in industry; It is hereby enacted as follows:—

Short title, extent, commencement and application. 1. (1) This Act may be called THE PAYMENT OF WAGES ACT, 1936.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

sult, and provided also that the specification claimed not the old processes, or any one of them, but only the new combination. A new combination of known processes and methods to produce a known article is a "new manufacture" within the meaning of

the statute, if the result of such a combination is to produce the article either greater in yield, or cheaper in costs or better in quality. I.L.R. (1943) Lah. 372=A.I.R. 1943 Lah. 247.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(4) It applies in the first instance to the payment of wages to persons employed in any factory and to persons employed (otherwise than in a factory) upon any railway by a railway administration or, either directly or through a sub-contractor, by a person fulfilling a contract with a railway administration.

(5) The Provincial Government may, after giving three months' notice of its intention of so doing, by notification in the Official Gazette, extend the provisions of the Act or any of them to the payment of wages to any class of persons employed in any industrial establishment or in any class or group of industrial establishments.

(6) Nothing in this Act shall apply to wages payable in respect of a wage-period which, over such wage-period, average two hundred rupees a month or more.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(i) "factory" means a factory as defined in clause (j) of section 2 of the Factories Act, 1934;

(ii) "industrial establishment" means any—

(a) tramway or motor omnibus service;

(b) dock, wharf or jetty;

(c) inland steam-vessel;

(d) mine, quarry or oil-field;

(e) plantation;

(f) workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale;

(iii) "plantation" means any estate which is maintained for the purpose of growing cinchona, rubber, coffee or tea, and on which twenty-five or more persons are employed for that purpose;

(iv) "prescribed" means prescribed by rules made under this Act;

(v) "railway administration" has the meaning assigned to it in clause (6) of section 3 of the Indian Railways Act, 1890; and

(vi) "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable, whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed, or otherwise, to a person employed in respect of his employment or of work done in such employment, and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include—

(a) the value of any house accommodation, supply of light, water, medical attendance or other amenity, or of any service excluded by general or special order of the ¹[* * * *] Provincial Government;

(b) any contribution paid by the employer to any pension fund or provident fund;

(c) any travelling allowance or the value of any travelling concession;

(d) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(e) any gratuity payable on discharge.

LEG. REF.

¹ Words 'Governor-General in Council' or omitted by A.O., 1937.

SEC. 2.—"Wages" as defined by sec. 2 can only mean wages earned and cannot embrace potential wages. Bonus which workman might earn but has not earned cannot form part

of his wages. The words "remuneration, which would, if the contract were fulfilled be payable", mean no more than remuneration payable on the fulfilment of the contract. Bonus never becomes payable to an employee who does not earn it under the terms of the contract. 32 Bom.L.R. 955=1941 Bom. 26.

Responsibility for pay- 3. Every employer shall be responsible for the
ment of wages. payment to persons employed by him of all wages
required to be paid under this Act:

Provided that in the case of persons employed (otherwise than by a contractor)—

(a) in factories, if a person has been named as the manager of the factory under clause (e) of sub-section (1) of section 9 of the Factories Act, 1934,

(b) in industrial establishments, if there is a person responsible to the employer for the supervision and control of the industrial establishment,

(c) upon railways (otherwise than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned,

the person so named, the person so responsible to the employer, or the person so nominated, as the case may be, shall be responsible for such payment.

4. (1) Every person responsible for the payment of wages under section 3 shall fix periods (in this Act referred to as wage-

Fixation of wage-periods. periods) in respect of which such wages shall be payable.

(2) No wage-period shall exceed one month.

Time of payment of 5. (1) The wages of every person employed
wages. upon or in—

(a) any railway, factory or industrial establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day,

(b) any other railway, factory or industrial establishment, shall be paid before the expiry of the tenth day,
after the last day of the wage-period in respect of which the wages are payable.

(2) Where the employment of any person is terminated by or on behalf of the employer, the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated.

(3) The ¹[Provincial Government] may, by general or special order, exempt, to such extent and subject to such conditions as may be specified in the order, the person responsible for the payment of wages to persons employed upon any railway (otherwise than in a factory) from the operation of this section in respect of the wages of any such persons or class of such persons.

(4) All payments of wages shall be made on a working day.

Wages to be paid in cur- 6. All wages shall be paid in current coin or
rent coin or currency notes. currency notes or in both.

7. (1) Notwithstanding the provisions of sub-section (2) of section 47 of the Indian Railways Act, 1890, the wages of an employed person shall be paid to him without deductions of any kind except those authorised by or under this

Act.

Explanation.—Every payment made by the employed person to the employer or his agent shall, for the purposes of this Act, be deemed to be a deduction from wages.

(2) Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely:—

(a) fines;

(b) deductions for absence from duty;

(c) deductions for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;

- (d) deductions for house accommodation supplied by the employer;
 (e) deductions for such amenities and services supplied by the employer as the ¹[* * *] [Provincial Government] may, by general or special order, authorise;

Explanation.—The word 'services' in this sub-clause does not include the supply of tools and raw materials required for the purposes of employment.

(f) deductions for recovery of advances or for adjustment of overpayments of wages;

(g) deductions of income-tax payable by the employed person;

(h) deductions required to be made by order of a Court or other authority competent to make such order;

(i) deductions for subscriptions to, and for repayment of advances from any provident fund to which the Provident Funds Act, 1925, applies or any recognised provident fund as defined in section 58-A of the Indian Income-tax Act, 1922, or any provident fund approved in this behalf by the Provincial Government, during the continuance of such approval;

(j) deductions for payments to co-operative societies approved by the Provincial Government or to a scheme of insurance maintained by the Indian Post Office; and

[(k) deductions, made with the written authorization of the employed person, in furtherance of any War Savings scheme, approved by the Provincial Government for the purchase of securities of the Government of India or the Government of the United Kingdom.] (*Added by Ordinance III of 1940.*)

8. (1) No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer, with the previous approval of the Provincial Government or of the prescribed authority, may have specified by notice under sub-section (2).

(2) A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment is carried on or in the case of persons employed upon a railway (otherwise than in a factory), at the prescribed place or places.

(3) No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine, or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.

(4) The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to half-an-anna in the rupee of the wages payable to him in respect of that wage-period.

(5) No fine shall be imposed on any employed person who is under the age of fifteen years.

(6) No fine imposed on any employed person shall be recovered from him by instalments or after the expiry of sixty days from the day on which it was imposed.

(7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(8) All fines and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in

such form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority.

Explanation.—When the persons employed upon or in any railway, factory or industrial establishment are part only of a staff employed under the same management, all such realisations may be credited to a common fund maintained for the staff as a whole, provided that the fund shall be applied only to such purposes as are approved by the prescribed authority.

9. (1) Deductions may be made under clause (b) of sub-section (2) of section 7 only on account of the absence of an employed person from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

(2) The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made a larger proportion than the period for which he was absent bears to the total period, within such wage-period, during which by the terms of his employment, he was required to work:

Provided that, subject to any rules made in this behalf by the Provincial Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

¹[*Explanation.*—For the purpose of this section, an employed person shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses, in pursuance of a stay-in-strike or for any other cause which is not reasonable in the circumstances, to carry out his work.]

10. (1) A deduction under clause (c) of sub-section (2) of section 7 shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employed person and shall not be made until the employed person has been given an opportunity of showing cause against the deduction, or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.

(2) All such reductions and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed.

11. A deduction under clause (d) or clause (e) of sub-section (2) of section 7 shall not be made from the wages of an employed person, unless the house-accommodation, amenity or service has been accepted by him, as a term of employment or otherwise and such deduction shall not exceed an amount equivalent to the value of the house-accommodation, amenity or service supplied and, in the case of a deduction under the said clause (e), shall be subject to such conditions as ²[* *] the Provincial Government may impose.

12. Deductions under clause (f) of sub-section (2) of section 7 shall be subject to the following conditions, namely:—

Deductions for recovery of advances.

(a) recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage-period, but no recovery shall be made of such advances given for travelling-expenses;

(b) recovery of advances of wages not already earned shall be subject to any rules made by the Provincial Government regulating the extent to which such advances may be given and the instalments by which they may be recovered.

Deductions for payments to co-operative societies and insurance schemes.

13. Deductions under clause (j) ¹[and clause (k)] of sub-section (2) of section 7 shall be subject to such conditions as the Provincial Government may impose.

14. (1) An Inspector of Factories appointed under sub-section (1) of section 10 of the Factories Act, 1934, shall be an Inspector for the purposes of this Act in respect of all factories within the local limits assigned to him.

(2) The ²[Provincial Government] may appoint Inspectors for the purposes of this Act in respect of all persons employed upon a railway (otherwise than in a factory) to whom this Act applies.

(3) The Provincial Government may, by notification in the Official Gazette, appoint such other persons as it thinks fit to be Inspectors for the purposes of this Act, and may define the local limits within which and the class of factories and industrial establishments in respect of which they shall exercise their functions.

(4) An Inspector may, at all reasonable hours, enter on any premises, and make such examination of any register or document relating to the calculation or payment of wages and take on the spot or otherwise such evidence of any person, and exercise such other powers of inspection, as he may deem necessary for carrying out the purposes of this Act.

(5) Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code.

15. (1) The Provincial Government may, by notification in the Official Gazette, appoint any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area.

LEG. REF.

¹ Inserted by Ordinance III of 1940.

² Substituted for 'Governor-General in Council' by A.O., 1937.

SEC. 15.—In the case of a factory, if a person is named as the manager of the factory under the Factories Act, then he would be liable for the amount of wages. The employer is not a proper party when there is a manager appointed. I.L.R. (1939) Bom. 96=41 Bom.L.R. 1283=1940 Bom. 87. The reduction of an employee to a lower grade of pay from a higher grade for a short period

is a "deduction" within the meaning of the Payment of Wages Act. If an employer terminates his existing contract with his employee, but offers to re-employ him on a lower rate, there is nothing against it in the Act, and no question of deduction would arise. I.L.R. (1941) Kar. 394=A.I.R. 1941 Sind 191.

A Civil Court is not barred by sec. 22, read with sec. 15 of the Payment of Wages Act, from trying a suit in which the plaintiff is claiming a sum of money alleged to be due in lieu of notice after dismissal from employment, when the claim is entirely

(2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the authority appointed under sub-section (1), may apply to such authority for a direction under sub-section (3):

Provided that every such application shall be presented within six months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be:

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

(3) When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under section 3, or give them an opportunity of being heard, and, after such further inquiry (if any) as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding ten rupees in the latter:

Provided that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to—

(a) a *bona fide* error or a *bona fide* dispute as to the amount payable to the employed person, or

(b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or

(c) the failure of the employed person to apply for or accept payment.

(4) If the authority hearing any application under this section is satisfied that it was either malicious or vexatious, the authority may direct that a penalty not exceeding fifty rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application.

(5) Any amount directed to be paid under this section may be recovered—

(a) if the authority is a Magistrate, by the authority as if it were a fine imposed by him as Magistrate, and

(b) if the authority is not a Magistrate, by any Magistrate to whom the authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

16. (1) Employed persons are said to belong to the same unpaid group if they are borne on the same establishment and if their wages for the same wage-period or periods have remained unpaid after the day fixed by section 5.

Single application in respect of claims from the same unpaid group.

denied under sec. 15. Delayed wages can only mean wages which are admittedly due, but the payment of which has been postponed on some excuse or another. 217 L.C. 228.

Sec. 15 (2) AND (3).—An application for compensation alone is not contemplated by sec. 15 (2) and (3). It must be for payment of delayed wages; and it is only in such application that order may be passed for payment of compensation. An application for compensation alone is not compe-

tent. I.L.R. (1942) Bom. 649=44 Bom.L.R. 606=1943 Bom. 273.

SECS. 15 AND 17: DECISION OF AUTHORITY.—REVISION.—The authority deciding disputes under the Payment of Wages Act is not a Court subordinate to the High Court which cannot therefore entertain an application in revision against a decision of the authority. I.L.R. (1944) Nag. 531=1944 N.L.J. 256=A.I.R. 1944 Nag. 288.

(2) A single application may be presented under section 15 on behalf or in respect of any number of employed persons belonging to the same unpaid group, and in such case the maximum compensation that may be awarded under sub-section (3) of section 15 shall be ten rupees per head.

(3) The authority may deal with any number of separate pending applications, presented under section 15 in respect of persons belonging to the same unpaid group, as a single application presented under sub-section (2) of this section, and the provisions of that sub-section shall apply accordingly.

17. (1) An appeal against a direction made under ¹[sub-section (3) or sub-section (4)] of section 15 may be preferred, within thirty days of the date on which the direction was made, in a Presidency-town ²[* * *] before the Court of Small Causes and elsewhere before the District Court—

(a) by the employer or other person responsible for the payment of wages under section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees, or

(b) by an employed person, if the total amount of wages claimed to have been withheld from him or from the unpaid group to which he belonged exceeds fifty rupees, or

(c) by any person directed to pay a penalty under sub-section [(4)]¹ of section 15.

(2) Save as provided in sub-section (1), any direction made under sub-section (3) or sub-section ¹[(4)] of section 15 shall be final.

18. Every authority appointed under sub-section (1) of section 15 shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898.

19. When the authority referred to in section 15 or the Court referred to in section 17 is unable to recover from any person (other than an employer) responsible under section 3 for the payment of wages any amount directed by such authority under section 15 or section 17 to be paid by such person, the authority shall recover the amount from the employer of the employed person concerned.

20. (1) Whoever being responsible for the payment of wages to an employed person contravenes any of the provisions of any of the following sections, namely, section 5 and sections 7 to 13, both inclusive, shall be punishable with fine which may extend to five hundred rupees.

LEG. REF.

¹ Substituted by sec. 2 and Sch. I of Act XX of 1937.

² Repealed by A.O., 1937.

SEC. 17: APPEALABILITY—TEST—DIRECTION—REJECTION OF CLAIM AS BARRED—IF A DIRECTION—APPEAL IF LIES.—According to sec. 17 of the Payment of Wages Act, appeals are allowed only when there has been a 'direction' which means an order to one side to make a certain payment to the other side. It is very doubtful whether when there has been a trial on the merits and no one has been directed to make any payment to the other side any appeal lies but when the application or claim is rejected as time bar-

red without even entering into the merits, there is nothing in the Act which provides an appeal against such a rejection. I.L.R. (1943) All. 490=1943 A.L.J. 164=1943 O. W.N. (H.C.) 97=A.I.R. 1943 All. 243.

SEC. 17 (1): "DIRECTION"—ORDER REJECTING CLAIM *in toto*—APPEAL.—The word direction in sec. 17 (1) must be construed as including a refusal to make a direction. An employed person has a right of appeal if his claim has been rejected *in toto* as also when his claim is allowed in part only. I.L.R. (1941) Kar. 394=A.I.R. 1941 Sind 191. Under sec. 17 (1) (b) the right of appeal depends on the monetary value of the claim made by the applicant and not on any finding of the trial Court. The meaning of the

(2) Whoever contravenes the provisions of section 4, section 6 or section 25 shall be punishable with fine which may extend to two hundred rupees.

21. (1) No Court shall take cognizance of a complaint against any person for an offence under sub-section (1) of section 20, unless an application in respect of the facts constituting the offence has been presented under section 15 and has been granted wholly or in part and the authority empowered under the latter section or the appellate Court granting such application has sanctioned the making of the complaint.

(2) Before sanctioning the making of a complaint against any person for an offence under sub-section (1) of section 20, the authority empowered under section 15 or the appellate Court, as the case may be, shall give such person an opportunity of showing cause against the granting of such sanction, and the sanction shall not be granted if such person satisfies the authority or Court that his default was due to—

(a) a *bona fide* error or *bona fide* dispute as to the amount payable to the employed person, or

(b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or

(c) the failure of the employed person to apply for or accept payment.

(3) No Court shall take cognizance of a contravention of section 4 or of section 6 or of a contravention of any rule made under section 26 except on a complaint made by or with the sanction of an Inspector under this Act.

(4) In imposing any fine for an offence under sub-section (1) of section 20 the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 15.

22. No Court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed—

Bar of suits.

(a) forms the subject of an application under section 15 which has been presented by the plaintiff and which is pending before the authority appointed under that section or of an appeal under section 17; or

(b) has formed the subject of a direction under section 15 in favour of the plaintiff; or

(c) has been adjudged, in any proceeding under section 15, not to be owed to the plaintiff; or

(d) could have been recovered by an application under section 15.

clause is clear, and there is no justification for holding otherwise on the ground that the section lends itself to exaggeration of claims for the purpose of making any orders passed thereon appealable. I.L.R. (1941) Kar. 394=A.I.R. 1941 Sind 191.

Sec. 17 (1) (a) provides for an appeal only if the total sum directed to be paid by way of wages as well as compensation exceeds Rs. 300. When no amount of wages is ordered to be paid, an order for compensation alone which does not exceed Rs. 300 is not appealable under sec. 17 (1). I.L.R. (1942) Bom. 649=44 Bom.L.R. 606=1942 Bom. 273.

SEC. 17 (1) (a):—RIGHT OF APPEAL.—NO SUM AWARDED AS COMPENSATION.—Under sec. 17 (1) (a) of the Payment of Wages Act an appeal if the sum directed to be paid exceeds Rs. 300; and it is not necessary that such sum should include the amount

payable on account of compensation. The words "by way of wages and compensation" in sec. 17 (1) (a) are by way of a description and not a condition precedent for the maintainability of an appeal. 1945 N.L.J. 281.

ORDER OF DISTRICT COURT IN APPEAL.—REVISION.—C. P. CODE, SEC. 115.—The High Court has power to revise an order passed by the District Court in appeal under sec. 17 of the Payment of Wages Act. A District Court decides a "case" within the meaning of sec. 115, C. P. Code, when it decides the appeal. 1945 N.L.J. 281.

SEC. 17 (2); SUBJECT-MATTER BELOW APPEALABLE VALUE.—REVISION.—The word "final" in sec. 17 (2) of the Payment of Wages Act prohibits only an appeal and not an application for revision. I.L.R. (1944) Nag. 540=1944 N.L.J. 329.

23. Any contract or agreement, whether made before or after the commencement of this Act, whereby an employed person relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right.

24. ¹[The powers by this Act conferred upon the Provincial Government shall, in relation to Federal railways (within the meaning of the Government of India Act, 1935) mines and oilfields, be powers of the Central Government].

25. The person responsible for the payment of wages to persons employed in a factory shall cause to be displayed in such factory a notice containing such abstracts of this Act and of the rules made thereunder in English and in the language of the majority of the persons employed in the factory, as may be prescribed.

26. (1) The ²[Provincial Government] may make rules to regulate the procedure to be followed by the authorities and Courts referred to in sections 15 and 17.

(2) The Provincial Government may ³[* * *] by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(3) In particular and without prejudice to the generality of the foregoing power, rules made under sub-section (2) may—

(a) require the maintenance of such records, registers, returns and notices as are necessary for the enforcement of the Act and prescribe the form thereof;

(b) require the display in a conspicuous place on premises where employment is carried on of notices specifying rates of wages payable to persons employed on such premises;

(c) provide for the regular inspection of the weights, measures and weighing machines used by employers in checking or ascertaining the wages of persons employed by them;

(d) prescribe the manner of giving notice of the days on which wages will be paid;

(e) prescribe the authority competent to approve under sub-section (1) of section 8 acts and omissions in respect of which fines may be imposed;

LEG. REF.

¹ Substituted by A.O., 1937, for the original section.

² Substituted by A.O., 1937.

³ Repealed by A.O., 1937.

SECS. 22 AND 15—CLAIM FOR MONEY ALLEGED TO BE DUE IN LIEU OF NOTICE AFTER DISMISSAL—CLAIM DENIED UNDER SEC. 15—JURISDICTION OF CIVIL COURT—IF BARRED.—A Civil Court is not barred by sec. 22, read with sec. 15 of the Payment of Wages Act from trying a suit in which the plaintiff is claiming a sum of money alleged to be in due in lieu of notice after dismissal from employment, when the claim is entirely denied under sec. 15. Delayed wages can only mean wages which are admittedly due, but the payment of which has been postponed on some excuse or other. This view seems to be confirmed by the proviso to sub-sec. (3) of sec. 15 in which it is said that a direction should not be made when the delay

in the payment of wages is due to a *bona fide* dispute as to the amount payable by the employed person. This seems to suggest that any *bona fide* disputes as to the amount payable are to be tried by the Civil Courts for otherwise there would be no authority capable of making an order for payment when the amount is, in fact, due. 217 I.C. 228.

SEC. 26: PAYMENT OF WAGES (PROCEDURE) RULES (1937), R. 12.—Memo of appeal filed along with copy of order but not with copy of direction—Direction not drawn up within a month—Appeal, if maintainable.

If a memorandum of appeal is filed with a copy of the order but without a copy of the directions,—the directions not having been drawn up in the prescribed form within a month, there is substantial compliance with the Rules. The principle underlying sec. 99, C. P. Code, is applicable to the case. 1945 N.L.J. 281.

(f) prescribe the procedure for the imposition of fines under section 8 and for the making of the deductions referred to in section 10;

(g) prescribe the conditions subject to which deductions may be made under the proviso to sub-section (2) of section 9;

(h) prescribe the authority competent to approve the purposes on which the proceeds of fines shall be expended;

(i) prescribe the extent to which advances may be made and the instalments by which they may be recovered with reference to clause (b) of section 12.

(j) regulate the scales of costs which may be allowed in proceedings under this Act;

(k) prescribe the amount of court-fees payable in respect of any, proceedings under this Act; and

(l) prescribe the abstracts to be contained in the notices required by section 25.

(4) In making any rule under this section the Provincial Government may provide that a contravention of the rule shall be punishable with fine which may extend to two hundred rupees.

(5) All rules made under this section shall be subject to the condition of previous publication, and the date to be specified under clause (3) of section 23 of the General Clauses Act, 1897, shall not be less than three months from the date on which the draft of the proposed rules was published.

THE PENAL SERVITUDE ACT (XXIV OF 1855).¹

Year	No.	Short Title.	Amendments.
1855	XXIV	The Penal Servitude Act, 1855.	Rep. in part Act XII of 1867; Act XIV of 1870; Act V of 1871; Act XVI of 1874; Acts XII of 1876; Act XII of 1891; Act X of 1914.

[13th August, 1855.

*An Act to substitute penal servitude for the punishment of Transportation in respect of European and American Convicts * * * * **

WHEREAS, by reason of the difficulty of providing a place to which Europeans or Americans can, with safety to their health, be sent for the purpose of undergoing sentences of transportation or of imprisonment for long terms it has become expedient to substi-

LEG. REF.

¹ Short title, "The Penal Servitude Act, 1855". See the Indian Short Titles Act, 1897 (XIV of 1897).

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (XV of 1874), sec. 3.

It has been declared in force in—

British Baluchistan by the British Baluchistan Laws Regulation, 1913 (II of 1913), sec. 3, Bal. Code; the Santhal Parganas, by

the Santhal Parganas Settlement Regulation (III of 1872), sec. 3 as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899), B. & O. Code, Vol. I.

Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898), sec. 6, Bur. Code, Vol. I.

It has been declared, by notification under sec. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts, namely:—

tute other punishments for that of transportation¹ * * * ; It is enacted as follows:—

No European or American to be sentenced to transportation.

1. * * * * No European or American shall be liable to be sentenced, or ordered, by any Court within ²[British India], to be transported.

2. Any person who, Terms of penal servitude instead of the present terms of transportation.

but for the passing of this Act, would, by any law now in force, or which may hereafter be in force, in any part of ³[British India], be liable to be sentenced or ordered, by any such Court, to be transported, shall, if a European or American, be liable to be sentenced or ordered to be kept in penal servitude for such term as hereinafter mentioned:

The terms of penal servitude to be awarded by any sentence or order instead of the term of transportation to which any such offender would, but for the passing of this Act, be liable shall be as follows: (that is to say)—

Instead of transportation for seven years, or for a term not exceeding seven years, penal servitude for the term of four years.

Instead of any term of transportation exceeding seven years and not exceeding ten years, penal servitude for any term not less than four and not exceeding six years.

Instead of any term of transportation exceeding ten years and not exceeding fifteen years, penal servitude for any term not less than six and not exceeding eight years.

Instead of any term of transportation exceeding fifteen years, penal servitude for any term not less than six and not exceeding ten years.

Instead of transportation for the term of life, penal servitude for the term of life.

And in every case where, at the discretion of the Court, one of any two or more of the terms of transportation hereinbefore mentioned might have been awarded, the Court shall have the like discretion to award one of the two or more terms of penal servitude hereinbefore mentioned, in relation to such terms of transportation.

LEG. REF.

Sindh	...	See Gazette of India.	1880, Pt. I, p. 672.
Aden	... ..	Ditto	1879, Pt. I, p. 434.
West Jalpaiguri and the Western Duars...	...	Ditto	1881, Pt. I, p. 74.
The Districts of Hazaribagh, Lohardaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum	...	Ditto	1881, Pt. I, p. 504.
The Scheduled portion of the Mirzapur District	...	Ditto	1879, Pt. I, p. 383.
Jaunsar Bawar	...	Ditto	1879, Pt. I, p. 382.
The Districts of Hazara, Peshawar, Gohat, Bannu, Dero. Ismail Khan and Dera Ghazi Khan. [Portions of the Districts of Hazara, Bannu, Dera Ismail Khan, Dera Ghazi Khan, and the Districts of Peshawar and Kohat now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and <i>ibid.</i> , 1902, Pt. I, p. 575; but its application to that part of the Hazara District known as Upper Tanawal has been barred by the Hazara (Upper Tanawal) has been barred by the Hazara (Upper			

¹The words "and to amend the law relating to the removal of such convicts" in the title, and the words "and to amend the law relating to the removal of European and American convicts for the purpose of imprisonment," in the Preamble were repealed

by the Amending Act, 1891 (XII of 1891).

²The words "After the commencement of this Act" were repealed by the Repealing Act, 1874 (XVI of 1874).

³Substituted by A.O., 1937.

3. Provided always that nothing herein contained shall interfere with or

Discretion of Courts as to alternative punishments.

Discretion of Courts as to alternative punishments. affect the authority or discretion of any Court in respect of any punishment which such Court may now award or pass on any offender other than transportation; but, where such other punishment may be awarded at the discretion of the Court instead of transportation or in addition thereto, the same may be awarded instead of, or (as the case may be) in addition to, the punishment substituted for transportation by this Act.

4. If any offender sentenced by any Court within ¹[British India] to the

Effect of pardon granted upon condition of penal servitude.

Effect of pardon granted upon condition of penal servitude. punishment of death shall have mercy extended to him, upon condition of his being kept in penal servitude for life, or for any term of years, all the provisions of this Act shall be applicable to such offender in the same manner as if he had been lawfully sentenced under this Act to the term of penal servitude specified in the condition.

5. [Power to substitute penal servitude for transportation.] Rep. by the Prisoners Act, 1871 (V of 1871).

6. [Mode of dealing with person under sentence of penal servitude.] Repealed by the Prisoners Act, 1871 (V of 1871).

7. [Application of enactments respecting transportation and imprisonment with hard labour.] Repealed by the Prisoners Act, 1871 (V of 1871).

8. [Removal of convicts under sentence of imprisonment from one prison to another.] Repealed by the Presidency Jails Act, 1867 (XII of 1867), and the Repealing and Amending Act, 1914 (X of 1914).

9, 10, 11 & 12. [Licences to convicts under sentence of penal servitude to be at large.] Repealed by the Prisoners Act, 1871 (V of 1871).

13. Nothing in this Act is intended to alter or affect the provisions of the

Act not to affect the provisions of certain English Statutes.

12 & 13 Victoria, Chapter 43,² or any Act of Parliament passed in the United Kingdom of Great Britain and Ireland since the 28th of August, 1833, or which may hereafter be passed.

14. Any sentence or order upon any person describing him as a European

Sentence when proof that a person is a European or an American.

or American shall be deemed, for the purposes of this Act, to be conclusive of the fact that such person is a European or American within the meaning of this Act.

LEG. REF.

Tanawal) Regulation, 1900 (II of 1900), Punjab and N.-W. Code.]

The Scheduled Districts of the Central Provinces ...

The Scheduled Districts in Ganjam and Vizagapatam ...

The District of Sylhet ...

The rest of Assam (except the North Lushai Hills) ...

The Porahat Estate in the Singbhum District ...

It has been declared, by notification under sec. 3 (b) of the last-mentioned Act, not to be in force in the Scheduled District of

See Gazette of India 1886, Pt. I, p. 48.

Ditto 1879, Pt. I, p. 771.

Ditto 1898, Pt. I, p. 870.

Ditto 1897, Pt. I, p. 631.

Ditto 1897, Pt. I, p. 299.

Ditto 1897, Pt. I, p. 1059.

Lahaul. See Gazette of India, 1886, Pt. I, p. 301.

¹ Substituted by A.O., 1937.

² "An Act for punishing mutiny and desertion of officers and soldiers in the service of the East India Company, and for regulating in such service the payment of regi-

mental debts and the distribution of effects of officers and soldiers dying in the service," rep. by 20 and 21 Vict., c. 66 (Mutiny, East India).

15. The word "European," as used in this Act, shall be understood to include any person usually designated a ¹[European Interpretation clause. British subject. * * * *]

16. [Commencement of Act.] Repealed by the Repealing Act, 1870 (XIV of 1870).

THE PETROLEUM ACT (XXX OF 1934).

[Rep. in part by Act I of 1938; Am. by Act XXV of 1940 and Act III of 1941.]

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[6th September, 1934.]

An Act to consolidate and amend the law relating to the import, transport, storage, production, refining and blending of petroleum and other inflammable substances.

WHEREAS it is expedient to consolidate and amend the law relating to the import, transport, storage, production, refining and blending of petroleum and other inflammable substances; it is hereby enacted as follows:—

PRELIMINARY.

Short title, extent and commencement. 1. (1) This Act may be called *THE PETROLEUM ACT, 1934.*

²(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

¹ See definition of European British subject in sec. 4, cls. (h) and (i) of the Code of Criminal Procedure, 1898 (Act V of 1898).

² The last part of this section was repealed by Sch. II of the Repealing and Amending Act, 1914 (X of 1914).

³ The Indian Petroleum Act, 1899, which was in force in Berar was repealed and this Act of 1934, and also the rules and regulations made under this Act, 1934, have been extended to and declared to be in force in Berar, by Act XXIII of 1937.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "petroleum" means any liquid hydrocarbon or mixture of hydrocarbons, and any inflammable mixture (liquid, viscous or solid) containing any liquid hydrocarbon;

(b) "dangerous petroleum" means petroleum having its flashing-point below seventy-six degrees Fahrenheit;

(c) "flashing-point" of any petroleum means the lowest temperature at which it yields a vapour which will give a momentary flash when ignited, determined in accordance with the provisions of Chapter II and the rules made thereunder;

(d) "to transport" petroleum means to move petroleum from one place to another in British India, and includes moving from one place to another in British India by sea or across territory in India which is not part of British India;

(e) "to import" petroleum means to bring it into British India by land, sea or air, otherwise than during the course of transport;

(f) "to store" petroleum means to keep it in any one place, but does not include any detention happening during the ordinary course of transport;

(g) "motor conveyance" means any vehicle, vessel or air-craft for the conveyance of human beings, animals or goods, by land, water or air, in which petroleum is used to generate the motive power;

(h) "prescribed" means prescribed by rules made under this Act.

CHAPTER I.

CONTROL OVER PETROLEUM.

Import, transport and storage of petroleum.

3. (1) No one shall import, transport or store any petroleum save in accordance with the rules made under section 4.

(2) Save in accordance with the conditions of any licence for the purpose which he may be required to obtain by rules made under section 4, no one shall import any dangerous petroleum, and no one shall transport or store any petroleum.

Rules for the import, transport and storage of petroleum.

4. The Central Government may make rules—

(a) prescribing places where petroleum may be imported and prohibiting its import elsewhere;

(b) regulating the import of petroleum;

(c) prescribing the periods within which licences for the import of dangerous petroleum shall be applied for, and providing for the disposal, by confiscation or otherwise, of any dangerous petroleum in respect of which a licence has not been applied for within the prescribed period or has been refused and which has not been exported;

(d) regulating the transport of petroleum;

(e) specifying the nature and condition of all receptacles and pipe-lines in which petroleum may be transported;

(f) regulating the places at which and prescribing the conditions subject to which petroleum may be stored;

(g) specifying the nature, situation and condition of all receptacles in which petroleum may be stored;

(h) prescribing the form and conditions of licences for the import of dangerous petroleum, and for the transport or storage of any petroleum, the manner in which applications for such licences shall be made, the authorities which may grant such licences and the fees which may be charged for such licences;

(i) determining in any class of cases whether a licence for the transport of petroleum shall be obtained by the consignor, consignee or carrier;

(j) providing for the granting of combined licences for the import, transport and storage of petroleum, or for any two of such purposes;

(k) prescribing the proportion in which any specified poisonous substance may be added to petroleum, and prohibiting the import, transport or storage of petroleum in which the proportion of any specified poisonous substance exceeds the prescribed proportion; and

(l) generally, providing for any matter which in its opinion is expedient for proper control over the import, transport and storage of petroleum.

5. (1) No one shall produce, refine or blend petroleum save in accordance with the rules made under sub-section (2).

Production, refining and blending of petroleum..

(2) The Central Government may make rules—

(a) prescribing the conditions subject to which petroleum may be produced, refined or blended; and

(b) regulating the removal of petroleum from places where it is produced, refined or blended and preventing the storage therein and removal therefrom, except as dangerous petroleum, of any petroleum which has not satisfied the prescribed tests.

(3) [Omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.]

6. All receptacles containing dangerous petroleum shall have a stamped, embossed, painted or printed warning, either on the receptacle itself, or, where that is impracticable, displayed near the receptacle, exhibiting in conspicuous characters the words "Petrol" or "Motor Spirit," or an equivalent warning of the dangerous nature of the petroleum:

Receptacles of dangerous petroleum to show a warning.

Provided that this section shall not apply to—

(a) any securely stoppered glass, stoneware or metal receptacle of less than two gallons capacity containing dangerous petroleum which is not for sale, or

(b) a tank incorporated in a motor conveyance, or attached to an internal combustion engine, and containing petroleum intended to be used to generate motive power for the motor conveyance or engine, or

(c) a pipe line for the transport of petroleum, or

(d) any tank which is wholly underground, or

(e) any class of receptacles which the Central Government may, by notification in the Official Gazette, exempt from the operation of this section.

7. Notwithstanding anything contained in this Chapter, a person need not

No licence needed for small stocks of non-dangerous petroleum not in bulk.

obtain a licence for the transport or storage of non-dangerous petroleum if the total quantity in his possession at any one place does not exceed five hundred gallons and none of it is contained in a receptacle exceeding two hundred gallons in capacity.

8. (1) Notwithstanding anything contained in this Chapter, a person need

No licence needed for small quantities of dangerous petroleum.

not obtain a licence for the import, transport, or storage of dangerous petroleum not intended for sale if the total quantity in his possession does not exceed six gallons.

(2) Dangerous petroleum possessed without a licence under this section shall be kept in securely stoppered receptacles of glass, stoneware or metal which shall not in the case of receptacles of glass or stoneware exceed one quart in capacity or in the case of receptacles of metal five gallons in capacity.

9. (1) The owner of a motor conveyance, who complies with the requirements of the law for the time being in force relating to the registration and licensing of such conveyance and its driver or pilot and the owner of any stationary internal combustion engine, shall not be required to obtain a licence—

Exemptions for motor conveyances and stationary engines.

(a) for the import, transport or storage of any petroleum contained in any fuel tank incorporated in the conveyance or attached to the internal combustion engine, or

(b) for the transport or storage of dangerous petroleum, not exceeding twenty gallons in quantity in addition to any quantity possessed under clause (a), provided the petroleum is intended to be used to generate motive power for the motor conveyance or engine,

[Provided further that the total quantity of dangerous petroleum which may be stored without a licence under clause (b) shall not exceed twenty gallons, notwithstanding that such owner may possess other motor conveyances or engines.]¹

(2) The dangerous petroleum transported or stored without a licence under clause (b) [of Sub-Section (1)]² shall be kept as provided in sub-section (2) of section 8, and, if it exceeds six gallons in quantity, shall be stored in an isolated place which does not communicate with any room where any person resides or works or in any room where persons assemble.

10. Notwithstanding anything contained in this Chapter, a railway administration, as defined in section 3 of the Indian Railways Act, 1890, need not obtain any licence for the import or transport of any petroleum in its possession in its capacity as carrier.

No licence needed by railway administration acting as carrier.

11. Nothing in this Chapter shall apply to any petroleum which has its flashing-point not below two hundred degrees Fahrenheit.

Exemption of heavy oils.

12. The Central Government may, by notification in the Official Gazette, exempt any petroleum specified in the notification from all or any of the provisions of this Chapter.

13. (1) The Central Government may authorise any officer by name or by virtue of office to enter any place where petroleum is being imported, stored, produced, refined or blended, or is under transport, and inspect all receptacles, plant and appliances used in connection with petroleum in order to ascertain if they are in accordance with the provisions of this Chapter and the rules made thereunder.

Inspection of places.

(2) The Central Government may make rules regulating the procedure of officers authorised under this section.

CHAPTER II. THE TESTING OF PETROLEUM.

14. (1) The Central Government may, by notification in the Official Gazette, authorise any officer by name or by virtue of office to enter any place where petroleum is being imported, transported, stored, produced, refined or blended and to inspect and take samples for testing of any petroleum found therein.

Inspection and sampling of petroleum.

(2) The Central Government may make rules—

LEG. REF.

Inserted by Act XXV of 1940.

- (a) regulating the taking of samples of petroleum for testing,
- (b) determining the cases in which payment shall be made for the value of samples taken, and the mode of payment, and
- (c) generally, regulating the procedure of officers exercising powers under this section.

15. (1) A standard apparatus for determining the flashing-point of petroleum shall be deposited with an officer to be appointed in this behalf by the Central Government, by notification in the Official Gazette.

(2) Such apparatus shall be engraved with the words "Standard Test Apparatus," and shall be verified and corrected from time to time and replaced when necessary, in accordance with rules made under section 21.

(3) The Standard Test Apparatus shall, on payment of the prescribed fee, be open to inspection at all reasonable times by any person wishing to inspect it.

16. (1) The officer appointed under section 15 shall, on payment of the prescribed fee, if any, compare with the Standard Test Apparatus any apparatus for determining the flashing-point of petroleum which may be submitted to him for this purpose.

(2) If any apparatus is found by him to agree with the Standard Test Apparatus within prescribed limits, the officer shall engrave such apparatus with a special number and with the date of the comparison, and shall give a certificate in respect of it in the prescribed form, certifying that on the said date the apparatus was compared with the Standard Test Apparatus and was found to agree with it within the prescribed limits, and specifying any corrections to be made in the results of tests carried out with the apparatus.

(3) A certificate granted under this section shall be valid for such period as may be prescribed.

(4) A certificate granted under this section shall, during the period for which it is valid, be proof, until the contrary is proved, of any matter stated therein.

(5) The officer shall keep a register in the prescribed form of all certificates granted by him under this section.

17. The Central Government may authorize any officer by name or by virtue of office to test petroleum of which samples have been taken under this Act, or which may have been submitted to him for test by any person, and to grant certificates of the results of such tests.

18. All tests of petroleum made under this Act shall be made with a test apparatus in respect of which there is a valid certificate under section 16, shall have due regard to any correction specified in that certificate, and shall be carried out in accordance with rules made under section 21.

19. (1) The testing officer after testing samples of petroleum shall make out a certificate in the prescribed form, stating whether the petroleum is dangerous or non-dangerous, and, if the petroleum is non-dangerous, the flashing-point of the petroleum.

(2) The testing officer shall furnish the person concerned, at his request, with a certified copy of the certificate, on payment of the prescribed fee, and such certified copy may be produced in any Court in proof of the contents of the original certificate.

(3) A certificate given under this section shall be admitted as evidence in any proceedings which may be taken under this Act in respect of the petroleum

SEC. 15.—Where the servant in breach of the conditions of the licence of his master, delivered petrol to another not having a licence to transport petrol, the master is

liable for the action of his servant in breach of the conditions of the licence. 1937 A.M. L.J. 138.

from which the samples were taken, and shall, until the contrary is proved, be conclusive proof that the petroleum is dangerous or non-dangerous, as the case may be, and, if the petroleum is non-dangerous, of its flashing-point.

20. (1) The owner of any petroleum, or his agent, who is dissatisfied with the result of the test of the petroleum may, within seven days from the date on which he received intimation of the result of the test, apply to the officer empowered under section 14 to have fresh samples of the petroleum taken and tested.

(2) On such application and on payment of the prescribed fee, fresh samples of the petroleum shall be taken in the presence of such owner or agent or person deputed by him, and shall be tested in the presence of such owner or agent or person deputed by him.

(3) If, on such re-test, it appears that the original test was erroneous, the testing-officer shall cancel the original certificate granted under section 19, shall make out a fresh certificate, and shall furnish the owner of the petroleum or his agent, with a certified copy thereof, free of charge.

Power to make rules regarding tests.

21. The Central Government may make rules—

(a) for the specification, verification, correction and replacement of the Standard Test Apparatus;

(b) prescribing fees for the inspection of the Standard Test Apparatus;

(c) regulating the procedure in comparing a test apparatus with the Standard Test Apparatus;

(d) prescribing the form of certificate to be given in respect of a test apparatus so compared, and the period for which such certificates shall be valid;

(e) prescribing the form of the register of such certificates;

(f) prescribing fees for comparing a test apparatus with the Standard Test Apparatus;

(g) regulating the procedure of testing officers in carrying out tests of petroleum, providing for the averaging of results where several samples of the same petroleum are tested, and prescribing the variations from standard temperatures which may be allowed;

(h) prescribing the form of certificates of tests of petroleum and the fees which may be charged therefor;

(i) providing, where the results of the testing of samples raise a doubt as to the uniformity of the quality of the petroleum in any lot under test, for the division of the lot into sub-lots, and for the selection and testing of samples of each sub-lot and for the averaging of results in accordance with the results of tests of those samples;

(j) prescribing fees for re-tests under section 20 and providing for their refund where the original test was erroneous; and

(k) generally, regulating the procedure of all officers performing duties connected with the testing of petroleum, and providing for any matter incidental to such testing.

22. The Central Government may also make rules providing specially for

Special rules for testing viscous or solid forms of petroleum.

the testing of any form of petroleum which is viscous or solid or contains sediment or thickening ingredients, and such rules may modify or supplement any of the provisions of this Chapter or of the rules made under section 21 in order to adapt them to the special needs of such tests.

CHAPTER III.

PENALTIES AND PROCEDURE.

General penalty for offences under this Act.

23. (1) Whoever—

(a) in contravention of any of the provisions of Chapter I or of any of the rules made thereunder, imports, transports, stores, produces, refines or blends any petroleum, or

(b) contravenes any rule made under section 4 or section 5, or
 1[(c) being the holder of a licence issued under section 4 or a person for the time being placed by the holder of such licence in control or in charge of any place where petroleum is being imported or stored, or is under transport, contravenes any condition of such licence or suffers any condition of such licence to be contravened, or]

(d) being for the time being in control or in charge of any place where petroleum is being imported, stored, produced, refined or blended or is under transport, refuses or neglects to show to any officer authorized under section 13 any receptacle, plant or appliance used in such place in connexion with petroleum, or in any way obstructs or fails to render reasonable assistance to such officer during an inspection, or

(e) being for the time being in control or in charge of any place where petroleum is being imported, transported, stored, produced, refined or blended, refuses or neglects to show to any officer authorized under section 14 any petroleum in such place, or to give him such assistance as he may require for the inspection of such petroleum, or refuses to allow him to take samples of the petroleum, or

(f) being required, under section 27, to give information of an accident, fails to give such information as so required by that section, shall be punishable with fine which may extend to five hundred rupees.

(2) If any person, having been convicted of an offence punishable under sub-section (1), is again guilty of any offence punishable under that sub-section, he shall be punishable for every such subsequent offence with fine which may extend to two thousand rupees.

24. (1) In any case in which an offence under clause (a) or clause (b) or clause (c) of sub-section (1) of section 23 has been committed, the convicting Magistrate may direct that—

(a) the petroleum in respect of which the offence has been committed, or
 (b) where the offender is convicted of importing, transporting, or storing petroleum exceeding the quantity he is permitted to import, transport or store, as the case may be, the whole of the petroleum in respect of which the offence was committed,

shall, together with the receptacles in which it is contained, be confiscated.

(2) This power may also be exercised by the High Court in the exercise of its appellate or revisional powers.

25. Offences punishable under this Act shall be triable, in the Presidency towns, by a Presidency Magistrate, and elsewhere by a Magistrate of the first class, or by a Magistrate of the second class who has been specially empowered by the [Central Government] in this behalf.

26. (1) The Central Government may, by notification in the Official Gazette, authorize any officer by name or by virtue of office to enter and search any place where he has reason to believe that any petroleum is being imported, transported, stored, produced, refined, or blended otherwise than in accordance with the provisions of this Act and the rules made thereunder, and to seize, detain or remove any or all of the petroleum in respect of which in his opinion an offence under this Act has been committed.

(2) The provisions of the Code of Criminal Procedure, 1898, relating to searches shall, so far as they are applicable, apply to searches by officers authorized under this section.

(3) The Central Government may make rules regulating the procedure

of authorized officers in the exercise of their powers under this section subject, however, to the provisions of sub-section (2).

27. Where any accident by explosion or fire, which is attended with loss of human life or serious injury to person or property, occurs as the result of the ignition of petroleum or petroleum vapour, or occurs in or near any place where petroleum is kept and under circumstances making it likely that it was the result of such ignition, the person for the time being in charge of the petroleum shall forthwith give information to the nearest Magistrate or to the officer in charge of the nearest police station.

28. (1) The inquiry mentioned in section 176 of the Code of Criminal Procedure, 1898, shall, ¹[unless section 8 of the Coroner's Act, 1871, is applicable to the circumstances], be held in all cases where any person has been killed by an accident which the Magistrate has reason to believe was the result of the ignition of petroleum or petroleum vapour.

(2) Any Magistrate empowered to hold an inquest may also hold an inquiry under the said section into the cause of any accident which he has reason to believe was the result of the ignition of petroleum or petroleum vapour, if such accident was attended by serious injury to person or property, notwithstanding that no person was killed thereby.

(3) For the purposes of ¹[sub-section (2)] a Commissioner of Police in a Presidency-town ²[* * *] shall be deemed to be a Magistrate empowered to hold an inquest.

(4) The result of all inquiries held in pursuance of this section ¹[and of any inquiry held by a coroner in a case to which sub-section (1) refers] shall be submitted as soon as may be to the ²[Central Government ¹[the Chief Inspector of Explosives in India] and the Provincial Government].

CHAPTER IV.

SUPPLEMENTAL.

Provisions relating to 29. (1) In making any rules under this Act, the rules. Central Government may—

(a) provide for any matter ancillary to such rules for which in its opinion provision is necessary to protect the public from danger arising from the import, transport, storage, production, refining or blending of petroleum, and

(b) make special provision for the special circumstances of any province or place.

(2) Every power to make rules conferred by this Act is subject to the condition of previous publication.

(3) All rules made under this Act shall be published in the Official Gazette ⁴[* * *].

30. (1) The Central Government may, by notification in the Official Gazette, apply any or all of the provisions of this Act, and of the rules made thereunder with such modifications as it may specify, to any dangerously inflammable substance, other than an explosive, and thereupon the provisions so applied shall have effect as if such substance had been included in the definition of petroleum.

(2) The Central Government may make rules providing specially for the testing of any substance to which any of the provisions of this Act have been applied by notification under sub-section (1), and such rules may supplement any of the provisions of Chapter II in order to adapt them to the special needs of such tests.

LEG. REF.

¹ Inserted by Act XXV of 1940.

² The words 'or in Rangoon' omitted by A.O., 1937.

³ Substituted for 'Local Government' by A.O., 1937.

⁴ Words 'and in the local official Gazette' omitted by *ibid.*

Power to limit powers of local authorities over petroleum.

31. Where any enactment confers powers upon any local authority in respect of the transport or storage of petroleum, the Central Government may, by notification in the Official Gazette,—

(a) limit the operation of such enactment, or

(b) restrict the exercise of such powers, in any manner ¹[it] deems fit.

32. [Repeals.] Repealed by Act I of 1938.

THE SCHEDULE.

ENACTMENTS REPEALED.

(Rep. by Act I of 1938.)

PLEDGING OF CHILDREN'S LABOUR ACT.

See *Children (Pledging of Labour) Act II of 1933* (supra).

THE POISONS ACT (XII OF 1919).²

Year.	No.	Short title.	Amendments.
1919	XII	The Poisons Act, 1919.	Am. Act, XXXVIII of 1920. Rep. in pt., Act XII of 1927.

[3rd September, 1919.

An Act to consolidate and amend the law regulating the importation, possession and sale of poisons throughout British India.

WHEREAS it is expedient to consolidate and amend the law regulating the importation, possession and sale of poisons throughout British India; It is hereby enacted as follows:—

Short title and extent. 1. (1) This Act may be called THE POISONS ACT, 1919.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

Power of the Provincial Government to regulate possession for sale and sale of any poison.

2. (1) ³[* *] The Provincial Government may by rule⁴ regulate within the whole or any part of the territories under its administration the possession for sale and the sale, whether wholesale or retail, of any specified poison.

LEG. REF.

¹ Substituted by A.O., 1937.

² For Statement of Objects and Reasons, see Gazette of India, 1919, Pt. V, p. 22 and for Proceedings in Council, see *ibid.*, 1919, Pt. VI, pp. 170 and 872.

³ Words 'Subject to control of the Governor-General in Council' omitted by A.O., 1937.

⁴ For such rules for Madras, see Madras Rules and Orders, 1923, Vol. I, Pt II, p. 287 for Assam, see Assam Gazette, 1921, Pt. II, p. 530; for Delhi, see Gazette of India, 1926, Pt. II-A, p. 481 and *ibid.*, 1928, Pt. II-A, p. 61.

SEC. 2.—⁵See 21 I.C. 264=8 Bur. I.J. 244 Where a sale (of a standard preparation containing strychnine) is effected by an assistant in a shop in the absence of the registered Pharmacist and out of his sight and hearing, when the registered pharmacist has no idea that the sale is going to take place or that it is taking place, and would never have known that it had taken place but for the fact that somebody so informed him no Court is entitled to hold that the sale has been effected either by the registered pharmacist or under his supervision. (1943) 1 K.B. 269=112 L.J. (K.B.) 221.

SECTIONS.

15. Quartering of additional police in disturbed or dangerous districts.

15-A. Awarding compensation to sufferers from misconduct of inhabitants or person interested in land.

16. Recovery of moneys payable under secs. 13, 14, 15 and 15-A, and disposal of same when recovered.

17. Special police-officers.

18. Powers of special police-officers.

19. Refusal to serve as special police-officers.

20. Authority to be exercised by police-officers.

21. Village police-officers.

Police-chaukidars in the Presidency of Fort William.

22. Police-officers always on duty and may be employed in any part of district.

23. Duties of police-officers.

24. Police-officers may lay information, etc.

25. Police-officers to take charge of unclaimed property, and be subject to Magistrate's orders as to disposal.

26. Magistrate may detain property and issue proclamation.

27. Confiscation of property if no claimant appears.

28. Persons refusing to deliver up certificate, etc., on ceasing to be police-officers.

29. Penalties for neglect of duty, etc.

30. Regulation of public assemblies and processions, and licensing of same.

Music in the streets.

30-A. Powers with regard to assemblies and processions violating conditions of licence.

31. Police to keep order in public roads,

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etc.

32. Penalty for disobeying orders issued under last three sections, etc.

33. Saving of control of Magistrate of district.

34. Punishment for certain offences on roads, etc.

Power of police-officers,

Slaughtering cattle, furious riding,

etc.

Cruelty to animals.

Obstructing passengers.

Exposing goods for sale.

Throwing dirt into street.

Being found drunk or riotous.

Indecent exposure of person.

Neglect to protect dangerous places.

35. Jurisdiction.

36. Power to prosecute under other law not affected.

Proviso.

37. Recovery of penalties and fines imposed by Magistrate.

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Repealed.

42. Limitation of actions.

Tender of amends.

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43. Plea that act was done under warrant. Proviso.

44. Police-officers to keep diary.

45. Provincial Government may prescribe form of returns.

46. Scope of Act.

47. Authority of District Superintendent of Police over village police.

FORM

THE POLICE ACT (V OF 1861).^s

Year.	No.	Short Title.	Amendments.
1861	V	The Police Act, 1861.	Repealed, in part, IX of 1871; XVI of 1874; X of 1882; X of 1914. Amended, III of 1888; VIII of 1895; I of 1903; IV of 1914; XXXVIII of 1920 and Ordinance XI of 1942.

LEG. REF.

^s Short title, "The Police Act, 1861". See the Indian Short-titles Act, 1897 (XIV of 1897).

Act V of 1861 has been applied to—

Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), sec. 4 (1), and Sch. I, Bur. Code, Vol. I. (As to its extension to Upper Burma, as amended by subsequent enactments under sec. 46, see notes to that section, *infra*.) [It has been extended to the Shan States, except Khamti Long and Mong Mit, by the Shan States Law and Criminal Justice Order, 1895. See Shan States Manual. It is also in force in the State of Mong Mit (Momeik), with its dependency Mong

Lang, see Burma Gazette, 1896, Pt. I, p. 252]; the Act has been repealed in the town of Rangoon by Burma Act IV of 1899, see Vol. II of the Bur. Code. The Act has also been amended in its application to Burma by Burma Act VI of 1925;

the Santhal Parganas by the Santhal Parganas Settlement Regulation, 1872 (III of 1872), sec. 3, as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899), B & O. Code, Vol. I;

the Arakan Hill District by the Arakan Hill District Laws Regulation, 1916 (I of 1916), sec. 2, Burma Code, Vol. I;

British Baluchistan by the British Baluchistan Laws Regulation, 1913. (II of 1913), sec. 3, Bal. Code;

[22nd March, 1861.]

An Act for the Regulation of Police.

WHEREAS it is expedient to re-organize the police and to make it a more efficient instrument for the prevention and detection of crime; It is enacted as follows:—

Preamble.

1. The following words and expressions in this Act shall have the meaning assigned to them, unless there be something in the subject or context repugnant to such construction, Interpretation-clause.

that is to say,—

“the words “Magistrate of the district” shall mean the chief officer charged with the executive administration of a district and exercising the powers of a

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the Angul District by the Angul Laws Regulation, 1913 (III of 1913), sec. 3, B & O. Code, Vol. I;

the Chittagong Hill Tracts by the Chittagong Hill Tracts Regulation, 1900 (I of 1900), Ben. Code, Vol. I;

the Town of Calcutta and its suburbs as modified by the Calcutta Police Act, 1898, Ben. Act I of 1898, Ben. Code, Vol. III; and the Pargana of Manpur by the Manpur Laws Regulation, 1926 (II of 1926), sec. 2.

The Act has been declared, by notification under sec. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts, namely, the District of Hazaribagh, Lohardaga (now the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44) and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum, *see* Gazette of India, 1881, Pt. I, p. 504; the Porahat Estate in the Singhbhum District, *see* Gazette of India, 1897, Pt. I, p. 1059, and under secs. 3 and 5-A of the same Act, in the Pargana of Manpur, *see* Gazette of India, 1899, Pt. II, p. 419. The powers of a Local Government have been conferred on the Agent, Governor-General, Central India, and also those of a High Court for the purpose of the Police Act (V of 1861.)

It has been extended, by notification under sec. 5 of the same Act, to the Kumaon and Garhwal Districts, *see* Gazette of India, 1891, Pt. I, p. 185, and (with the exception of sec. 5) to the Scheduled District of Coorg, *see* Gazette of India, 1914, Pt. II, p. 2347. Secs. 15, 15-A, 16, 30, 30-A, 31 and 32 have been extended to the Scheduled Districts in Ganjam and Vizagapatam, *see* Fort St. George Gazette, 1898, Pt. I, p. 667 and Gazette of India, 1898, Pt. I, p. 873.

As to special enactment in force in Madras, Bombay and Lower Provinces of Bengal, and extensions of this Act under the power conferred by sec. 46, *see* notes to that section.

As to special enactments for Military Frontier or Rural Police in force in certain parts of British India, *see* note to sec. 8.

As to the relaxation of the provisions of the Police Act, 1861 (V of 1861), which restrict the employment of police-officers to the presidency, province or place of the Police establishment of which they are members,

see the Police Act, 1888 (III of 1888).

¹ Cf. also sec. 3 (2) of the Code of Criminal Procedure, 1898 (Act V of 1898).

SEC. 1.—Act V of 1861 is a special law on the subject of police, and persons charged with offences punishable under that law must be tried under the provisions of the Criminal Procedure Code. 5 W.R. (Cr.) 1. Police regulations cannot alter or modify provisions of the Code of Criminal Procedure. 1938 A.L.J. 782=A.I.R. 1938 All. 534. Convictions under Act V of 1861 are appealable in the same way as other convictions. 5 W.R. (Cr.) 1; 5 W.R. (Cr.) 22. Where the appellants were convicted by an officer exercising the powers of a Magistrate and sentenced to imprisonment exceeding the limit prescribed by sec. 411, Cr. P. Code, 1861, the appeal lies to the Sessions Court. 5 W.R. (Cr.) 22. A police constable is liable to be punished under the Penal Code and not under the Police Act if he commits any offence when not on duty. 96 P.R. 1866 (Cr.). A Magistrate is competent under sec. 133, Cr. P. Code, 1861, to direct an enquiry to be made by a police-officer into an offence punishable under a local Act such as the Police Act. 14 W.R. (Cr.) 41. On this section *see also* 30 C. 97=6 C.W.N. 342; 15 W.R. (Cr.) 17; 30 M.L.T. 38; 10 C.W.N. 322.

“POLICE-OFFICER”—MEANING OF—POLICE PATELS IN BERAR.—Primarily the term “Police-officer” in sec. 25 of the Evidence Act means the same as it does in the Police Act but it can be extended beyond the definition in sec. 1 of the Police Act to cover only those persons who like police-officers, coming within that definition are so much more interested in obtaining convictions than any member of the community is, that they might possibly resort to improper means for doing so. That class does not include police patels in Berar. 23 N.L.R. 23=28 Cr.L.J. 471=1927 N. 222. As to sanction to prosecute police-officers, *see* 1935 R. 165.

“MAGISTRATE OF THE DISTRICT”.—Cf. sec. 3 (2) of the Code of Criminal Procedure, 1898 (Act V of 1898). As to the meaning of the word Magistrate, *see* 4 W.R. (Cr.) 2. As to whether Inspector-General of Police is such, *see* 7 Cr.L.J. 291=9 P.W.R. 1908 (Cr.).

Magistrate, by whatever designation the chief officer charged with such executive administration is styled:

the word "Magistrate" shall include all persons within the general police-district, exercising all or any of the powers of a Magistrate:

the words "police" shall include all persons who shall be enrolled under this Act:

the words "general police-district" shall embrace any¹⁻² presidency, province or place, or any part of any presidency, province or place, in which this Act shall be ordered to take effect:

³[the words "District Superintendent" and "District Superintendent of Police" shall include any Assistant District Superintendent or other person appointed by general or special order of the Provincial Government to perform all or any of the duties of a District Superintendent of Police under this Act in any district:]

the word "property" shall include any movable property, money or valuable security:

* * * * *

the word "person" shall include a company or corporation:

the word "month" shall mean a calendar month:

⁵the word "cattle" shall, besides horned cattle, include elephants, camels, horses, asses, mules, sheep, goats and swine.

⁶[References to the subordinate ranks of a police force shall be construed as references to members of that force below the rank of Deputy Superintendent.]

⁷2. The entire police-establishment under a Provincial Government shall, for the purposes of this Act, be deemed to be one police force, and shall be formally enrolled; and shall consist of such number of officers and men, and shall be constituted in such manner ⁹[* *], as shall from time to time be ordered by the Provincial Government ⁹[* *].

¹⁰[Subject to the provisions of this Act the pay and all other conditions of service of members of the subordinate ranks of any police-force shall be such as may be determined by the Provincial Government].

3. The superintendence of the police throughout a general police-district shall vest in and, ⁹[* * *] shall be exercised by the Provincial Government to which such district is subordinate; and, except as authorised under the provisions of this Act, no person, officer or Court shall be empowered by the Provincial Government to ⁹[* * *], supersede or control any police functionary.

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¹⁻² Under sec. 2 of the Police Act, 1888 (III of 1888), the Central Government notwithstanding this provision, may, create a general police-district, consisting of parts of two or more presidencies, provinces or places.

The Chittagong Hill Tracts have been declared to be a general police-district for the purposes of this Act, *see* the Chittagong Hill Tracts Regulation, 1900 (I of 1900), sec. 16, Ben. Code, Vol. I.

The North-West Frontier Province has been declared to be a general police-district for the purposes of this Act, *see* the North-West Frontier Province Law and Justice Regulation, 1901 (VII of 1901), sec. 13, Punj. & N.W.F. Code.

As to Delhi Province, *see* Gazette of India, 1912, Pt. I, p. 1105.

³ This paragraph was inserted in sec. 1 by the Police Act (1861), Amendment Act, 1895 (VIII of 1895), sec. 1.

⁴ Certain words were repealed by Sch. II of the Repealing and Amending Act, 1914 (X of 1914).

⁵ *Cf.* definition of "cattle" in sec. 3 of the Cattle-trespass Act, 1871 (I of 1871).

⁶ Inserted by A.O., 1937.

⁷ Sec. 2, so far as it relates to the provinces under the administration of the Lieut. Governor of Bengal, was repealed by the Bengal Police Act, 1869 (Ben. Act VII of 1869), Ben. Code, Vol. II.

⁸ *See* note appended to sec. 8, *infra*, as to enrolment of the police force in certain places.

⁹ Omitted by A.O., 1937.

¹⁰ Inserted by A.O., 1937.

4. The administration of the police throughout a general police-district shall be vested in an officer to be styled the Inspector-General of Police, and in such Deputy Inspectors-General and Assistant Inspectors-General as to the Provincial Government shall seem fit.

The administration of the police throughout the local jurisdiction of the Magistrate of the district shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant District Superintendents as the Provincial Government shall consider necessary.

1[* * * * *]

5. The Inspector-General of Police shall have the full powers of a Magistrate throughout the general police-district; but shall exercise those powers subject to such limitation as may from time to time be imposed by the Provincial Government.

6. [Magisterial powers of police-officers.] Rep. by the Code of Criminal Procedure, 1882 (Act X of 1882).

7. [Subject to such rules as the Provincial Government may from time to time make under this Act, the Inspector-General, Deputy Inspectors-General, Assistant Inspectors-General and District Superintendents of Police may at any time dismiss, suspend or reduce any police-officer of the subordinate ranks] whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same;

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1 Omitted by A.O., 1937.

2 Substituted by *ibid.*

SEC. 7: SCOPE OF SECTION.—As to the effect of appointment under this section, see 10 C.W.N. 727=3 Cr.L.J. 420=3 C.L.J. 475. This section deals merely with powers of superior officers (Police) in regard to the control of their subordinates and does not secure the offender from further prosecution under Penal Code. 26 P.R. 1915 (Cr.) =16 Cr.L.J. 788=31 I.C. 644. According to sec. 7, it cannot be said that a Sub-Inspector is a public servant "who is not removable from his office save by or with the sanction of the Provincial Government or some higher authority" and hence sec. 197 of the Criminal Procedure Code will not apply to him and no sanction for his prosecution is necessary. The power to dismiss, suspend or reduce any police-officer of the subordinate rank conferred by sec. 7 of the Police Act on the Inspector-General and other officers is not a delegation of its powers by the Provincial Government. 188 I.C. 846=1940 O.W.N. 494=A.I.R. 1940 Oudh 382.

CONFINEMENT AND SUSPENSION—VALIDITY—WHAT CONSTITUTES CONFINEMENT.—Sec. 7 provides confinement for a term not exceeding 15 days as an alternative punishment for suspension. The section does not contemplate confinement in addition to suspension and certainly not indefinite confinement. To order a police-officer to live in the police lines until further orders and not to leave the lines without permission is to confine him in those lines. Such an order is

clearly illegal. 58 C. 1132=134 I.C. 891=35 C.W.N. 547. See also 2 C.L.J. 616.

ORDER CONFINING POLICE-OFFICER TO POLICE LINES—REASONABLENESS.—Where a police-officer against whom an order of suspension had already been made was ordered to live in the police lines until further orders and by reason of the later order the police-officer was prejudiced in conducting his defence. *Held*, that assuming the order was legal it was an unreasonable one. The police-officer should on the other hand be given every opportunity to prepare his defence and not be hampered. (*Ibid.*)

SEC. 7 contemplates punishments to be awarded after the police-officer has been adjudged by his superior officer to be remiss or negligent in the discharge of his duty. Where the police-officer is suspended pending the result of the enquiry into his conduct and is ordered not to go out of his station, the orders are not illegal and do not fall under sec. 7. 23 Pat. 225=10 Cut.L.T. 20=1944 Pat. 256.

Sec. 7 confers the powers of appointment (which connote punishment), on certain designated officers, and the Local Government cannot, by any rules framed by it delegate disciplinary powers to those officers. It is conceivable that the Local Government might order such officers to exercise their disciplinary powers subject to its control or approval, but it cannot delegate such powers to be exercised on the Local Government's behalf. Consequently, Police Department Notification No. 44 of 1937 in so far as it does not leave the power of punishment of Sub-Inspectors to the authority by whom the appointment was made

¹[or may award any one or more of the following punishments to any police-officer ²[of the subordinate ranks] who shall discharge his duty in a careless or negligent manner, or who by any act of his own shall render himself unfit for the discharge thereof, namely:—

- (a) fine to any amount not exceeding one month's pay;
- (b) confinement to quarters for a term not exceeding fifteen days, with or without punishment drill, extra guard, fatigue or other duty;
- (c) deprivation of good-conduct pay;
- (d) removal from any office of distinction or special emolument].

8. ³Every police-officer ⁴[appointed to the police-force other than an officer mentioned in section 4] shall receive on his appointment a certificate in the form annexed to this Act,

Certificates to police-officers. under the seal of the Inspector-General or such other officer as the Inspector-General shall appoint by virtue of which the person holding such certificate shall be vested with the powers, functions and privileges of a police-officer.

⁵[Such certificate shall cease to have effect whenever the person named in it ceases for any reason to be a police-officer, and, on his ceasing to be such an officer, shall be forthwith surrendered by him to any officer empowered to receive the same.

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¹ The second paragraph of sec. 7 was substituted for the words "or fine any police-officer to any amount not exceeding one month's pay who shall discharge his duty in a careless or negligent manner, or who, by any act of his own, shall render himself unfit for the discharge thereof" by the Police Act (1861) Amendment Act, 1895 (VIII of 1895), sec. 2. Sec. 7 has also been amended in its application to Burma by the Police (Burma Amendment) Act VI of 1825.

² Inserted by A.O., 1937.

³ As to enrolment, maintenance and discipline of—

(1) the Military Police-force employed on—

(a) the Andaman and Nicobar Islands, see the Andaman and Nicobar Islands Military Police Regulation, 1888 (II of 1888), Gazette of India, 1888, Pt. I, p. 391;

(b) Assam, see the Assam Rifles Act, 1920 (Assam Act I of 1920), Assam Code;

(c) Burma, see the Bur. Military Police Act, 1887 (XV of 1887), Burma Code, Vol. I;

(d) Bengal, see the Eastern Frontier Rifles (Bengal Battalion) Act, 1920 (Bengal Act II of 1920);

(2) the Chittagong Hill Tracts Frontier Police, see the Chittagong Hill Tracts Frontier Police Regulation, 1881 (III of 1881), Bengal Code, Vol. I;

(3) the Rural Police in the District of Cachar and Sylhet, see the Sylhet and Cachar Rural Police Regulation, 1883 (I of 1883), Assam Code, Vol. I;

(4) the Punjab Frontier police-officers, see the Punjab Frontier Police Officers Regulation, 1893 (VII of 1893), Punj. & N. W. Code;

(5) the Calcutta and Suburban Police, see Bengal Act IV of 1866 (Calcutta Police) and Bengal Act II of 1866 (Calcutta Suburban Police), Bengal Code, Vol. II;

(6) the Police establishment in municipal areas in the United Provinces of Agra and Oudh, see the United Provinces Municipalities Act, 1916 (U.P. Act II of 1916), U.P. Code, Vol. II;

(7) the Police establishment in municipal areas in the Punjab, see the Punjab Municipal Act, 1911 (III of 1911), Punj. & N.W. Code;

(8) the Rural Police in the Santhal Parganas, see the Santhal Parganas Rural Police Regulation, 1910 (IV of 1910), B & O. Code, Vol. I;

(9) the Rural Police in Chota Nagpur, see the Chota Nagpur Rural Police Act, 1914 (B. & O. Act I of 1914), B. & O. Code, Vol. III.

⁴ Substituted by A.O., 1937.

⁵ These paragraphs were substituted for the original paragraph by the Police Act (1861) Amendment Act, 1895 (VIII of 1895), sec. 3.

but purports to *delegate* to certain specified authorities the power of punishment, including dismissal, is *ultra vires* of the Local Government. Where, therefore, a Sub-Inspector of Police who was appointed by the Deputy Inspector-General of Police is prosecuted for an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, the previous sanction of the Local Government is not required under sec. 197 (1), Cr. P. Code, for his prosecution, although Notification No. 44 of 1937 delegates the power of punishment of Sub-Inspectors to the District Superintendent of Police and constitutes the Deputy Inspector-General of Police as the appellate authority. 1938 Rang.L.R. 104=175 I.O. 442=39 Cr.L.J. 614=A.I.R. 1938 Rang. 181.

Sec. 8.—Officers of the Society for the Prevention of Cruelty to Animals, appointed under Act V of 1861 are public servants within the meaning of the Indian Penal

A police-officer shall not by reason of being suspended from office cease to be a police-officer. During the term of such suspension the powers, functions and privileges vested in him as a police-officer shall be in abeyance, but he shall continue subject to the same responsibilities, discipline and penalties and to the same authorities, as if he had not been suspended.]

9. No police-officer shall be at liberty to withdraw himself from the duties of his office, unless expressly allowed to do so by the District Superintendent or by some other officer authorized to grant such permission, or, without the leave of the District Superintendent, to resign his office,¹ unless he shall have given to his superior officer notice in writing, for a period of not less than two months, of his intention to resign. (*See Ordinance XI of 1942.*)

Police-officers not to resign without leave or two months' notice. 10. No police-officer shall engage in any employment or office whatever other than his duties under this Act, unless expressly permitted to do so in writing by the Inspector-General.

11. [*Police superannuation fund.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

12. The Inspector-General of Police may, from time to time, subject to the approval of the Provincial Government, frame such orders and rules as he shall deem expedient relative to the organization, classification and distribution of the police-force, the places at which the members of the force shall reside, and the particular services to be performed by them; their inspection, the description of arms, accoutrements and other necessities to be furnished to them; the collecting and communicating by them of intelligence and information; and all such other orders and rules relative to the police-force as the Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties.

13. It shall be lawful for the Inspector-General of Police, or any Deputy Inspector-General, or Assistant Inspector-General or for the District Superintendent, subject to the general direction of the Magistrate of the district, on the application of any person showing the necessity thereof, to depute any additional number of police-officers to keep the peace at any place within the general police-district, and for such time as shall be deemed

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¹ Amended in application to Burma by the Police (Burma Amendment) Act (VI of 1925).

² For rules under sec. 12, *see* different Local Rules and Orders.

Code. The mere fact that the certificate of appointment given to such officers are not strictly in conformity with the form prescribed in the Schedule does not invalidate their appointment or take them out of the category of public servants. 3 C.L.J. 475=10 C.W.N. 727=3 Cr.L.J. 420. As to the responsibilities of police-officer when under orders of suspension, *see* 10 A.L.J. 459; 1884 A.W.N. 169. *See also* 8 Beng.L.R. App. 58.

SEC. 9.—The accused, a police constable did not return to duty on the expiry of

casual leave for which he was prosecuted and fined. During the pendency of trial he was suspended. After his trial he was reinstated and asked to join, which he did not do. He was tried and sentenced to imprisonment. *Held*, that they were distinct offences and the accused was rightly convicted. 42 A. 22=17 A.L.J. 873=20 Cr.L.J. 575=52 I.C. 63.

SEC. 12: CASE-LAW.—Extent of powers to make rules under the section, *see* 15 C. 194. Necessity for approval of Local Government, *see* 15 C. 194. Cost of additional police—Liability of third parties. *See* 1 W. R. (Cr.) 15.

SEC. 13.—As to a Magistrate's power to realise the cost of a constable from an individual, *see* 1 W.R. (Cr.) 15. *See also* 18 C. W.N. 1272=15 Cr.L.J. 703=26 I.C. 151.

trate of the district under sub-section (2) shall be subject to revision by ¹[the Commissioner of the Division or] the Provincial Government, but save as afore-said shall be final.

(5) No civil suit shall be maintainable in respect of any injury for which compensation has been awarded under this section.

(6) *Explanation*.—In this section the word “inhabitants” shall have the same meaning as in the last preceding section.]

²[16. (1) All moneys payable under sections 13, 14, 15 and 15-A shall be recoverable by the Magistrate of the district in the manner provided by ³sections 386 and 387 of the Code of Criminal Procedure, 1882, for the recovery of fines, or by suit in any competent Court.

Recovery of moneys payable under sections 13, 14, 15 and 15-A, and disposal of same when recovered.

(2) [Omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.]

(3) All moneys paid or recovered under section 15-A shall be paid by the Magistrate of the district to the persons to whom and in the proportions in which the same are payable under that section.]

17. When it shall appear that any unlawful assembly, or riot or disturbance of the peace has taken place, or may be reasonably apprehended, and that the police-force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly or riot or disturbance of the peace has occurred, or is apprehended, it shall be lawful for any police-officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such police-officers may require to act as special police-officers for such time and within such limits as he shall deem necessary; and the Magistrate to whom such application is made shall, unless he see cause to the contrary, comply with the application.

Special police-officers.

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¹In the North-West Frontier Province the words in brackets should be omitted, *vide* the North-West Frontier Province Law and Justice Regulation, 1901 (VII of 1901). First Schedule, Punj. & N.W. Code.

²Sec. 16 was substituted by sec. 6 of the Police Act (1861) Amendment Act, 1895 (VIII of 1895).

³*See* now the same sections of the Code of Criminal Procedure, 1898 (Act V of 1898).

SEC. 17: SCOPE OF SECTION.—*See* 10 C.W.N. 322; 18 W.R. (Cr.) 67. The only legitimate object for appointing special constables is to strengthen the ordinary police force by the addition of suitable persons to their number, when the ordinary force find themselves too few to meet an emergency. In a case of dispute as to proprietary rights, it is an abuse of the law and an act of oppression to appoint active men on one side as special constables, in order to prevent their asserting their alleged rights and so to give an advantage to the other party. A refusal to serve as such is no offence under sec. 173, I. P. Code, and proceedings could not be taken under that section. 10 C.W.N. 82=2 C.L.J. 555=3 Cr.L.J. 169. [R. 10 C.W.N. 322; 12 C.W.N. 727.] When can special constables be appointed. 10 Bang.

L.R. (App.) 4=18 W.R. (Cr.) 67. The circumstances which justify an order under sec. 17 are that a disturbance of the peace is apprehended and that the police force available is insufficient to preserve the peace, and protect the inhabitants of the village where disturbances are apprehended. In a case where it was not clear that there was any danger of a disturbance of the peace or that, if there was such a danger, the ordinary police force available was not sufficient to cope with it. *Held*, that the appointment of the petitioner as a special constable was unnecessary and inexpedient. *Held*, further, that the petitioner should not be prosecuted under sec. 19 for his refusal to act in accordance with such appointment. 12 C.W.N. 727=8 C.L.J. 66=7 Cr.L.J. 507 (12 C.W.N. 366=10 C.W.N. 82=2 C.L.J. 555, F.). An order under sec. 17 appointing special constables is of an executive nature and not open to revision under sec. 435, Cr. P. Code. 20 O.C. 229=18 Cr.L.J. 900=42 I.C. 132. The failure of a person appointed as a special constable under sec. 17 to obey a lawful notice issued to him to attend a police station amounts to a neglect or refusal to serve as a special constable within sec. 19. (28 C. 411. Dist.) 19 Cr.L.J. 91=43 I.C. 251 (C.). Power of High Court to interfere: with order of Magistrate. *See* 10 C.W.N. 322; 10 Beng.L.R. (App. 4.

18. Every special police-officer so appointed shall have the same powers, privileges and protection, and shall be liable to perform the same duties and shall be amenable to the same penalties, and be subordinate to the same authorities, as the ordinary officers of police.

Powers of special police-officers.

19. If any person being appointed a special police-officer as aforesaid shall, without sufficient excuse, neglect or refuse to serve as such, or to obey such lawful order or direction as may be given to him for the performance of his duties, he shall be liable, upon conviction before a Magistrate, to a fine not exceeding fifty rupees for every such neglect, refusal or disobedience.

Refusal to serve as special police-officers.

20. Police-officers enrolled under this Act shall not exercise any authority, except the authority provided for a police-officer under this Act and any Act which shall hereafter be passed for regulating criminal procedure.

Authority to be exercised by police-officers.

21. Nothing in this Act shall affect any hereditary or other village-police-officer, unless such officer shall be enrolled as a police-officer under this Act. When so enrolled, such officer shall be bound by the provisions of the last preceding section. No hereditary or other village-police-officer shall be enrolled without his consent and the consent of those who have the right of nomination.

Village-police-officers.

If any police-officer appointed under ²Act XX of 1856 (*to make better provision for the appointment and maintenance of Police-Chaukidars in Cities, Towns, Stations, Suburbs and Bazars in the Presidency of Fort William in Bengal*) is employed out of the district for which he shall have been appointed under that Act, he shall not be paid out of the rates levied under the said Act for that district.

Police-chaukidars in the Presidency of Fort William.

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¹ For some cases in which the application of sec. 20 has been restricted, see the Assam Police-officers Regulation, 1883 (II of 1883), Assam Code, Vol. I; the Burma Military Police Act, 1887 (XV of 1887), Bur. Code, Vol. I.

It has been declared not to apply to any Assistant District Superintendent of Police whose duties are exercised in connection with the unenrolled border Police-force—see Sec. 2 of the Punjab Frontier Police-officers Regulation, 1893 (VII of 1893), Panj. & N. W. Code.

² The Bengal Chankidari Act, 1856.

SEC. 18.—See 10 C.W.N. 322.

SEC. 19.—Special constables should be appointed under sec. 19 only when it is really intended to use them as police-officers and to strengthen the ordinary police force and not otherwise. It is objectionable to appoint as special constables, parties to dispute against whom complaints have been lodged or proceedings under sec. 107, Cr. P. Code, are pending so as to handicap them in their defence. 43 C. 277=17 Cr.L.J. 197=20 C.W.N. 855=34 L.C. 309. See also 10 C.W.N. 322. Refusal to accompany a police-officer to the Police Station, situated at some

distance, not for any purpose of police duty but simply to obtain the authority of appointment to serve as special constables and the necessary badges and arms, does not amount to a refusal to serve as special constable, and it does not, therefore, constitute an offence under sec. 19. An arrest made by a police-officer on such a refusal is not lawful and any resistance offered to such an arrest does not amount to an offence under sec. 353 although it may amount to an offence under sec. 147. 28 C. 411=5 C.W.N. 134 (18 A. 246, Appr.; 3 C.W.N. 605, D.). See also 16 P.R. 1913 (Cr.)=14 Cr.L.J. 142=18 L.C. 894.

SEC. 20.—For some cases in which the application of sec. 20 has been restricted, see the Assam Police-officers Regulation, 1883 (II of 1883), secs. 2 and 3; the Burma Military Police Act, 1887 (XV of 1887), sec. 11; see also 10 C.W.N. 322. This section has been declared not to apply to any Assistant District Superintendent of Police whose duties are exercised in connection with the unenrolled border police-force, see sec. 2 of the Punjab Frontier Police-officers Regulation, 1893 (VII of 1893), Gazette of India, 1893, Pt. I, p. 285; see U.B.R. (1892-96) Vol. I, p. 10.

Police-officers always on duty and may be employed in any part of district.

22. Every police-officer shall, for all purposes in this Act contained, be considered to be always on duty, and may at any time be employed as a police-officer in any part of the general police-district.

23. It shall be the duty of every police-officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisances; to detect and bring offenders to justice and to apprehend all persons whom he is legally authorised to apprehend, and for whose apprehension sufficient ground exists: and it shall be lawful for every police-officer, for any of the purposes mentioned in this section, without a warrant, to enter and inspect any drinking-shop, gaming-house or other place of resort of loose and disorderly characters.

24. It shall be lawful for any police-officer to lay any information before a Magistrate, and to apply for a summons, warrant, search-warrant or such other legal process as may by law issue against any person committing an offence,

Police-officers may lay information, etc.

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Police-officers to take charge of unclaimed property, and be subject to Magistrate's orders as to disposal.

25. It shall be the duty of every police-officer to take charge of all unclaimed property, and to furnish an inventory thereof to the Magistrate of the district.

LEG. REF.

1 The words "and to prosecute such person up to final judgment" were repealed by the Code of Criminal Procedure, 1882 (Act X of 1882).

SEC. 22: ASSAULT WHILE ON DUTY—CONTROLLING TRAFFIC IN A PRIVATE PLACE.—Where a police-officer was deputed in a private place to control the traffic on the road leading from that private place to the public road and he was assaulted while so discharging his duty. *Held*, the police-officer was acting in the lawful discharge of his duty and the accused was guilty of an offence under sec. 353, I. P. Code. 111 I.C. 665 = 29 Cr.L.J. 905 = 1928 L. 230.

SEC. 23.—This section does not cover the execution of invalid warrants or extend a constable's powers of arrest. 138 I.C. 844 = 33 Cr.L.J. 706 = 13 Pat.L.T. 135 = 1932 P. 171. On this section, *see also* 8 L.B. R. 329 = 17 Cr.L.J. 347 = 35 I.C. 523 = 26 W.R. (Cr.) 8 = 1891 A.W.N. 179. As to duties of police officers, *see* 20 A. 151 (liability for making false entries in police diaries). *See also* 21 W.R. (Cr.) 303; 21 W.R. (Cr.) 30 (omission to give information an offence under sec. 177, Penal Code). The Municipal Committee is a competent authority within the meaning of sec. 23. 132 I.C. 258 = 25 N.L.R. 194 = 1930 N. 33. Sec. 23 requires police officers to prevent commission of offences and to detect and bring offenders to justice. The section applies to offences under the Excise laws also and such offences are not therefore excluded from the operation of sec. 23. Where the assistance of a police officer is requisitioned under the Excise Law, it is his duty as that of the

Excise officers to carry out the provisions of the Excise Law. If the police officer forbears to send a person arrested for trial, he forbears to do an official act within the meaning of sec. 161, I. P. Code. 22 Pat. 76 = A.I.R. 1943 Pat. 229.

NON-COGNIZABLE CASES.—There is nothing either in the Police Act, secs. 23, 24 and 25 or in the Criminal Procedure Code, which would in any way prevent a police officer from lodging a complaint with regard to a non-cognizable offence. 120 I.C. 297 = 10 P. L. T. 601 = 1929 P. 514.

REPORT ABOUT SUSPECTS.—Sec. 23 prescribes the duties of a police officer and one of the duties mentioned is to collect and communicate intelligence affecting the public peace. A report, therefore, made by a Sub-Inspector of Police to a superior officer regarding suspicions against persons residing within the jurisdiction, falls within the meaning of sec. 23, and a suit brought after a month from the date of notice is time barred. 125 I.C. 379 = 1930 L. 592.

SEC. 24.—*See* 5 I.C. 714 = 4 P.W.R. (1910) (Cr.) = 11 Cr.L.J. 205 (Police-officer making false and malicious report against a person to superior police-officer)

SEC. 25.—Orders passed under sec. 25 are executive and not magisterial orders and hence not open to appeal or revision. If any objection is taken to the acts of the police in this connection, recourse should be had to Civil Courts. 1942 A.M.L.J. 75. Timber claimed by a landowner as having been washed on to his estate by a river is not unclaimed property within the meaning of sec. 25 and the following sections. 9 W. R. 97. On this section, *see also* 1930 L. 539.

The police-officers shall be guided as to the disposal of such property by such orders as they shall receive from the Magistrate of the district.

26. (1) The Magistrate of the district may detain the property and issue a proclamation, specifying the articles of which it consists, and requiring any person who has any claim thereto to appear and establish his right to the same within six months from the date of such proclamation.

¹[(2) The provisions of section 525 of the Code of Criminal Procedure, 1882, shall be applicable to property referred to in this section.]

²[27. (1) If no person shall within the period allowed claim such property, or the proceeds thereof, if sold, it may, if not already sold under sub-section (2) of the last preceding section, be sold under the orders of the Magistrate of the district.

(2) The sale-proceeds of property sold under the preceding sub-section and the proceeds of property sold under section 26 to which no claim has been established shall be ³[at the disposal of the Provincial Government.]

28. Every person, having ceased to be an enrolled police-officer under this Act, who shall not forthwith deliver up his certificate, and the clothing, accoutrements, appointments and other necessities which shall have been supplied to him for the execution of his duty, shall be liable on conviction before a Magistrate, to a penalty not exceeding two hundred rupees, or to imprisonment with or without hard labour, for a period not exceeding six months, or to both.

29. Every police-officer who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice for the period of two months, ⁴[or who, being absent on leave, shall fail, without reasonable cause, to report himself for duty on the expiration of such leave,] or who shall engage without authority in any employment other than his police-duty, or who shall be guilty of cowardice, or who shall offer any unwarrantable personal violence to any person in his custody, shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment with or without hard labour, for a period not exceeding three months, or to both.

LEG. REF.

¹This sub-section was added by sec. 7 of the Police Act (1861) Amendment Act, 1895 (VIII of 1895). Read now the Code of Criminal Procedure, 1898 (Act V of 1898).

²This section was substituted by sec. 8 of the Police Act (1861) Amendment Act, 1895 (VIII of 1895).

³Substituted by A.O., 1937.

⁴These words were added by sec. 9 of the Police Act (1861) Amendment Act, 1895. (VIII of 1895).

SEC. 26.—See 1 U.B.R. (1902-1903) Police 1 (Right of finder of goods); 6 L.B.R. 57 (whether this section covers the claim of a creditor to attach right, title and interest of judgment-debtor).

SEC. 29 has no application to persons who are not police-officers. 10 C.L.R. 521. The expression "police-officer" applies to all the members of the police force in whatever

capacity they may be employed, including constables. 116 I.C. 611=30 Cr.L.J. 635=1929 L. 325. Sec. 29 is to be construed quite widely. The words "rules and regulations" refer to such rules and regulations as are properly framed by competent authorities, that is to say, by the Inspector-General. So also the words "lawful order" refer to any order which any officer may lawfully give to any individual or specific body of individuals under his command. Offences under sec. 29 are not limited to the wilful breaches or neglect of a rule or regulation or a lawful order but include any "violation of duty." 9 P. 31=1930 P. 195. An order by a Superintendent of Police regulating the duties of mounted police under command, e.g., directing them to groom their horses is a lawful order under sec. 29 and a disobedience of such order renders the guilty person liable to conviction. 21 Cr.L.J. 465=56 I.C. 497 (Pat.). Where a

police-officer was served with one order of transfer and then with another order which he could reasonably have construed as cancelling the previous order and he did not comply with the first order, he could not be convicted of wilful breach or neglect of a lawful order made by a competent authority, 1922 P. 207. Where it could not be said that the accused failed without reasonable cause to report himself to duty on the expiration of his leave. *Held*, that he could not be convicted under sec. 29 for neglect of duty. 66 I.C. 67=25 C.W.N. 408. Where a police official makes wrong entries in the police diary and conceals certain bail bonds instead of producing them in Court, he is guilty of an offence under sec. 29. 1941 O.W.N. 1255=1941 A.W.R. (C.C.) 358=1941 O.A. 947=1942 Oudh 163.

REASONABLE CAUSE.—Where a police-officer who is really ill and is on leave fails to report himself for duty on the expiration of his leave, his failure to report is not without reasonable cause. 97 I.C. 423=27 Cr. L.J. 1111=1927 L. 15. There is nothing in the law to require a police officer to enter a Civil Hospital and not place himself under the treatment of a private practitioner when he is ill and, therefore, he should not be convicted under sec. 29 if he chooses to be treated by a private practitioner. (*Ibid.*) A man doing his best to keep rioters out and who is carried into a building by a rush of the very men whom he is trying to protect, is clearly showing no cowardice up to the time that he enters the building, and if after entering the building the persons inside refuse to let him go out, he is not guilty of cowardice. 112 I.C. 99=5 O.W.N. 256=29 Cr.L.J. 979=1928 O. 285. A person who has refused to act as a special constable, cannot be prosecuted under sec. 29. The provisions of that section were not intended to apply to special constable and cannot be interpreted as so applying by the operation of the provisions of sec. 18. 10 C.W.N. 322. In a summary trial of an offence under sec. 29 it is not sufficient to state that it consisted in the absence from special constable's parade on certain dates without permission, but it is necessary to state that the act consisted of a breach of duty lawfully imposed and to specify how the duty was created and in what act or omission the breach consisted. It was not intended to apply to a case, where the offence charged is absence from special constable's parade on certain dates without permission. The section is an exceedingly stringent provision and should not be put in force except in extreme cases, and where milder remedies have been tried and failed. 10 C.W.N. 79=2 C.L.J. 565=3 Cr.L.J. 178. The section deals with offences constituted either by any violation of duty, or wilful breach, or neglect of any rule or regulation, or lawful order made by competent authority on the part of a police-officer. Any neglect of duty short of a violation of duty does not amount to an offence under this section. 12

C. 427. *See also* 17 W.R. (Cr.) 34. An offence under the above section is not a cognizable offence. U.B.R. (1892-96), Vol. 1, p. 295. The words "lawful order" in sec. 29 mean an order which the authority mentioned therein is competent to make; so that they would not cover an order for extra drill given by a District Superintendent of Police to his constables, for their failing to cut down the jungle in the vicinity of their lines as per his orders. 12 C. 427. Where the order under sec. 7 is illegal no conviction under sec. 29 can be sustained for disobeying such an order. 58 C. 1132=134 I.C. 881=35 C.W.N. 547. The accused, a Sub-Inspector of Police, was charged with an offence under the section for carelessness in conducting an inquiry. The facts proved against him were that he failed to record the statements of certain parties till late in his inquiry, that he did not search the house of one Bakhti, that he did not keep a proper look out to ascertain whence the said Bakhti got certain ornaments found in her possession. On these findings he was convicted and sentenced to pay a fine of Rs. 100. *Held*, that the findings did not constitute any offence punishable under the section. 1883 A.W.N. 42. Every negligence does not amount to "violation of duty" within sec. 29 much less when it is not wilful. 107 I.C. 771=29 Cr.L.J. 285=1928 L. 164. Mere rashness or negligence on the part of a police-officer before ordering the search of a man's house for stolen property does not constitute an offence amounting to a violation of duty under sec. 29. 19 W.R. (Cr.) 7. [17 W.R. 34 Cr.; 8 Bom.L.R. App. 60, F.] Where there is not even mere neglect on his part, let alone intentional violation of duty, offence under the section is not made out. [17 W.R. (Cr.) 34, Rel. on.] The mere escape of a prisoner from lawful custody does not make the constable, in whose charge he was, guilty of an offence under sec. 29. 103 I.C. 200=28 Cr.L.J. 664=1927 Oudh 257. *See also* 83 I.C. 663 26 Cr.L.J. 103=1925 Oudh 281. Acts or omissions punishable, under sec. 29 come within the category of "offences punishable under any law other than the Indian Penal Code" and those offences likewise fall within the terms of sec. 148 of the same Code. 25 W.R. (Cr.) 20. Refusal to turn out for drill on being ordered to do so by a head constable in charge of the thana is an offence under sec. 29. 1896 A.W.N. 105 (*Diss.* 20 A. 70.) When the Superintendent of Police asks a Sub-Inspector of Police to register a case in the Police diary and send up for trial the person concerned, the Sub-Inspector has no discretion in the matter and a failure to obey the orders of the Superintendent is an offence under sec. 29. 95 I.C. 765=27 Cr.L.J. 845=1926 A. 562. Where a constable obtained leave of absence for one month a substitute being appointed and overstayed his leave by 29 days, *held*, that such overstaying of one's leave would not amount to a withdrawal from the duties

¹[30. (1) The District Superintendent or Assistant District Superintendent of Police may, as occasion requires, direct the

Regulation of public assemblies and processions and licensing of same.

conduct of all assemblies and processions on the public roads, or in the public streets or thoroughfares, and prescribe the routes by which, and the times at which, such processions may pass.

LEG. REF.

¹ This section was substituted by sec. 10 of the Police Act (1861) Amendment Act. 1895 (VIII of 1895).

of his office within the meaning of sec. 29. 6 A. 495=184 A.W.N. 215 (*D. Rat.* 279); 6 C. 625; 8 C.L.R. 56. A police constable who had gone to another station to escort an offender, delayed his departure from that station for two days. No order was given to him for the date of his return. There was some evidence to show that under similar circumstances police officers had been given two days' halt. *Held*, that he was not guilty under sec. 29. 116 I.C. 611 = 30 Cr.L.J. 635 = 1929 L. 325. When a police-officer is authorised by law to depute his subordinate to proceed to a place where a crime is reported to have been committed, he cannot be supposed to have contravened the law by not proceeding to the spot himself; under such circumstances the conviction of the prisoner on a charge of wilful violation of duty is illegal. 1 Agra (Cr.) 1. Sec. 29 contemplates that the person, to be charged with an offence under that section, must have been at the time of his doing the act in respect of which the charge is preferred a police constable within the meaning of that statute. A suspended police-officer ceases to be a police-officer. Where a police constable was suspended, and was ordered to remain in the lines during the suspension, *held*, that he was not guilty under sec. 29, for absenting himself therefrom without leave. 10 A. 459=1888 A.W.N. 169. [17 W.R. (Cr.) 12, F.] A mukhtar who is allowed to have possession of the diary by the Police Officer is guilty of the abetment of the offence under sec. 29, as the offence continues so long as the diary is in mukhtar's hand. 9 P. 31=1930 P. 195. A police-officer negligently or improperly submitting an incorrect report of a local investigation may be punished under sec. 29 in cases where the proof is sufficient to bring the case under sec. 218 of the Penal Code. 15 W.R. Cr. 17.

JURISDICTION.—A Deputy Magistrate exercising the full power of a Magistrate has jurisdiction under this section, to fine police officers for violation of duty. 4 W.R. Cr. 2. A Magistrate only, and not a Sessions Judge has power to try cases under the above section. 1 W.R. Cr. 5. [R. 19 A. 465.] A Cantonment Magistrate has power to try cases, under this section without complaint. 1 Agra Cr. 24. A District Magistrate is not precluded under sec. 556, Cr. P. Code, on account of his being the head of the Police in the District, from trying a

person under sec. 29 for a breach of an order issued by a Reserve Inspector. 22 A. 340. [R. 24 M. 238=2 Weir 370.] Sec. 29 does not give a Magistrate jurisdiction over European British subjects. Where, in a prosecution under sec. 29, the plea of being an European British subject is raised by the accused, the Magistrate is bound to enquire into and determine that plea. 3 N.W. P. 128. The summary conviction and punishment of two police-officers under this section by a Cantonment Magistrate without formal trial, was held to be irregular and illegal. 1 Agra Cr. 24.

POWER TO MAKE RULES.—There is no express power given by the Act to any officer, save the Inspector-General of Police, to make rules; he can do so under sec. 12 for, amongst other purposes, preventing abuse or neglect of duty. Such rules must be made subject to the approval of the Local Government. Therefore a disobedience of an order of the District Superintendent to the effect that constables are to be within the lines at 9 P.M. is not an offence under sec. 29. 15 C. 194. *See also* 10 C.W.N. 79=2 C.L.J. 565=3 Cr.L.J. 178; 1 Agra (Cr.) 24; 3 N.W.P. 128; 22 A. 54; 1 W.R. (Cr.) 5; 17 W.R. (Cr.) 12=8 B.L.R. App. 58; 6 C. 625; 15 C. 194; 10 A. 459; 25 C.W.N. 408=66 I.C. 67=23 Cr.L.J. 227. The meaning of R. 278 of Police Manual, Part I, is that the Court officer is to keep the diaries in his own possession and that if the accused or his agent call for the diary in any circumstances other than those mentioned in the earlier part of para. (b) of the rule the Court officer should refuse to comply with the request. 9 P. 31=1930 P. 195. The words "document or information" used in R. 803 of Police Manual, Pt. I, are comprehensive enough to include the police diaries, although they have been specifically dealt with under R. 278. (*Ibid.*) R. 261-A of the Police Manual, Pt. I, is merely an enabling rule except that in the case of a Magistrate who institutes a prosecution he must be the Magistrate of the District. (*Ibid.*)

SEC. 30: SCOPE OF SECTION.—Per *Mullick and Courts, JJ.*:—"The words of sec. 30 are sufficiently general to enable the Superintendent of Police to issue a general notification containing a prohibition against convening or collecting assemblies or directing or promoting procession without a licence. If the person or persons against whom the notice is directed convenes or collects an assembly or promotes or directs a procession without licence he or they will be punishable under sec. 32". 3 Pat.L.T. 585 = 1922 P. 274=68 I.C. 945=23 Cr.L.J.

(2) He may also, on being satisfied that it is intended by any persons or class of persons to convene or collect an assembly in any such road, street or thoroughfare, or to form a procession which would, in the judgment of the Magistrate of the district, or of the sub-division of a district, if uncontrolled, be likely to cause a breach of the peace, require by general or special notice that the persons convening or collecting such assembly or directing or promoting such procession shall apply for a licence.

(3) On such application being made, he may issue a licence specifying the names of the licensees and defining the conditions on which alone such assembly or such procession is to be permitted to take place and otherwise giving effect to this section: Provided that no fee shall be charged on the application for, or grant of, any such licence.

625. But see 53 C. 879=133 I.C. 192=32 Cr.L.J. 1005=35 C.W.N. 187. There is nothing in the Act which renders a person liable to punishment for joining an assembly or procession which has already been convened or collected if he has no notice that the convenor or promoter had omitted to take out a licence, but after becoming aware that the person whose duty it was to take out a licence has failed to do so, he persists in remaining with the assembly or procession, then it may be said that he shares the common object of such persons to resist the execution of the Superintendent's order. His conduct may then amount to an offence under sec. 141, I. P. Code. 3 Pat.L.T. 585=68 I.C. 945=23 Cr.L.J. 625.

Per *Bhide, J.*—The object of the licence is to secure observance of certain conditions by every member of the procession and merely by the licensee. The licence is granted to the directors or promoters of the procession as a matter of convenience as it will not be practicable to require every potential member of a procession to take out a licence. The directors or promoters of a procession who take out a licence in such case therefore become responsible for the conduct of the processionists. It will obviously be the duty of the licensee in such a case to explain the conditions of the licence to all who wish to take part in the procession. A.I.R. 1941 Lah. 372 (F.B.)=I.L.R. (1941) Lah. 820=43 Cr.L.J. 145.

TERMS EXPLAINED.—“PROCESSION”.—Procession is the action of a body of persons going or marching along in orderly succession in a formal or ceremonial way, especially as a religious ceremony or on a festive occasion. Where an image was merely carried down the ghat by four or five carriers and immersed in the river and there was nothing to be described as a body of persons going or marching along in orderly succession in a formal or ceremonial way, it is not correct to say that it was carried in a procession. 130 I.C. 239=32 Cr.L.J. 482=1931 C. 128.

“THOROUGHFARE”.—As the Parshottam Das Park was not intended to be exclusively used as a thoroughfare, or as a way by which people passed and as that was not its chief or primary object, the whole of the park could not be said to be a thoroughfare within the meaning of sec. 30. 145 I.C. 738

=34 Cr.L.J. 1062=1933 A.L.J. 1197=1933 A. 614.

SCOPE OF POWERS.—POWER TO CONTROL PROCESSION, BUT NOT TO FORBID.—Sec. 30 gives the police power to control processions. In order that this power may be exercised, the Act in certain circumstances authorizes the police to require persons to apply for licences. The object of this is that adequate arrangements for control may be made in time. But the police have no power to forbid the issue of a procession. The power to control does not include the power to forbid. 4 P. 795=27 Cr.L.J. 522=1926 P. 173. Sec. 30 as amended by Act VIII of 1895 only authorises the police to regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies. Neither sec. 30 nor sec. 31 empowers the police to issue a general order prohibiting any singing in the streets at night L.B.R. (1893-1900), p. 394. It is the right of a citizen to use the public thoroughfares, provided that he commits no offence in doing so and the taking out of a procession is not in itself an offence, nor does it require a special licence except as provided by sec. 30 that is a section which empowers the Superintendent of Police to control processions, and the manner in which they are to be controlled, if it is necessary to control them, is set forth in sub-sec.(2). It is impossible to read into the section any authority for absolutely forbidding the taking out of a procession. Accordingly it is no offence to take out a procession merely because an application for licence was rejected. 155 I.C. 605=1935 A.L.J. 386.

NOTICE REQUIRING CONVENERS TO APPLY FOR LICENCE.—VALIDITY.—*Quære*:—Whether a notice under sec. 30 sub-sec. (2) requiring conveners, collectors, directors, promoters of assemblies or processions of five or more men in the jurisdiction of a particular police station to apply to Assistant Superintendent of Police for a licence for such assemblies or processions is valid? 144 I.C. 185=34 Cr.L.J. 688=1933 C. 353.

GENERAL NOTICE.—LEGALITY.—Sec. 30 does not empower the police-officer to issue a general notice that any one taking out a procession passing a mosque must take out a licence. It does not contemplate his taking any action until he is satisfied that it is intended to take out a procession which

Music in the streets.

(4) He may also regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies.]

in the opinion of the Magistrate if uncontrolled would be likely to cause a breach of the peace. 58 C. 879=32 Cr.L.J. 1005=35 C.W.N. 187. But see 23 Cr.L.J. 625=68 I. C. 945.

CONDITIONS IN LICENCE—VAGUE AND INDEFINITE TERMS.—In a licence issued under sec. 30 (2), there was a condition that the "speed of the procession shall be under the directions of the Ilaga Magistrate and the local police". *Held*, that before such a condition can be made the subject of prosecution it must be entered in the licence in clear and unambiguous terms and a licensee cannot be prosecuted for the violation of a condition which is so vague and indefinite that it is difficult to hold that the licensee was bound to obey the orders of the Magistrate and the local police as to the speed of the procession. 30 Cr.L.J. 371=10 L. 852=1929 L. 404.

RESPONSIBILITY FOR CONDITIONS OF LICENCE—SURETIES.—It is the applicant for the licence alone to whom the licence can be given and who is bound by the conditions of the licence under sec. 30. Where the names of certain persons were included in the licence as sureties according to the particular form of licence used on the occasion, *held*, that the provision in the licence as to sureties was unauthorised by law. 30 Cr.L.J. 371=10 L. 852=1929 L. 404. There is no provision of law which makes it incumbent on an applicant for a licence, to provide sureties or which authorizes the officers concerned to demand such sureties. (*Ibid.*)

'ISSUE' OF LICENCE, WHAT CONSTITUTES.—In the Act the word "issue" has not been defined; but it signifies that, if the D.S.P. or Assistant D.S.P. signs the licence and delivers it to some one with directions that it shall in due course be delivered to the applicant, the licence has been issued within the meaning of sec. 30. 4 P. 795=27 Cr.L.J. 522=1926 P. 173.

OPERATION OF NOTIFICATION.—A notification under sec. 30 cannot be held to be operative after the occasion which called for the notification has passed away. 32 C.W. N. 162=29 Cr.L.J. 126=1928 C. 272.

PROCESSION BEFORE 'GETTING' LICENCE.—Once an application is made in time the applicant is free to take out his procession whether the licence had by then been issued or not. If the licence has been issued, he is bound to obey the conditions whether it has been delivered or not; if, on the other hand, it has not been issued, he is bound only to see that the general law was not broken. 4 P. 795=27 Cr.L.J. 522=1926 P. 173.

REGULATING MUSIC IN STREETS.—The District Superintendent of Police under sec. 30 is authorized to regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies, but a

prohibition of every kind of music is not covered by the word "regulate". (39 All. 131, Rel. on.). 51 A. 485=1929 A.L.J. 180=1929 A. 201.

ORDER UNDER SECTION—DISOBEDIENCE TO.—Disobedience to an order under sec. 30 (2) constitutes resistance 'to the execution of any law' within that meaning of sec. 141, I. P. Code. 54 M. 1025=1931 M. 484=61 M. L.J. 842.

SEC. 30 (4): ORDER THAT NO MUSIC TO BE PLAYED WITHIN 40 PACES OF MOSQUE—LEGALITY.—Where an order is that no procession with music would be allowed to pass within 40 paces from the mosque, that is clearly a regulation that falls within the ambit of sec. 30 (4). The District Superintendent of Police has a right to regulate the extent to which music may be used in the streets on future occasions, and it is not necessary for him to pass a separate order on every occasion. I.L.R. (1943) Nag. 295=1943 N.L.J. 352=A.L.R. 1943 Nag. 199.

ORDINARY MEMBERS OF PROCESSION—CONVICTION—LEGALITY.—Persons can only be properly convicted under sec. 30 (2) if it is established that they were directors or promoters of a procession and were as such under an obligation to apply for a licence for it. If they were merely ordinary members of the procession, sec. 30, sub-sec. (2) does not apply to them. The mere fact that they were at the head of the procession, and wearing garlands is not sufficient. 144 I.C. 185=34 Cr.L.J. 688=1933 C. 353.

SECS. 30, 31 AND 32.—Orders passed under secs. 30, 31 and 32 do not define rights of persons, nor decide who is in the wrong in the case of any dispute in public place. 15 N.L.R. 51=20 Cr.L.J. 313=50 I.C. 489. With respect to orders issued by police, the presumption is that they are issued in pursuance of duty. (*Ibid.*) Whether orders issued by police, are in the exercise of duty and are reasonably necessary, is a question of fact. (*Ibid.*) Under sec. 30 there must be a notice special or general on each occasion on which an intended assembly or assemblies is or are required by the Superintendent of Police to be controlled by means of licences to be taken out by the persons celebrating the festivals concerned. 20 Cr. L.J. 213=49 I.C. 773 (Pat.).

SECS. 30 AND 32: LICENCE, IF REQUIRED FOR EVERY PROCESSION—JOINING UNLICENSED PROCESSION—IF OFFENCE.—Per *Bhide, J.*—It cannot be said that a licence under sec. 30 is required for every procession. A licence is required to be taken under sec. 30 only when a breach of the peace is apprehended by the authorities concerned. It is therefore no offence to join a procession merely because no licence has been taken for it under sec. 30. Even when a general or a special notice is issued under sec. 30, requiring persons "directing or promoting" a pro-

30-A. (1) Any Magistrate or District Superintendent of Police or Assistant District Superintendent of Police or Inspector

Powers with regard to assemblies and processions violating conditions of licence.

of Police or any police-officer in charge of a station may stop any procession which violates the conditions of a licence granted under the last foregoing section, and may order it or any assembly which violates any

such condition as aforesaid to disperse.

(2) Any procession or assembly which neglects or refuses to obey any order given under the last preceding sub-section shall be deemed to be an unlawful assembly.]

31. It shall be the duty of the police to keep order on the public roads,

Police to keep order in public roads, etc.

and in the public streets, thoroughfares, ghats and landing-places, and at all other places of public resort, and to prevent obstructions on the occasions of assem-

blies and processions on the public roads and in the public streets, or in the neighbourhood of places of worship, during the time of public worship, and in any case when any road, street, thoroughfare, ghat or landing-place may be thronged or may be liable to be obstructed.

32. Every person opposing or not obeying the orders issued under the last

Penalty for disobeying orders issued under last three sections, etc.

²[three] preceding sections, or violating the conditions of any licence granted by the District Superintendent or Assistant District Superintendent of Police for the use of music, or for the conduct of assemblies

LEG. REF.

¹ Sec. 30-A was inserted by sec. 11 of the Police Act (1861) Amendment Act (VIII of 1895).

² The word "three" was substituted for the word "two" by sec. 12 of the Police Act (1861) Amendment Act (VIII of 1895).

cession to apply for a licence but no licence is obtained and yet a procession is taken out, it is only those persons who are "directors" or promoters of the procession who can be convicted under sec. 32 for disobedience of the order and not ordinary members of the procession. I.L.R. (1940) Lah. 820=A.I.R. 1941 Lah. 372 (F.B.).

SEC. 30-A: CONDITIONS OF LICENCE—

CARRYING OF LATHI.—Where a person took out a licence for a procession to proceed through Patna city, one of the conditions of which was that no member of it was to carry a lathi or a sword, *held*, that the object of a licence under the Police Act is to ensure the preservation of public order and clearly the licensee must undertake the duty of maintaining order throughout the course of the procession and, therefore, the licensee was responsible for seeing that no member carrying a lathi joined the procession on the way though at the start it had no such member. The fact that sec. 30-A gives the power to the officers mentioned to stop a licenced procession which violates the conditions of the licence does not excuse a licensee from strictly complying with the conditions of his licence. 6 P. 763=29 Cr.L.J. 114=1928 P. 166.

PROCESSION ORDERED TO DISPERSE—DISOBEDIENCE OF ORDER BY PROCESSIONISTS—OFFENCE.—Where a procession has been ordered to disperse under powers given by S. 30-A because the conditions of a licence have

been violated, any person who omits to obey the order to disperse is liable, whether he was aware of the conditions of the licence or not. The liability in such a case would be that a person who neglects or refuses to disperse would be deemed to be a member of an unlawful assembly and punishable under S. 143, Penal Code. This would be an independent offence committed by a processionist. A.I.R. 1941 Lah. 372 (F.B.).

PROSECUTION FOR BREACH.—Sec. 30-A merely gives an additional power to the officers concerned to stop the procession and then, if it does not disperse, to deal with its members as members of an unlawful assembly. It is not a condition precedent to the prosecution of the licensee for violation of the conditions of the licence that action should first be taken under sec. 30-A. 30 Cr.L.J. 371=10 L. 852=1929 L. 404.

SEC. 31.—Under this section the police have power to pass any order reasonably necessary for "keeping order" or "preventing obstruction." But the question whether a particular order could be held to be legally justifiable under the section must depend on the facts of each case. 130 I.C. 425=32 Cr. L. J. 532=1931 L. 33 (as to circumstances that would justify an order for disposal of procession). See also 50 I.C. 489. On this section, see also 13 A. 131; 14 A. L.J. 172; 17 Cr.L.J. 448=35 I.C. 1008. The section does not authorize a police officer to issue an order which a Magistrate might have issued under sec. 144, Cr. P. Code, to refrain from doing a perfectly legal act. 1936 A.L.J. 579=163 I.C. 866=A.I.R. 1936 A. 534. An order issued under sec. 31 may be an oral order. 91 I.C. 56=27 Cr.L.J. 24=1926 All. 264.

SEC. 32.—Where the Superintendent of

and processions, shall be liable, on conviction before a Magistrate, to a fine not exceeding two hundred rupees.

Saving of control of Magistrate of district. 33. Nothing in the last ¹[four] preceding sections shall be deemed to interfere with the general control of the Magistrate of the district over the matters referred to therein.

LEG. REF.

¹ The word "four" was substituted for the word "three" by sec. 12 of the Police Act (1861) Amendment Act, 1895 (VIII of 1895).

Police under sec. 30 had prohibited processions without a police licence and the accused took out an idol carried by four or five men and immersed it in the river, and there was nothing to indicate that this was done in a formal or ceremonious way, *held*, that the finding of the Magistrate that the image was carried in a procession and that a licence was required for the same was unsustainable. 130 I.C. 239=32 Cr.L.J. 482=1931 C. 128. Innocent persons joining unlicensed procession—No offence. 1941 Lah. 372=I.L.R. (1941) Lah. 820.

ULTRA VIRES — ORDER — DISOBEDIENCE THEREOF.—Where the order of the police under sec. 30 is illegal the accused cannot be convicted under sec. 32 for disobedience of the order. 58 C. 879=32 Cr.L.J. 1005=35 C.W.N. 187. *See also* 35 I.C. 1008 (order forbidding jalkawalas to frequent railway station, not legal); 5 C.P.L.R. 92 (order respecting playing of music at night).

"VIOLATING THE CONDITIONS OF ANY LICENCE"—MEANING OF.—The expression "violating the conditions" which has been used in sec. 32 connotes the idea of direct violation on the part of the person whom it is sought to prosecute, for example, by violating the condition himself or by expressly permitting such violation by others or passive violation by not taking due care to see that the conditions of the licence are fulfilled. Where, therefore, one of the conditions of a licence to form a procession is to the effect that no weapons are to be carried by any persons in the procession, the licensee is liable to prosecution for violation of that condition only if he carries a weapon himself or expressly permit weapons to be carried by others or fails to take due care to see that that condition of the licence is fulfilled. I.L.R. (1940) 2 Cal. 122=44 C.W.N. 706=1941 Cal. 113. Where a licence is issued to a person as a sole licensee to take out a procession on condition that no arms are carried by its members, the licensee is liable to conviction for breach of condition of licence under sec. 32 of the Police if arms are carried by some of the members of the procession, although this is unknown to the licensee. 45 C.W.N. 663.

Licence under S. 30 (2) for procession—Condition for stopping music at specified place—Violation—Offence—Liability of persons other than licensee. *See* 192 I.C. 311=13 R.M. 557=42 Cr.L.J. 272 (2)=A.

Cr. C. M.-I-140

I.R. 1941 Mad. 99 (2)=(1940) 2 M.L.J. 819.

ONUS OF PROOF.—Per *Full Bench*.—It cannot be said that S. 32 applies only to the licensee and only the licensee can violate the conditions of a licence. Any member of the procession with knowledge of the terms of the licence may be proved to have violated the terms of the licence and consequently may come within the purview of S. 32. Per *Ram Lal, J.*—In such cases it is always for the prosecution to prove that a processionist charged with having violated the conditions of a licence was aware of the existence of conditions which are alleged to have been violated, before he can be held liable. The mere fact that a person joined a procession or even continued to remain in the procession will not be sufficient to prove this knowledge or shift from the prosecution the onus of proving this knowledge. Per *Bhide, J.*—Where the conditions of the licence make the licensee responsible for certain things and there are no conditions binding on the members of the procession as such, the licensee alone could be held liable for breach of conditions of the licence, for owing to the very nature of the conditions none except the licensee could violate them. A.I.R. 1941 Lah. 372 (F.B.).

BREACH OF LICENCE—LICENSEE CANNOT PLEAD WANT OF KNOWLEDGE.—A licensee assumes responsibility for the entire conduct of the procession and its component members and he cannot repudiate such responsibility by alleging that the violation of the conditions took place without his consent or even his knowledge or in his absence. If any member of the procession is guilty of the breach of the conditions of the licence, the licensee is liable to be prosecuted for it. 30 Cr.L.J. 371=10 L. 852=1929 L. 404.

PROHIBITION OF ORGANISATION—JOINING THE PROCESSION.—When a notice has been issued under sec. 30 (2) prohibiting the organizing or promotion of a procession without licence and a procession is taken out without such licence, the mere fact of joining in the procession which was promoted or organized by other persons would not amount to a disobedience of the order. 8 P.L.T. 245=28 Cr.L.J. 443=1927 Pat. 191. Where a licence obtained from the Police under sec. 30 (2) for taking a procession prescribes a condition that music of all description should be stopped within a specified distance on either side of any mosque, not only the licensee, but all persons who, being aware of this condition in the licence, violate it, would be guilty of an offence under sec. 32. The persons violating the condi-

36. Nothing contained in this Act shall be construed to prevent any person from being prosecuted under any other Regulation or Act for any offence made punishable by this Act, or from being liable under any other Regulation or Act or any other or higher penalty or punishment than is provided for such offence by this Act:

Proviso.

Provided that no person shall be punished twice for the same offence.

¹[37. The provisions of sections 64 to 70, both inclusive, of the Indian Penal Code, and of sections 386 to 389, both inclusive, of the ²Code of Criminal Procedure, 1882, with respect to fines, shall apply to penalties and fines imposed under this Act on conviction before a Magistrate:

Recovery of penalties and fines imposed by Magistrates.

Provided that, notwithstanding anything contained in section 65 of the first mentioned Code, any person sentenced to fine under section 34 of this Act may be imprisoned in default of payment of such fine for any period not exceeding eight days.]

38. [*Procedurc until return is made to warrant of distress.*] Rep.—see the Police Act (1861), Amendment Act, 1895 (VIII of 1895), s. 14.

39. [*Imprisonment if distress not sufficient.*] Rep.—see the Police Act (1861), Amendment Act, 1895 (VIII of 1895), s. 14.

40. [*Levy of fines from European British subjects.*] Rep.—see the Police Act (1861), Amendment Act, 1895 (VIII of 1895), s. 14.

41. [*Rewards to police and informers payable to General Police Fund.*] Omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

³42. ⁴All actions and prosecutions against any person, which may be lawfully brought for anything done or intended to be done under the provisions of this Act, or under the general police-powers hereby given shall be commenced within three months after the act complained of shall have been committed, and not otherwise and notice in writing of such action and of the cause thereof shall be given to the defendant, or to the District Superintendent or an Assistant District Superintendent of the district in which the act was committed, one month at least before the commencement of the action.

LEG. REF

¹ Sec. 37 was substituted for secs. 37, 38, 39 and 40 by sec. 14 of the Police Act (1861), Amendment Act, 1895 (VIII of 1895).

² Read now the Code of Criminal Procedure, 1898 (Act V of 1898).

³ So much of sec. 42 as relates to the limitation of suits was repealed by the Indian Limitation Act, 1871 (IX of 1871).

⁴ A commandant or second-in-command of Military Police in Burma is entitled to the privileges which a police-officer has under secs. 42 and 43, see the Burma Military Police Act, 1887 (XV of 1887), sec. 13, Burma Code, Vol. I.

so playing on the constable does not come under sec. 332, I.P. Code, but is an offence under sec. 323, I.P. Code. 92 J.C. 889=27 Cr.L.J. 377=1926 Lah. 250.

RECEIVING TIPS FOR—SUPPLYING WATER.—The expression “exposes for sale” implies that every person who takes any quantity of it (water) has to pay for it. A person setting up a chauki (wooden board) with an earthen jar filled with water over it and supplying water to all those who wanted it

is not guilty under sec. 34 (4) merely because sometimes some of the persons who took water did voluntarily give tips. 24 A. L.J. 292=27 Cr.L.J. 303=1926 A. 288.

VALIDITY OF CONVICTION.—S. 279, I.P. CODE.—The finding of a Magistrate that the accused was not guilty of an offence under sec. 34 necessarily and logically means that the accused could not be convicted of an offence under sec. 279 of the Penal Code. 23 A.L.J. 436=23 Cr.L.J. 1057=1925 A. 448.

PRACTICE.—Unless it is proved that an act complained of was to the obstruction, inconvenience, annoyance, risk, danger or damage of the residents or passengers, there cannot be a conviction under sec. 34. 20 Cr.L.J. 452=51 I.C. 240 (Pat.).

SENTENCE of imprisonment under the section must be simple. L.B.R. (1871-1872) Cr. Vol. I, p. 434; U.B.R. (1879-1901) Vol. I, p. 363.

Sec. 36.—See 7 Cr.L.J. 29.

Sec. 42.—In this section “action” means civil action, and notice of criminal prosecution is not required by sec. 42 of the Act.

No plaintiff shall recover in any such action if tender of sufficient amend shall have been made before such action brought, or
Tender of amends. if a sufficient sum of money shall have been paid into
Court after such action brought, by or on behalf of the defendant, and, though
a decree shall be given for the plaintiff in any such action, such plaintiff shall
not have costs against the defendant, unless the Judge before whom the trial is
held shall certify his approbation of the action:

Provided always that no action shall in any case lie where such officers shall have been prosecuted criminally for the same act.

43. When any action of prosecution shall be brought or any proceedings held against any police-officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate.

Such plea shall be proved by the production of the warrant directing the act, and purporting to be signed by such Magistrate and the defendant shall thereupon be entitled to a decree in his favour, notwithstanding any defect of jurisdiction in such Magistrate. No proof of the signature of such Magistrate shall be necessary, unless the Court shall see reason to doubt its being genuine:

Provided always that any remedy which the party may have against the authority issuing such warrant shall not be affected by anything contained in this section.

44. It shall be the duty of every officer in charge of a police-station to keep a general diary in such form as shall, from time to time, be prescribed by the Provincial Government and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the

LEG. REF.

¹ See footnote (4) on page 1116, *supra*.

30 N.L.R. 348=35 Cr.L.J. 1416=1934 N. 206. Sec. 42 refers to actions for "anything done or intended to be done under the provisions or under the general police powers". Where a suit has been brought against police-officer for damages for something done in the exercise of his powers under Cr.P. Code, Police Act, sec. 42 does not apply. (31 I.C. 173, Foll.) 1930 A. 742. See also 1942 Mad. 530=(1942) 1 M. L.J. 602. Cited under S. 47. On the passing of the Limitation Act (IX of 1871) the part of sec. 42, Police Act, which provides a period of three months for suit contemplated by it was repealed with the result that such suits became subject to the general law of limitation contained in the Limitation Act and the special provision of limitation contained in sec. 42, ceased to be operative. 1930 A. 742. Any person aggrieved by the acts of police officers can prefer a charge under sec. 29 without the sanction of the Government or other competent authority and without any previous notice in writing as required by sec. 42 that section being applicable only to civil actions. 2 P.R. 1868 (Cr.). In a suit against a Police-Officer, the objection under this section, that one month's notice has not been given, must be taken in the lower Court; and the objection, if not taken ad-

vantage of and pleaded in the first instance, cannot be made use of as a ground of appeal. 8 W.R. 425. Three police-officers detained a person, suspected of having committed theft, in custody without a special order for more than 24 hours for the purpose of enabling the officer in charge of the police station, who was absent, to go into the case. He was further detained in contravention of the provisions of sec. 152, Cr. P. Code. *Held*, per Cunningham and Campbell, JJ., that they were answerable for detention only until the return of the superior officer. *Held*, per Lindsay, J., dissenting, that the prosecution instituted, more than three months after the detention was barred by sec. 42, Act V of 1861. 36 P.R. 1870 (Cr.). The prosecutions referred to in this section are for acts done or purporting to be done by a police-officer in the execution of his duty as a police-officer, and not for acts done apart from the execution of his duty. U.B.R. (1897-1901) Vol. I, p. 365 (7 N.W.P. 237 R.).

SEC. 42, PROVISOR.—Where a complaint is made against a Police Sub-Inspector for illegal arrest within the period of limitation prescribed by sec. 42, the trial can proceed in spite of the section. - 65 I.C. 433=23 Cr. L.J. 81. *See also* 1934 N. 206; 1930 A. 742.

SEC. 44.—*See* 20 A. 15; 21 W.R. (Cr.) 30.

offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined.

The Magistrate of the district shall be at liberty to call for and inspect such diary.

45. The Provincial Government may direct the submission of such returns by the Inspector-General and other police-officers as to such Provincial Government shall seem proper, and may prescribe the form in which such returns shall be made.

Provincial Government may prescribe form of returns.

¹[46. (1) This Act shall not by its own operation take effect in any ²presidency, province or place. But the ³[Provincial Government] by an order to be published in the

Scope of Act. Official Gazette, may extend the whole or any part of this Act to any presidency, province or place, and the whole or such portion of this Act as shall be specified in such order shall thereupon take effect in such presidency, province or place.]

(2) When the whole or any part of this Act shall have been so extended, the Provincial Government may, from time to time, by notification in the Official Gazette, make rules consistent with this Act—

LEG. REF.

¹ This section was substituted by sec. 15 of the Police Act (1861), Amendment Act, 1895 (VIII of 1895).

² In the Madras and Bombay Presidencies, and in Burma, there are special Police Act, *see* Act XXIV of 1859 (Madras Code, Vol. I), Bombay Acts VII of 1867 and IV of 1890 Bom. Code, Vols. II and III respectively; and Burma Act, IV of 1899), Bur. Code, Vol. II; and in the Lower Provinces of Bengal Bengal Act, VII of 1869, is to be read and taken as part of Act V of 1861, *see* sec. 6 of the former Act, Ben. Code, Vol. II. But for the purposes of sec. 2 of the Police Act, 1888 (III of 1888), and notwithstanding sec. 46 of this Act, the Act of 1861 shall be deemed to take effect throughout British India, *see* sec. 2 (6) of Act III of 1888.

For notifications extending this Act under the power conferred by the original section to—

(1) the United Provinces of Agra and Oudh, including Ajmer-Merwara then under that Government, *see* Notification No. 964 in the North-Western Provinces Gazette, 1861, p. 634.

[For orders as to enforcement of the Act in 27 districts in the United Provinces of Agra and Oudh, in Hamirpur, Jalaun, Jhansi Lalitpur, Naini Tal (including the Tarai Parganas) and Almora and Aarhwal issued under the original sec. 46, paragraph 2 (after the Act had been extended under paragraph 1 of that section to the whole province), *see* Notifications noted in U.P. List of R. & O. These orders are kept in force by sec. 16 of Act VIII of 1895.

(2) Oudh, *see* Notification No. 34 in the North-Western Provinces Gazette, 1861, p. 1758.

(3) Tract of land between Allahabad and Jubbulpore ceded in full sovereignty by certain Native States, *see* Notification No. 205-F. at page 13 of the C.P.R. & O

(4) Districts in Burma—

(a) Pegu [now the "Pegu and Irrawaddy Divisions," *see* Burma Gazette, 1881, Pt. II, p. 98, Notification No. 946], *see* Notification No. 1453, Burma Gazette, 1861, Pt. I, p. 2340;

(b) Tenasserim Martaban, *see* Notification No. 1906, Burma Gazette, 1861, Pt. I, p. 3189;

(c) Arakan, *see* Notification No. 571, Burma Gazette, 1864, Pt. I, p. 45.

(5) the Central Provinces, the Districts of Nagpur, Raipur, Bhandara, Chanda and Chhindwara, Sironcha, Nimar, *see* C.P.R. & O.

(6) Bengal and Assam, that is, the Provinces Governorship of Bengal and of Assam, *see* Notification No. 1871 set out at p. 14 of the Assam R. & O., Vol. I;

(7) Several districts in the Punjab, *see* Notification No. 971, dated 15th May, 1861; Calcutta Gazette, 18th May, 1861, p. 1302 and Punjab R. & O.

Under the power conferred by the section as it now stands it has been extended as follows to—

(1) Upper Burma (except the Shan States), *see* Notification No. 619, Burma Gazette, 1895, Pt. II, p. 265.

(2) Madras, secs. 15, 15-A, 16, 30, 30-A, 31 and 32 of the Act have been extended to the whole of the Madras Presidency, *see* Notification No. 728, dated 31st October, 1895, Gazette of India, 1895, Pt. I, p. 876.

(3) Eastern Doonars in the Goalpara District, *see* Notification No. 230, Gazette of India, 1897, Pt. I, p. 198.

(4) The North and South Lushai Hills and the tract known as Rutton Puiya's villages including Demagri (now known as the Lushai Hills), *see* Gazette of India, 1898, Pt. I, p. 370.

For list of Provinces and districts to which the Act has been extended by special enactments, *see* note (1) on p. 114, *supra*.

³ Substituted by A.O., 1937.

(a) to regulate the procedure to be followed by Magistrates and police-officers in the discharge of any duty imposed upon them by or under this Act;

(b) to prescribe the time, manner and conditions within and under which claims for compensation under section 15-A are to be made, the particulars to be stated in such claims, the manner in which the same are to be verified, and the proceedings (including local enquiries if necessary) which are to be taken consequent thereon; and

(c) generally, for giving effect to the provisions of this Act.

(3) All rules made under this Act may from time to time be amended: added to or cancelled by the Provincial Government.

47. It shall be lawful for the Provincial Government, in carrying this Act into effect in any part of the territories subject to such Provincial Government, to declare that any authority which now is or may be exercised by the Magistrate of the district over any village watchman or other village police-officer for the purposes of police, shall be exercised, subject to the general control of the Magistrate of the district, by the District Superintendent of Police.

FORM.

(See section 8.)

A.B., has been appointed a member of the police-force under Act V of 1861, and is vested with the powers, functions and privileges of a police-officer.

THE POLICE ACT (III of 1888)².

Year.	No.	Short Title.	Amendment.
1888	III	The Police Act.	Repealed in part, X of 1914. Amended XII of 1891.

[17th February, 1888.

An Act to amend the Law relating to the Regulation of Police.

WHEREAS it is expedient to relax those provisions of Acts for the regulation of police which restrict the employment of Police-Officers to the presidency,

LEG. REF.

¹ For powers conferred under this section, see different Local Rules and Orders.

² For Statement of Objects and Reasons, see Gazette of India, 1888, Pt. V, p. 130; for Report of the Select Committee, see *ibid.*, 1888, Pt. IV, p. 8; and for Proceedings in Council, see *ibid.*, 1887, Pt. VI, p. 100; and *ibid.*, 1888, pp. 37 and 40.

The Act has been declared to be in force in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890).

It has been declared, by notification under sec. 3 (a) of the Scheduled Districts Act, 1874. (XIV of 1874), to be in force in the Districts of Hazaribagh, Lohardaga (now the Ranchi District, see Calcutta Gazette 1899, Pt. I, p. 44) Manbhum and Palamau, and in Pargana Dhalbhum and the Kolhan in the Singhbhum District, see Gazette of India, 1895, Pt. I, p. 130.

It has been declared in force in Upper Burma (except the Shan States) by the

Burma Laws Act, 1898 (XIII of 1898).

It has been previously extended there, by notification under sec. 5 of Act XIV of 1874. see Gazette of India, 1892, Pt. I, p. 94.

SECS. 47 AND 42: FALSE COMPLAINT—CONVICTION FOR OFFENCE—NO PERIOD OF LIMITATION LAID DOWN.—Where a person was accused of having sent a false report to the Deputy Superintendent of Police against an Inspector and was convicted under sec. 47 of the Police Act and sentenced to a fine, on the question whether the complaint should have been made within the time laid down in sec. 42. *Held*, that the Act does not make provision for the filing of a false complaint against police officer and there was no period of limitation laid down for the bringing of complaints of the nature with which the present case was concerned. A. I.R. 1942 Mad. 530. (2)=(1942) 1 M.L.J. 602.

province or place of the police-establishment of which they are members; It is hereby enacted as follows:—

Title and extent. 1. (1) This Act may be called THE POLICE ACT, 1888.

(2) It extends to the whole of British India; ¹[*]

¹[* * * *].

²[2. (1) Notwithstanding anything in the Madras District Police Act, 1859, the Indian Police Act, 1861, the Bombay District Police Act, 1890, or any Act relating to the Constitution of police-forces for special purposes. police in any Presidency-town, the Central Government may, by notification in the Official Gazette, create a special police district embracing parts of two or more Provinces, and extend to every part of the said district the powers and jurisdiction of members of a police force belonging to any part of British India specified in the notification.

(2) Subject to any orders which the Central Government may make in this behalf, members of the said police force shall have, within every part of any Province of which any part is included in the said district, the powers, duties, privileges and liabilities which, as police officers, they have in their own Province.

(3) Any member of the said police-force whom the Central Government shall generally or specially empower to act under this sub-section may, subject to any orders which the Central Government may make in this behalf, exercise within any Province any part of which is included in the said district any of the powers of the officer in charge of a police-station in that Province, and when so exercising any such powers, shall, subject to any such order as aforesaid, be deemed to be an officer in charge of a police-station discharging the functions of such an officer within the limits of his station.

(4) A part of a Province included in the said district shall not by reason of that inclusion cease, for the purposes of any enactment relating to police, to be part of that province.]

3. Notwithstanding anything in any of the Acts mentioned or referred to in the last foregoing section, but subject to any orders which the Central Government may make in this behalf, a member of the ²[police-force] of any ³[* *] Province ³[* *] may discharge the functions of a police officer in any part of British India beyond the limits of the ³[* *] Province ³[* *] and shall, while so discharging such functions, be deemed to be a member of the ²[police-force] of that part and be vested with the powers, functions and privileges, and be subject to the liabilities, of a police-officer belonging to that ²[police-force].

⁴[4. Nothing in this Act shall be deemed to enable the police of one Province to exercise powers and jurisdiction in any area within another Province, not being a railway area, without the consent of the Government of that other Province.]

LÉG. REF.

¹ Rep. by Act X of 1914.

² Substituted by A.O., 1937.

³ Omitted by *ibid.*

⁴ Inserted by *ibid.*

Police within their special district, the Railway station, they are certainly competent to prefer a complaint in respect of an offence under the Bombay Public Conveyance Act. 33 Cr.L.J. 462=34 Bom.L.R. 275=1932 Bom. 256, followed in 1933 Bom. 63=34 Bom.L.R. 1662=141 J.C. 790.

SEC. 2.—Whether or not the Railway Police have all the powers of the general

THE POLICE (INCITEMENT TO DISAFFECTION) ACT (XXII OF 1922).

[5th October, 1922.

An Act to provide a penalty for spreading disaffection among the police and for kindred offences.

WHEREAS it is expedient to penalize the spreading of disaffection among the police and other kindred offences; it is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called THE POLICE (INCITEMENT TO DISAFFECTION) ACT, 1922.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) It shall come into force¹ in any province or part of a province on such date as the Provincial Government may, by notification in the Official Gazette, direct.

2. In this Act, the expression “member of a police-force” means any person appointed or enrolled for the performance of police duties under any enactment specified in the Schedule.

3. Whoever intentionally causes or attempts to cause, or does any act which he knows is likely to cause, disaffection towards His Majesty or the Government established by law in British India² [or British Burma] amongst the members of a police-force, or induces or attempts to induce, or does any act which he knows is likely to induce, any member of a police-force to withhold his services or to commit a breach of discipline shall be punished with imprisonment which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

Explanation.—Expressions of disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, or of disapprobation of the administrative or other action of the Government, do not constitute an offence under this section unless they cause or are made for the purpose of causing or are likely to cause disaffection.

4. Nothing shall be deemed to be an offence under this Act which is done in good faith—
(a) for the purpose of promoting the welfare or interests of any member of a police-force by inducing him to withhold his services in any manner authorized by law; or

(b) by or on behalf of any association formed for the purpose of furthering the interests of members of a police-force as such, where the association has been authorised or recognized by the Government and the act done is done under any rules or articles of the association which have been approved by the Government.

5. No Court shall proceed to the trial of any offence under this Act except with the previous sanction, or on the complaint, of the District Magistrate or, in the case of a Presidency-town³ [* *], of the Commissioner of Police.

LEG. REF.

¹ Came into force in Madras Presidency on 13th May, 1930.

CR C. M.-I-141

² Inserted by A.O., 1937.

³ Words “or the town of Rangoon” omitted by A.O., 1937.

Trial of cases.

6. (1) No Court inferior to that of a Presidency Magistrate or Magistrate of the first class shall try any offence under this Act.

(2) Notwithstanding anything contained in Chapter XXII of the Code of Criminal Procedure, 1898, no offence under this Act shall be triable summarily.

THE SCHEDULE.

(See Section 2.)

Year.	No.	Short title.
<i>Acts of the Governor-General in Council.</i>		
1859	XXIV	The Madras District Police Act, 1859.
1861	V	The Police Act, 1861.
1887	XV	The Burma Military Police Act, 1887.
1888	III	The Police Act, 1888.
1892	V	The Bengal Military Police Act, 1892.
<i>Madras Act.</i>		
1888	III	The Madras City Police Act, 1888.
<i>Bombay Acts.</i>		
1890	IV	The Bombay District Police Act, 1890.
1902	IV	The City of Bombay Police Act, 1902.
<i>Bengal Acts.</i>		
1866	II	The Calcutta Suburban Police Act, 1866.
"	IV	The Calcutta Police Act, 1866.
1890	III	The Calcutta Port Act, 1890.
1920	II	The Eastern Frontier Rifles (Bengal Battalion) Act, 1920.
<i>Burma Act.</i>		
1899	IV	The Rangoon Police Act, 1899.
<i>Assam Act.</i>		
1920	I	The Assam Rifles Act, 1920.
<i>Regulation by the Governor-General in Council.</i>		
1888		The Andaman and Nicobar Islands Military Police Regulation, 1888.

THE POLICE (RESIGNATION OF OFFICE) ORDINANCE
(XI OF 1942).

[7th April, 1942.]

An Ordinance temporarily to suspend the right at present enjoyed by certain members of Police forces in British India to resign office on giving notice of their intention to resign.

WHEREAS an emergency has arisen which makes it necessary temporarily to suspend the right at present enjoyed by certain members of Police forces in British India to resign office on giving notice of their intention to resign;

Now, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, the Governor-General is pleased to make and promulgate the following Ordinance:—

Short title, extent and commencement.

1. (1) This Ordinance may be called THE POLICE (RESIGNATION OF OFFICE) ORDINANCE, 1942.

(2) It extends to the whole of British India.

(3) It shall come into force at once.

Temporary amendment
of certain Acts relating to
police.

2. So long as this Ordinance remains in force the amendments specified in the third column of the Schedule shall be deemed to be made in the enactments specified in the second column thereof.

THE SCHEDULE.

See section 2.

Number and year of Act.	Name of Act.	Amendments deemed to be made.
Act XXIV of 1859.	The Madras District Police Act, 1859.	1. In section 19, the words "or unless he shall have given to his superior officer two months' notice in writing of his intention to do so" shall be omitted. 2. In section 44, the words "or without having given two months' notice as provided by this enactment" shall be omitted.
Act V of 1861.	The Police Act, 1861.	1. In section 9, the words "unless he shall have given to his superior officer notice in writing, for a period of not less than two months of his intention to resign" shall be omitted. 2. In section 29, the words "or without having given previous notice for the period of two months" shall be omitted.
Ben. Act II of 1866.	The Calcutta Suburban Police Act, 1866.	In section 7, the words "or unless he shall have given to the Commissioner six months' notice of his intention if a member of the mounted branch of the said force, and two months' notice if a member of any other branch" and the words "or notice" shall be omitted.
Ben. Act IV of 1866.	The Calcutta Police Act, 1866.	In section 14, the words "or unless he shall have given to the Commissioner six months' notice of his intention, if a member of the mounted branch of the said force, and two months' notice if a member of any other branch" and the words "or notice" shall be omitted.
Mad. Act III of 1888.	The Madras City Police Act, 1888.	In section 13, the words "or until after the expiry of two months from the date of his giving to the Commissioner a notice in writing of his intention to do so" shall be omitted.
Bom. Act IV of 1890.	The Bombay District Police Act, 1890.	1. In sub-section (1) of section 34, after the words "withdraw himself from the duties thereof" the word "until" and clauses (a) and (b) shall be omitted. 2. In sub-section (2) of section 34, for the words "as aforesaid" the words "as such police-officer, to the Crown or to any police fund" shall be substituted.
Bom. Act IV of 1902.	The City of Bombay Police Act, 1902.	1. In sub-section (1) of section 14, the words beginning with "and except in the case of a special Police officer" and ending with the end of the sub-section shall be omitted. 2. In the proviso to sub-section (2) of section 14, for the words "any such debt as aforesaid due from such Police officer" the words "any debt due by him as a Police officer to the Crown or to any Police fund" shall be substituted.

THE INDIAN POST OFFICE ACT (VI OF 1898).

(EXTRACTS).

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CHAPTER X.

PENALTIES AND PROCEDURE.

Offences by Officers of the Post Office.

Penalty for misconduct of persons employed to carry or deliver mail bags or postal articles.

49. Whoever, being employed to carry or deliver any mail bag or any postal article in course of transmission by post,—

(a) is in a state of intoxication while so employed, or

(b) is guilty of carelessness or other misconduct, whereby the safety of any such mail bag or postal article as aforesaid is endangered, or

(c) loiters or makes delay in the conveyance or delivery of any such mail bag or postal article as aforesaid, or

(d) does not use due care and diligence safely to convey or deliver any such mail bag or postal article as aforesaid,

shall be punishable with fine which may extend to fifty rupees.

50. Whoever, being employed to carry or deliver any mail bag or any postal article in course of transmission by post, voluntarily withdraws from the duties of his office without permission or without having given one month's previous notice in writing, shall be punishable with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

Penalty for voluntary withdrawal from duty, without permission or notice, of person employed to carry or deliver mail bags or postal articles.

SECS. 49 AND 50.—Subordinate Magistrate can commit for offence under sec. 49, *See* 5 B.H.C. (Cr.) 36; 3 B.H.C. (Cr.) 8. There must be a fraudulent intention in the act of the accused before he can be convicted under the above section. 19 W.R. (Cr.) 4. Alternative charges under this Act and Penal Code are not legal. *See* 10 I.C. 168=12 Cr.L.J. 224 (Sind).

SENTENCE.—Solitary confinement cannot be awarded as part of a sentence passed under this section. 24 P.R. 1879 (Cr.).

Separate sentences for offences arising out of the same transaction are not proper. 2 Weir 454=1 M.H.C.B. 83.

ILLUSTRATIVE CASES.—A postmaster absenting himself from the station without giving notice is guilty of an offence. 1 Weir 72. *See also* 1 Weir 860. A person is punishable under sec. 262, I.P.Code, for using a postage stamp twice. 5 C.P.L.R. 43 (Cr.).

NON-TRACING ADDRESSEES.—LIABILITY OF THE POST OFFICE.—Where the article sent was never lost in the course of transmission,

51. Whoever, being employed to carry or deliver any postal article in course of transmission by post and required while so

Penalty for making false entry in register kept by person employed to carry or deliver postal articles.

employed to keep any register, makes, or causes or suffers to be made, any false entry in the register with intent to induce the belief that he has visited a place, or delivered a postal article, which he has not visited or delivered, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one hundred rupees, or with both.

52. Whoever, being an officer of the Post Office, commits theft in respect of, or dishonestly misappropriates, or, for any purpose whatsoever, secretes, destroys or throws away,

Penalty for theft, dishonest misappropriation, secretion, destruction, or throwing away, of postal articles.

any postal article in course of transmission by post or anything contained therein, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be punishable with fine.

but all that happened was that by reason of the label having been torn it was not possible to deliver it to the addressee, *held*, that sec. 6 or 34 did not exempt the Post Office from liability. 79 I.C. 334—46 A. 455—1924 A. 692.

DISCOVERY OF POSTAL ARTICLE OUTSIDE POST OFFICE—FINDER GIVING IT BACK TO POSTMASTER—IN COURSE OF TRANSMISSION.—*M*, a servant of *K*, having discovered a number of letters lying in a khola opposite a post office, handed them over to his master. One of the letters was addressed to *P* and *K* took it to the addressee who stated that the letter had never been delivered to him. The matter was reported to the Postmaster *F*, who took possession of the letters saying that he would take necessary action in the matter. No action being taken by *F*, the matter was reported to the Postmaster-General with the result that *F* was sent up for trial. The Magistrate framed two alternate charges against him, first under sec. 52, Post Office Act and the other under sec. 201, Penal Code. The Magistrate found *F* guilty only under sec. 201. It was contended that the charge framed by the Magistrate was defective and prejudiced the accused, the alternate charge was illegal and contravened the provisions of sec. 236, Cr.P. Code. *Held*, that the first charge was not defective, as the postal articles in question were "in course of transmission by post" according to sec. 3, when they were made over to *F* by *K* and, therefore, the mere fact that the letters had been posted when *F* was not the Postmaster of the Post Office was immaterial. The framing of charge in the alternative under sec. 201 did not contravene sec. 236, Cr.P. Code. 1930 L. 460.

SEC. 52.—The opening of a newspaper by a person employed in the Post Office and replacing it in its envelope, does not constitute an offence. 19 W.R. (Cr.) 4. Secreting two letters to give to the delivery peon an share with him the bearing postage. 14 M. 229—1 Weir 860. A branch postmaster who

was also a dealer in goods opened an envelope containing a railway receipt addressed to him and took delivery of goods but he showed in the books of the post office that the letter was not delivered owing to the absence of the addressee. Some time after he paid the money due to the post office and entered delivery of the letter. *Held*, that under those circumstances the postmaster was liable to be convicted under sec. 52. 8 L. 662; 1928 L. 92—109 I.C. 236.

SECS. 52 AND 53.—The respondent, a postman, was charged by the police with an offence under sec. 52 for secreting two postal articles in course of transmission by post and was committed for trial by the Court of Session. There was no complaint by order or authority from the Director-General of Posts and Telegraphs or Postmaster-General. A preliminary objection was taken that the acts also constituted an offence under sec. 53 of the Act of detaining postal articles, which under sec. 72 of the Act could not be taken cognizance of without such complaint. *Held*, that the offence under S. 52 would be taken cognizance of without any complaint and the commitment was legal. The fact that the acts also constituted a minor offence under sec. 53 was no bar to the trial of the offence under sec. 52 of the Act. 53 L.W. 70—(1941) 1 M.L.J. 44—1941 Mad. 392.

SENTENCE.—Where a Sub-Postmaster of 13 years' service taking possession of the V.P.P. cover addressed to him and also of the railway receipt, obtained delivery of the goods, but in order to put off payment manipulated the register maintained in the Post Office, sentence of one year's rigorous imprisonment and a fine of Rs. 100 was adequate punishment. 52 Mad. 534—1929 Mad. 447—56 M.L.J. 551.

EVIDENCE.—Statements made by the postman in course of departmental enquiry are not good evidence. 26 I.C. 307—16 Cr.L.J. 3. Conviction not to be based on mere suspicion. On this section, see also 2 Weir 454—1 M.H.C.R. 83.

shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Penalty for affixing without authority thing to, or painting, tarring or disfiguring, post office or post office letter-box.

63. Whoever, without due authority, affixes any placard, advertisement, notice, list, document, board or other thing in or on, or paints, tars or in any way disfigures any Post Office or any letter-box provided by the Post Office for the reception of postal articles, shall be punishable with fine which may extend to

fifty rupees.

64. Whoever, being required by this Act to make a declaration in respect of any postal article to be sent by post or the contents,

Penalty for making false declaration.

or value thereof, makes in his declaration any statement which he knows, or has reason to believe, to be false, or does not believe to be true, shall be punishable with fine which may extend to two hundred rupees, and, if the false declaration is made for the purpose of defrauding the Government, with fine which may extend to five hundred rupees.

Penalty for master of ship failing to comply with the provisions of section 40 or 41.

65. Whoever, being the master of a ship,—

(a) fails to comply with the provisions of section 40, or

(b) without reasonable excuse, the burden of proving which shall lie on him, fails to deliver any postal article or mail bag or to comply with the directions of the officer in charge of the Post Office at a port of arrival, as required by section 41,

shall be punishable with fine which may extend to one thousand rupees.

66. (1) Whoever, being either the master of a ship arriving at any port in British India or any one on board, knowingly has

Penalty for detention of letters on board vessel arriving in port.

in his baggage or in his possession or custody, after the postal articles on board or any of them have been sent to the Post Office at the port of arrival, any postal article within the exclusive privilege conferred on the Central Government by section 4, shall be punishable with fine which may extend to fifty rupees for every such postal article as aforesaid.

(2) Whoever, being such master or other person as aforesaid, detains any such postal article as aforesaid after demand made for it by an officer of the Post Office, shall be punishable with fine which may extend to one hundred rupees for every such postal article.

67. Whoever, except under the authority of this Act¹ [or of any other Act

LEG. REF.

¹Inserted by Act XV of 1921, Sec. 4.

SEC. 64: ORDER TO SEND A PARCEL BY VALUE-PAYABLE POST INSURED.—*Bona fides* of sender—Rule 133, 6 A.L.J. 481—9 Cr. L.J. 537—2 I.C. 228. An order to send the article cannot be inferred merely because the addressee did not refuse to receive nor return by post any of the previous issues sent to him, and did not make a protest even after he received intimation that he had been enrolled as a subscriber and that the issue in question would be sent by Value-Payable Post. 33 M. 511—20 M.L.J. 402—5 I.C. 738.

WANT OF SANCTION.—Where the accused

was proved to have sent blank papers in an insured cover addressed to himself and claimed the value of the currency notes which he alleged had been enclosed in the cover and he was prosecuted for offences under sec. 64 of the Post Office Act and secs. 420 and 511, I.P. Code and convicted for the latter offences only, *held*, that it was doubtful if an offence under sec. 64 of the Post Office Act had been committed, and that at any rate the prosecution under sec. 64 was rendered unsustainable for want of sanction under sec. 72. *Held also*, that the conviction for the major offences under the Penal Code was perfectly valid. 9 P. 126—11 Pat.L.T. 234—31 Cr.L.J. 934.

Penalty for detaining mails or opening mail bag.

for the time being in force] or in obedience to the order in writing of the Central Government or the direction of a competent Court, detains the mails or any postal article in course of transmission by post, or on any pretence opens a mail bag in course of transmission by post, shall be punishable with fine which may extend to two hundred rupees:

Provided that nothing in this section shall prevent the detention of an officer of the Post Office carrying the mails or any postal article in course of transmission by post, on a charge of having committed an offence declared to be cognizable by the Code of Criminal Procedure, 1898, or any other law for the time being in force.

68. Whoever fraudulently retains, or wilfully secretes or makes away with,

Penalty for retaining postal articles wrongly delivered or mail bags.

or keeps or detains, or, when required by an officer of the Post Office, neglects or refuses to deliver up any postal article in course of transmission by post which ought to have been delivered to any other person, or a mail bag containing a postal article, shall be punishable with imprisonment for a term which may extend to two years, and shall also be punishable with fine.

69. Whoever, not being an officer of the Post Office, wilfully and maliciously,

Penalty for unlawfully diverting letters.

with intent to injure any person, either opens or causes to be opened any letter which ought to have been delivered, or does any act whereby the due delivery of a letter to any person is prevented or impeded, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both:

Provided that nothing in this section shall apply to a person who does any act to which the section applies, if he is a parent, or in the position of a parent or guardian, of the addressee, and the addressee is a minor or a ward.

General

Penalty for abetting, or attempting to commit offences under Act.

70. Whoever abets the commission of any offence punishable under this Act or attempts to commit any offence so punishable, shall be punishable with the punishment provided for that offence.

71. In every prosecution for an offence in respect of a mail bag or of any

Property in cases of offences to be laid in the Post Office.

postal article sent by post, it shall be sufficient, for the purpose of the charge, to describe the mail bag or postal article as being the property of the Post Office, and it shall not be necessary to prove that the mail bag or postal article was of any value.

72. No Court shall take cognizance of an offence punishable under any of

Authority for prosecutions under certain sections of Act.

the provisions of sections 51, 53, 54, clauses (a) and (b), 55, 56, 58, 59, 61, 64, 65, 66 and 67 of this Act, unless upon complaint made by order of, or under authority from, the Director-General or a Postmaster-General.

Sec. 72.—A prosecution under sec. 61 of the Act, although authorized by the Postmaster-General, is illegal, unless such prosecution takes place on a complaint as defined in sec. 4, cl. (h) of the Cr.P. Code. 10 C. W.N. 1029—4 C.L.J. 170. See also 125 I.C. 770—11 Pat.L.T. 224—31 Cr.L.J. 934. It is not necessary that sanction to prosecute under sec. 72 must precede a pro-

secution under sec. 55, and a conviction under the latter section is valid even though the sanction to prosecute was obtained only after the prosecution was launched. 52 M. 534—1929 M. 447—56 M.L.J. 551.

SECS. 72, 52 AND 53.—See 53 L.W. 70—(1941) 1 M.L.J. 44 cited under sec. 52 *supra*.

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4. Keeper of printing-press to make declaration.

5. Rules as to publication of printed periodicals containing public news.

6. Authentication of declaration.

Deposit.

Inspection and supply of copies.

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Authentication and filing.

Inspection and supply of copies.

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8-A. Person whose name has been incorrectly published as editor may make a declaration before a Magistrate.

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11-A. Copies of newspaper printed in Bri-

SECTIONS.

tish India to be delivered *gratis* to Government.

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13. Penalty for keeping press without making declaration required by sec. 4.

14. Punishment for making false statement.

15. Penalty for printing or publishing periodicals without conforming to rules.

16. Penalty for not delivering books or not supplying printer with maps.

16-A. Penalty for failure to supply copies of newspapers *gratis* to Government.

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PART V.

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19. Publication of memoranda registered.

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20. Power to make rule.

Publication.

21. Power to exclude any class of books from operation of Act.

22. [*Repealed.*]

23. [*Repealed.*]

THE PRESS AND REGISTRATION OF BOOKS ACT (XXV OF 1867).¹

[22nd March, 1867.]

Year.	No.	Short title.	Amendments.
1867	XXV	The Press and Registration of Books Act 1867.	Rep. in part, Act XIV of 1870 ; Act III of 1914. <i>See</i> Act I of 1910. Rep. in part and amended, Act X of 1890 ; Act XII of 1891 ; Act X of 1914. Amended Act XI of 1915 ; Act XXXVIII of 1920 ; Act XIV of 1922 ; Act XI of 1923.

An Act for the Regulation of Printing Presses and Newspapers, for the preservation of copies of Books printed in British India, and for the registration of such books.

WHEREAS it is expedient to provide for the regulation of printing-pres-

LEG. REF.

¹ Short title, "The Press and Registration of Books Act, 1867", was given by the Indian Short Titles Act, 1897 (XIV of 1897).

For Statement of Objects and Reasons, *see* Gazette of India, 1867, p. 191; and for Proceedings in Council, *see* *ibid.*, Supplement, pp. 72, 156 and 299.

This Act was declared, by the Laws Local Extent Act, 1874 (XV of 1874), Sec. 3, to be in force in the whole of British India, except as regards the Scheduled Districts.

It has been applied to the Santhal Parganas by the Santhal Parganas Settlement Regulation, III of 1872, sec. 3, as amended by the Santhal Parganas Justice and Laws

Regulation, 1899 (III of 1899), Bihar and Orissa Code; and to Upper Burma (except the Shan States) by the Burma Laws Act 1898 (XIII of 1898), sec. 4 (1) and Sch. I, Burma Code.

It has been applied, by notification under sec. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874) to the following Scheduled Districts, namely:—

the Province of Sindh, *see* Gazette of India, 1890, Pt. I, p. 672;
Aden, *see* Gazette of India, 1879, Pt. I, p. 434;

the Territory of Peint, *see* Gazette of India, 1887, Pt. I, p. 144;

Peint is now no longer a scheduled District and all the enactments in force in the Nasik District of the Bombay Presidency,

Preamble. ses and of periodicals containing news, for the preservation of ¹[*] copies of every book printed or lithographed in British India, and for the registration of such books; it is hereby enacted as follows:—

PART I.

PRELIMINARY.

Interpretation-clause. 1. In this Act, unless there shall be something repugnant in the subject or context,—

“Book” includes every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan separately printed or lithographed:

[British India.] Omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

“Editor”. ²“Editor” means the person who controls the selection of the matter that is published in a newspaper:]

“Magistrate”. “Magistrate” means any person exercising the full powers of a ³Magistrate, and includes a ⁴Magistrate of Police ⁵[* * * * *]:

LEG. REF.

among them Act XXV of 1867 are now in force in this territory, *see* the Point Laws Act, 1894 (Bom. Act II of 1894), Bom. Code;

the Island of Perim, *see* Gazette of India, 1887, Pt. I, p. 5;

that portion of the Jalpaiguri District which was formerly the Jalpaiguri, Sub-division and now forms the western portion of the District of Jalpaiguri and extends as far east as the Teesta River, the hills west of Teesta River in the District of Darjeeling, the Darjeeling Tarai, the Damson Sub-division of the Darjeeling District, the Districts of Hazaribagh, Lohardaga [now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44] and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum, *see* Gazette of India, 1881, Pt. I, pp. 74 and 304; the Western Duars of the Jalpaiguri District, *see* *ibid.*, 1910, Pt. I, p. 1160;

the Districts of Kaman and Garhwal, *see* Gazette of India, 1876, Pt. I, p. 605;

the scheduled portion of the Mirzapur District, *see* Gazette of India, 1879, Pt. I, p. 383;

Pargana Jaunsar Bawar in the Dehra Dun District, *see* Gazette of India, 1879, Pt. I, p. 382;

the Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khan, *see* Gazette of India, 1886, Pt. I, p. 48; portions of the Districts of Hazara, Bannu, Dera Ismail Khan, and Dera Ghazi Khan and the Districts of Peshawar and Kohat now form part of the North-West Frontier Province, *see* Gazette of India, 1901, Pt. I, p. 857 and *ibid.*, 1902, Pt. I, p. 575, but its application to that part of the Hazara District known as Upper Tanawal is barred by the Hazara (Upper Tanawal) Regulation, 1900 (II of 1900), Punj. and N. W. Code;

the Districts of Kamrup, Nowgong, Darrang, Sibsagar, Lakhimpur, Goalpara (excluding the Eastern Duars) and Cachar (excluding the North Cachar Hills) *see* Gazette of India, 1878, Pt. I, p. 533;

the Garo Hills, the Khasi and Jaintia Hills, the Naga Hills, the North Cachar Hills in the Cachar District and the Eastern Duars in the Goalpara District, *see* Gazette of India, 1897, Pt. I, p. 299.

the District of Sylhet, *see* Gazette of India, 1879, Pt. I, p. 631.

It has been declared by notification under sec. 3 (b) of the Scheduled Districts Act, 1874 (XIV of 1874), not to be in force in the Scheduled Districts of Lahaul in the Punjab, *see* Gazette of India, 1886, Pt. I, p. 301.

It has been extended, by notification under sec. 5 of the Scheduled Districts Act, 1875 (XIV of 1874) to the Tarai District of the Province of Agra, *see* Gazette of India, 1876, Pt. I, p. 506, to the District of Coorg, *see* *ibid.*, 1918, Pt. II, p. 1730.

¹ The word “three” in the preamble was repealed by sec. 1 of the Press and Registration of Books Act, Amendment Act, 1890 (X of 1890).

² This definition was inserted by sec. 3 and First Schedule of the Press Law Repeal and Amendment Act, 1922 (XIV of 1922).

³ Now Magistrate of the first class, *see* the Code of Criminal Procedure, 1898 (Act V of 1898), sec. 3.

⁴ Now, Presidency Magistrate, *see* the Press and Registration of Books Act (1867) Amendment Act, (1890) X of 1890, sec. 3, and the Code of Criminal Procedure, 1898 (Act V of 1898).

⁵ Words “and a Justice of the Peace” were repealed by Act (X of 1890).

SEC. 1.—“Book or Pamphlet” meaning of. *See* 21 Pat.L.T. 675=A.J.R. 1940 Pat. 613, cited under sec. 9 *infra*.

"Newspaper".

¹["Newspaper" means any printed periodical work containing public news or comments on public news:]

[Number and Gender.] Repealed by Act X of 1914.

[Local Government.] Omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

2. [Repeal of Act XI of 1835.] Rep. by Act XIV of 1870.

PART II.

OF PRINTING-PRESSES AND NEWSPAPERS.

3. Every book or paper printed within British India shall have printed legibly on it the name of the printer and the place of printing, and (if the book or paper be published ²[the name] of the publisher and the place of publication.
- Particulars to be printed on books and papers.

LEG. REF.

¹ Inserted by sec. 3 and first schedule of Act XIV of 1922.

² Inserted by the Amending Act, 1891 (XII of 1891).

SEC. 3: 'PAPER PRINTED'.—Meaning of. 38 Bom.L.R. 1115=166 I.C. 263=A.I.R. 1937 Bom. 28. If term is synonymous with 'news-paper'. (*Ibid.*) 'Publisher', meaning of. (*Ibid.*) If includes mere seller or distributor. (*Ibid.*) Where a person is proceeded against under sec. 12 of the Act there must be evidence to show that the paper had been printed in British India. The burden is on the prosecution to prove the same, where the accused appears to be a mere school boy who may not know where the leaflets have been printed. 35 C.W.N. 778=134 I.C. 1197=1931 C. 641. The word 'paper' in sec. 3 does not mean a newspaper of a periodical nature and will cover the case of a manifesto by a new political party. 1939 A.M.L.J. 87. The word 'paper' in sec. 3 of the Act is practically synonymous with 'newspaper' as defined in the Act. A poster issued shortly after a communal disturbance making a fervent appeal to the people to live in peace and harmony and printed on a single foolscap sheet, cannot be considered to be anything and analogous to a book or newspaper or a pamphlet. 44 P.L.R. 524=43 Cr.L.J. 897=A.I.R. 1943 Lah. 1=I.L.R. (1943) Lah. 95.

SCOPE OF THE SECTION.—The intention of the section, in requiring that the name of the printer and the place of printing and the name of the publisher and the place of the publication should be printed legibly on every book or paper was to inform the public who the responsible printer or publisher was and to convey that information on the face of the paper. Words, which contained no such information, would not amount to a sufficient compliance with the requirements of sec. 3. The intention was not simply to provide some facility or other, but to provide a specific facility on the face of the

paper. Where a newspaper was printed and published bearing the following words, "printed and published at Cochin for the Malabar Economic Company at the said Company's Goshree Vilasam Press". *Held*, that these words were not a sufficient compliance with the requirements of sec. 3 inasmuch as there was no name of the printer as required by the Act. 16 M. 443=3 M.L.J. 201=1 Weir 862. Under sec. 3, it is not necessary that the actual name of the printer should be given. So long as a name of style, which sufficiently designates the printer, is given, it does not matter that it is not the actual name of the printer. It is sufficient that it is the name under which he chooses to do business and is generally known. Unless it can be said that the words do not convey to an ordinary reader the information required by the Act, the conviction for a non-compliance of the provisions of sec. 3 cannot be supported. 16 M. 443=3 M.L.J. 201=1 Weir 862. The printer of a book is bound to imprint his name and the place of printing, under the provisions of sec. 3, even if he has printed only a portion of the book. 14 Bom.L.R. 40=13 I.C. 827=13 Cr.L.J. 139. Where a copy of a vernacular newspaper contained the following words printed on the Margin of the front page "ba ihtimam Ram Saran Dat printer, Hindustan Steam Press, Lahore men, Lala Bhawani Das Manager ke liye chapa". *Held*, that they do not contain a clear intimation as to the publisher, as required by sec. 3 of the Act. 5 P.R. 1909, (Cr.)=10 Cr.L.J. 195=2 I.C. 978.

SECS. 3 AND 12.—The word "publisher" has been used in the Act in a restricted sense, and does not include a vendor of a newspaper or book. Sec. 12 read with sec. 3 clearly indicates that such persons are not included in the word "publisher" for sec. 3 enjoins the printing of the names of the printer and publisher. 23 C. 414. A man who causes a book to be printed and offers it to the public for sale is a publisher within the meaning of secs. 3 and 12. 1887 A.W.N.

4. No person shall, within British India, keep in his possession any press
 Keeper of printing press for the printing of books or papers, who shall not
 to make declaration. have made and subscribed the following declaration
 before the Magistrate within whose local jurisdiction
 such press may be:—

"I, A. B., declare that I have a press for printing at—".

And this last blank shall be filled up with a true and precise description
 of the place where such press may be situate.

95. The rule in sec. 3 of the Act requires that every paper printed and published in British India shall have legibly printed on it the name of the printer and the place of printing and the name of the publisher and place of publication, as such. An omission to comply with sec. 3 is punishable under sec. 12. Secs. 3 and 12 do not deal with intention. Printers and publishers cannot be allowed to select for themselves the description to be used in professing to comply with the Act, but they must use the descriptions prescribed by the Act. 5 P.R. 1909, (Cr.)=10 Cr.L.J. 195=2 I.C. 978.

SECS. 3, 4 AND 5: 'PRINTING'—'PRINTING PRESS'—'NEWSPAPER'—CYCLOSTYLING—BONEO DUPLICATOR.—The word 'printing' in the Act must be construed in its strict and narrow sense, namely, typography. It does not include cyclostyling. A Boneo duplicator cannot be considered a "printing press" within the meaning of sec. 4. A newspaper, as defined in the Act, means a printed periodical and not any publication produced by type-writing, duplicating, cyclostyling or such method. 27 N.L.R. 270=134 I.C. 854=1931 N. 177. See also 133 I.C. 682=1931 P. 351. (Printing Press, what is see 12 Lah. 483.)

SEC. 4: OBJECT AND SCOPE.—Sec. 4 appears to have been enacted with a double motive. The first is that the executive authorities shall note where the press is situated and the second is that they shall know who is the person in charge. A removal of the premises clearly deprives the executive authorities of their knowledge as to the location of the press. But the same cannot be said where there is a change in the personnel of the keeper of the press. 130 I.C. 380=1931 O. 81. The Act does not require a new declaration in cases where a press, as to which the printer has made the declaration prescribed by sec. 4 is changed to another locality within the same local jurisdiction as the former place. 9 P.R. 1889. (Cr.). There is no clause in sec. 4 (corresponding to the provision in sec. 5) requiring a new declaration as often as a change of place takes place. 9 P.R. 1889, (Cr.).

"FOR THE PRINTING OF BOOKS OR PAPERS".—The question whether a printing press is or is not within sec. 4 is a question of the use to which the printing press is in fact put or intended to be put by the possessor. The words "for the printing of books or papers" modify the verb "keep" and not the noun "press". They refer to the object of the possessor of the machine. 10 P. 492=133 I.C. 682=1931 P. 351 (2). See also 134 I.

C. 854=1931 N. 177.

"PAPERS".—The word "papers" in secs. 3 and 4 are papers containing news which are intended to be circulated and are practically, if not exactly, synonymous with the word "newspaper" as defined in sec. 1 of the Act. 10 P. 492=1931 P. 351 (2).

"PRINTING"—CYCLOSTYLE MACHINE.—The word "printing" includes the multiplication of copies by means of cyclostyle machine. (Ibid.) No fresh declaration need be filed in the case of any press which has once been declared and which continues at the same address though there is a change in the person of the keeper of the press. 130 I.C. 380=1931 O. 81. The Act does not provide for a change in the person of the keeper of the press. 130 I.C. 380=1931 O. 81. The proceedings of a Magistrate in refusing to authenticate a declaration under sec. 6 is a purely ministerial action with which the High Court cannot interfere. 21 P.R. 1918 (Cr.)=45 I.C. 525=137 P.L.R. 1918.

PRESUMPTION AND PROOF.—The initial presumption about knowledge in the case of periodicals does not arise in the case of a pamphlet alleged to contain seditious matter. 1931 L. 182=12 L. 483=131 I.C. 273. Per *Shah, A.C.J.*—There is no presumption as regards a book, that the persons whose name appears as the author is the author thereof. The statement from the manager of the Press cannot be treated as evidence of the facts stated therein. The declaration under sec. 4 is not evidence of his knowledge of the contents, though it is a fact which along with other evidence in the case must be considered in deciding the question of fact. The fact of a person being the keeper of the Press and the printer of the pamphlet by itself does not imply any knowledge of the contents. Some evidence which would indicate a knowledge of the contents on his part is necessary. There is no provision in the Act as to the presumption to be drawn from a declaration made under sec. 4 and the names of the printer and publisher printed under sec. 3 as there is under sec. 7 as regards declaration made under sec. 5. The knowledge of the contents so far as is necessary has to be proved like any other fact. Per *Crump, J.*—A printed book of itself proves nothing relevant to the present enquiry. There is no presumption that it is written by the man who is described as the author, unless it is one of that limited class of books covered by sec. 87 of the Indian Evidence Act. The written information given by the manager of the Press is not given in the dis-

Rules as to publication of printed periodicals containing public news.

5. No ¹[newspaper] shall be published in British India, except in conformity with the rules hereinafter laid down:

²[(1) Every copy of every such newspaper shall contain the name of the person who is the editor thereof printed clearly on such copy as the name of the editor of that newspaper:]

³(2) The printer and the publisher of every such ⁴[newspaper] shall appear ⁵[in person or by agent authorised in this behalf in accordance with rules made under section 20, before a District, Presidency or Sub-divisional Magistrate within whose local jurisdiction such newspaper shall be printed or published, or such printer or publisher resides], and shall make and subscribe, in duplicate, the following declaration:

"I, A. B., declare that I am the printer (or publisher, or printer and publisher) of the ⁴[newspaper] entitled—and printed (or published, or printed and published, as the case may be) at—".

And the last blank in this form of declaration shall be filled up with a true and precise account of the premises where the printing or publication is conducted:

⁶(3) As often as the place of printing or publication is changed, a new declaration shall be necessary:

⁷(4) As often as the printer or the publisher who shall have made such declaration as is aforesaid shall leave British India, a new declaration from a printer or publisher resident within the said territories shall be necessary.

⁸[Provided that no person who has not attained majority in accordance with the provisions of the Indian Majority Act, 1875, or of the law to which he is subject in respect of the attainment of majority, shall be permitted to make the declaration prescribed by this section, nor shall any such person edit a newspaper.]

6. Each of the two originals of every declaration so made and subscribed is aforesaid, shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made.

Authentication of declaration.

One of the said originals shall be deposited among the records of the office of the Magistrate, and the other shall be deposited

Deposit.

among the records of the High Court of Judicature, or ⁹[other principal Civil Court of original jurisdiction for the place where] the said declaration shall have been made.

LEG. REF.

¹ Substituted for the words 'printed periodical work containing public news or comments on public news' by Act XIV of 1922.

² This clause was inserted by *ibid.*

³ These clauses were re-numbered by *ibid.*

⁴ Substituted for words "periodical work" by *ibid.*

⁵ Substituted for words "before the Magistrate within whose local jurisdiction such work shall be published" by *ibid.*

⁶ Proviso inserted by *ibid.*

⁷ Substituted for words "other Court within the local limits of whose ordinary original civil jurisdiction" by Act X of 1890.

charge of any duty, for neither the Act nor the Rules under the Act as those now stand impose any such obligation. A keeper of a considerable Press may not know the contents of each and every book printed at his Press. Without details as to the connection of the keeper with the actual business it is impossible to make any such presumption.

The declaration under sec. 3 or the written information supplied by the manager carries the matter no further. Without knowledge a man cannot be guilty of abetment. 47 B. 438=25 Bom.L.R. 97=76 I.C. 294=1923 B. 255.

SEC. 5.—'Publisher', meaning of. 38 Bom. L.R. 1115=166 I.C. 263=A.I.R. 1937 B. 28. Although sec. 499 requires proof of publication in order to support a conviction for defamation, the intention of the Act was to constitute the declarations made by a person that he was the printer and publisher of a newspaper into *prima facie* evidence of publication and to throw on the accused the burden of showing that the actual publisher of the libel was not the person mentioned in the declaration. 9 M. 387=1 Weir 576=1 Weir 865. The presumption could be rebutted if such person showed that he entrusted in good faith the temporary management of the newspaper to a competent person during his absence and that the libel was published without his autho-

The officer in charge of each original shall allow any person to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said declaration, attested by the seal of the Court which has the custody of the original, on payment of a fee of two rupees.

7. In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declarations, ¹[or, in the case of the editor, a copy of the newspaper containing his name printed on it as that of the editor], shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, ¹[or printed on such newspaper, as the case may be], that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every ²[newspaper] whereof the title shall correspond with the title of the ²[newspaper] mentioned in the declaration ¹[or the editor of every portion of that issue of the newspaper of which a copy is produced].

New declaration by persons who have signed declaration and subsequently ceased to be printers or publishers.

8. Provided always that any person who may have subscribed any such declaration as is aforesaid, and who may subsequently cease to be the printer or publisher of the ²[newspaper] mentioned in such declaration, may appear before any Magistrate, and make and subscribe in duplicate the following declaration:—

"I, A. B., declare that I have ceased to be the printer (or publisher, or printer and publisher) of the ²[newspaper] entitled—"

Each original of the latter declaration shall be authenticated by the signature and seal of the Magistrate before whom the said latter declaration shall have been made, and one original of the said latter declaration shall be filed along with each original of the former declaration.

The officer in charge of each original of the latter declaration shall allow any person applying to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said latter declaration, attested by the seal of the Court having custody of the original, on payment of a fee of two rupees.

LEG. REF.

¹ Inserted by Act XIV of 1922.

² Substituted for words "periodical work" by *ibid.*

ity, knowledge or consent. 9 M. 387=1 Weir 576=1 Weir 865.

SEC. 7.—See 155 I.C. 450=1935 Nag. 90. A person, who subscribes to the declaration under the Act, must be presumed, under this section, to be cognisant of all that he has printed and published and, in the absence of any evidence to the contrary, his liability in the matter cannot be gainsaid. 7 C. L.J. 49=7 Cr.L.J. 10=35 C. 141. This section, which applies both to civil and criminal proceedings, makes the printer or publisher responsible for whatever may appear in a newspaper whoever the writer of the article in it may be; and, therefore, a prosecution may proceed against the printer, unless he can prove absence from the news-

paper office in good faith and without knowledge that the seditious articles would be published during his absence. But it is not absence in good faith for a printer, to go away knowing very well what is going to happen in his absence, and for the purpose of shirking his liability. 35 C. 945=8 Cr.L.J. 438. The registered printer of a paper, so long as he continues such printer, cannot escape from criminal liability for publication therein, of a seditious article by the plea that he was temporarily absent from the station when the article was printed, or that he was ignorant of the contents thereof, or that he had no intention of committing any offence. 1 P.R. 1905=2 Cr.L.J. 31=69 P.L.R. 1905. Where certain articles appearing in a newspaper are seditious, the declared printer would be responsible for the said articles, unless he can make out on sufficient evidence, that he had in fact nothing to do with them. 38 C. 227=10 I.C. 954=12 Cr.

14. Any person who shall, in making any declaration under the authority of this Act, make a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction before a Magistrate, be punished by fine not exceeding ¹[two thousand] rupees, and imprisonment for a term not exceeding ²[six months].

15. Whoever shall ³[edit] print or publish any ⁴[newspaper] without conforming to the rules hereinbefore laid down, or who shall ³[edit] print or publish, or shall cause to be ³[edited] printed or published, any ⁵[newspaper], knowing that the said rules have not been observed with respect to ⁶[that newspaper] shall, on conviction before a Magistrate, be punished with fine not exceeding ¹[two thousand] rupees, or imprisonment for a term not exceeding ²[six months], or both.

⁷[16. If any printer of any such book as is referred to in section 9 of this Act shall neglect to deliver copies of the same pursuant to that section, he shall for every such default forfeit to the Government such sum not exceeding fifty rupees as a Magistrate having jurisdiction in the place where the book was printed may, on the application of the officer to whom the copies should have been delivered or of any person authorized by that officer in this behalf, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the copies which the printer ought to have delivered.

If any publisher or other person employing any such printer shall neglect to supply him, in the manner prescribed in the second paragraph of section 9 of this Act, with the maps, prints or engravings which may be necessary to enable him to comply with the provisions of that section, such publisher or other person shall for every such default forfeit to the Government such sum not exceeding fifty rupees as such a Magistrate as aforesaid may, on such an application as aforesaid, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the maps, prints or engravings which such publisher or other person ought to have supplied.

⁸[16-A. If any printer of any newspaper published in British India neglects to deliver copies of the same in compliance with section 11-A, he shall, on the complaint of the Officer to whom copies should have been delivered or of any person authorised by that officer in this behalf, be punishable, on conviction by a Magistrate having jurisdiction in the place where

LEG. REF.

¹ Substituted for words "five thousand" by Act XIV of 1922.

² Substituted for words "two years" by *ibid.*

³ Inserted by *ibid.*

⁴ Substituted for words "such periodical work as is hereinbefore described" by *ibid.*

⁵ Substituted for words "such periodical work" by *ibid.*

⁶ Substituted for words "that work" by *ibid.*

⁷ Section was substituted for the original sec. 16 by Act X of 1890.

⁸ Section 8 was inserted by Act XIV of 1922.

offence. 130 I.C. 380=1931 O. 81. As to burden of proof, *see* 57 Cal. 460=34 C.W.N. 142=1929 Cal. 635. On this section, *see also* 9 P.R. 1889 (Cr.).

SEC. 14.—Any false statement made in the course of a declaration is made punishable under the section. But it must be made and submitted before a Magistrate. 73 I.C. 689=1923 Lah. 440.

SEC. 16.—The words "delivered out of the Press" are not equivalent to "printed". The work of printing might be completed before any copy was actually delivered out of the Press. 49 All. 315=99 I.C. 1032=1927 All. 237. Sec. 16 does not provide for conviction and sentence. 191 I.C. 106=21 P.L.T. 675 =A.I.R. 1940 Pat. 613.

the newspaper was printed, with fine which may extend to fifty rupees for every default.]

¹[17. Any sum forfeited to the Government under ²[section 16] may be recovered, under the warrant of the Magistrate determining the sum, or of his successor in office, in the manner authorised by the ³Code of Criminal Procedure for the time being in force, and within the period prescribed by the Indian Penal Code, for the levy of a fine.

⁴[* * * * *]

PART V.

REGISTRATION OF BOOKS.

18. There shall be kept at such office, and by such officer as the Provincial Government shall appoint in this behalf a book to be called a Catalogue of Books⁵ printed in British India, wherein shall be registered a memorandum of every book which shall have been delivered ⁶[pursuant to clause (a) of the first paragraph of section 9] of this Act. Such memorandum shall (so far as may be practicable) contain the following particulars (that is to say):—

- (1) the title of the book and the contents of the title-page, with a translation into English of such title and contents, when the same are not in the English language;
- (2) the language in which the book is written;
- (3) the name of the author, translator or editor of the book or any part thereof;
- (4) the subject;
- (5) the place of printing and the place of publication;
- (6) the name or firm of the printer and the name or firm of the publisher;
- (7) the date of issue from the press or of the publication;
- (8) the number of sheets, leaves or pages;
- (9) the size;
- (10) the first, second or other number of the edition;
- (11) the number of copies of which the edition consists;
- (12) whether the book is printed or lithographed;
- (13) the price at which the book is sold to the public; and
- (14) the name and residence of the proprietor of the copyright or of any portion of such copyright.

Such memorandum shall be made and registered in the case of each book as soon as practicable after the delivery of the ⁷[copy thereof pursuant to clause (a) of the first paragraph of section 9].

⁸[* * * * *]

19. The memoranda registered during each quarter in the said Catalogue shall be published in the Official Gazette as soon as may be after the end of such quarter, and a copy of the memoranda so published shall be sent to the said Secretary of State, and to the ⁹[Central Government], respectively.

LEG. REF.

¹ Section was substituted for the original sec. 17 by Act X of 1890.

² Substituted for words "the last foregoing section" by Act XI of 1923, Sch.

³ See the Code of Criminal Procedure, 1898 (Act V of 1898).

⁴ Omitted by A.O., 1937.

⁵ For notifications directing by whom and where the catalogue of books under this section is to be kept, see the different Local Rules and Orders.

⁶ Substituted for words and figure "pursuant to sec. 9" by Act X of 1890.

⁷ Substituted for words "copies thereof in manner aforesaid" by Act X of 1890.

⁸ Last paragraph of sec. 18 relating to the effect of registration was repealed by Copyright Act, 1914 (III of 1914).

⁹ Substituted by A.O., 1937, for words "Government of India" which had been substituted for the original words "Secretary to the Government of India in the Home Department" by Act X of 1914.

SEC. 18.—Catalogue of books kept at Bombay—Jurisdiction of Calcutta High Court to order expunging of registry in such

PART VI.
MISCELLANEOUS.

20. The Provincial Government shall have power to make such rules¹ as may be necessary or desirable for carrying out the objects of this Act, and from time to time to repeal, alter and add to such rules.

Power to make rules. All such rules, and all repeals and alterations thereof, and additions thereto, shall be published in the Official Gazette.

Publication. 21. ²[The Provincial Government may, by notification in the Official Gazette] exclude any class of books ³[or papers] from the operation of the whole or any part or parts of this Act.

Power to exclude any class of books from operation of Act.

22. [Continuance of parts of Act.] Rep. by Act X of 1890.

23. [Commencement.] Rep. by Act XIV of 1870.

**THE INDIAN PRESS (EMERGENCY POWERS) ACT
(XXIII OF 1931).**

No.	Year.	Short title.	Amendments.
Act No. XXIII	1931	The Indian Press (Emergency Powers) Act, 1931.	Amendment by Act XXIII of 1932 [see Act XI of 1934 Cr. Law Amendment Act, 1935 and Act XXXV of 1939] and Ordinance LII of 1942.

[9th October, 1931.]

An Act to provide ⁴[for the better control of the press].

WHEREAS it is expedient to provide ⁴[for the better control of the press]; It is hereby enacted as follows:—

Short title, extent and duration. 1. (1) This Act may be called THE INDIAN PRESS (EMERGENCY POWERS) ACT, 1931.

(2) It extends to the whole of British India, inclusive of British Baluchistan and the Sonthal Parganas.

(3) [Repealed by Criminal Law Amendment Act, 1935].

LEG. REF.

¹ For such rules, see the different Local Rules and Orders.

² Substituted by A.O., 1937.

³ Inserted by First Schedule of the Repealing and Amending Act, 1915 (XI of 1915).

⁴ Substituted for the words "against the publication of matter inciting to or encouraging murder or violence" by Act XXIII of 1932, sec. 14.

books. See 9 C.W.N. 591=1 G.L.J. 278. See also 10 C.W.N. 134=33 Cal. 571. A person by translating a book into another language does not render himself guilty of an infringement of copyright. 14 Bom. 586. Translations are not copies and a person by translating a book does not infringe the author's copyright. 19 Bom. 557.

SEC. 1: CONSTRUCTION OF THE ACT.—The provisions of the Press (Emergency Powers) Act are of a penal character and according to the ordinary rules of interpretation,

they should be construed strictly and in such a manner as to protect the liberties of the subject. 151 I.C. 943=35 Cr.L.J. 1447 (2)=1934 Lah. 264; I.L.R. (1942) Kar. 127=1942 Sind 65 (S.B.). The Press Ordinance enacts provisions of a very comprehensive nature but they should be interpreted in a reasonable manner. The law does not seek to put any narrow construction on the expression used and only interferes when plainly and deliberately the limits prescribed by it are violated. 12 Lah. 345=132 I.C. 889=32 Cr.L.J. 997=1931 Lah. 283 (F.B.).

AMENDING ORDINANCE (VII OF 1922).—VALIDITY OF.—As the validity of the Ordinance rests neither on proof of an emergency nor upon the recital of an emergency but upon the judgment of the Governor-General that immediate action of that character was necessary, there is no basis for the contention that the Ordinance is not valid and effective merely on the ground that the

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "book" includes every volume, part or division of a volume, pamphlet and leaflet, in any language, and every sheet of music, map, chart or plan separately printed or lithographed;

(2) "document" includes also any painting, drawing or photograph or other visible representation;

(3) "High Court", means the highest Civil Court of Appeal for any local area except in the case of the province of Coorg where it means the High Court of Judicature at Madras;

(4) "Magistrate" means a District Magistrate or Chief Presidency Magistrate;

(5) "newspaper" means any periodical work containing public news or comments on public news;

(6) "news-sheet" means any document other than a newspaper containing public news or comments on public news or any matter described in subsection (1) of section 4;

(7) "press" includes a printing press and all machines, implements and plant and parts thereof and all materials used for multiplying documents;

(8) "printing press" includes all engines, machinery, types, lithographic stones, implements, utensils and other plant or materials used for the purpose of printing;

(9) "unauthorised newspaper" means—

(a) any newspaper in respect of which there are not for the time being valid declarations under section 5 of the Press and Registration of Books Act, 1867, and

Ordinance does not begin by saying "whereas an emergency has arisen." 140 I.C. 304 = 33 Cr.L.J. 949 = 56 C.L.J. 157 = 1932 C. 738 (S.B.).

SEC. 2, CLS. (5) AND (6): 'DOCUMENT'—MEANING.—The word 'document' in sec. 2 (6) of the Press Emergency Powers Act, 1931, bears the same meaning as in sec. 29, I.P. Code, and sec. 3 of the Evidence Act, 1934 Cr.C. 1338 = 1934 All. 1031.

"PUBLIC NEWS"—INFORMATION CONVEYED BY PHOTOGRAPHS.—Information is "public news" within the meaning of sec. 2 (6) if it concerns a matter of public and topical interest as contrasted with purely historical interest. Accused was found in possession of card photographs of person killed in the Chittagong armoury raid case and they were kept for distribution. The legal proceedings were not terminated and the emergency measures rendered necessary in the District of Chittagong were still in operation. *Held*, that the information regarding the raid was public news, that the photographs were documents containing public news and therefore news-sheets within the meaning of sec. 2 (6) and that accused was guilty. 60 Cal. 1089 = 37 C.W.N. 990 = 34 Cr.L.J. 619 = 1933 Cal. 458. Where a leaflet in the course of an exhortation to the public to strive for freedom or independence does not confine itself to matters of historical interest only, but also contains information and comments on definite events of topical interest or importance, it must be regarded as a 'news-sheet' within the meaning of that term in

sec. 2 (6) of the Act. I.L.R. (1937) 2 Cal. 670 = 174 I.C. 393 = A.I.R. 1938 Cal. 222. The expression "public news" in sec. 2 (5) means something such as "current happenings or alleged current happenings of interest or likely to be of interest to the public or to a portion of the public." Anything new or unknown when communicated to another, is news, and news which is intended for, or is communicated to the general public, no matter what its nature is public news. An item of news irrespective of its nature when reported in a paper published for the general public, would be a public news, but if published only in a periodical intended for a small circle of readers interested in a particular subject would not be a public news. All news appearing in a periodical which is published for the general public is public news, and the paper is a "newspaper" within the meaning of the Act. If the proprietors of a paper choose to make week by week "news" of the activities or alleged activities of persons of sufficient importance to interest members of the public for whom the paper is published, and to whom it is sold or given away, they cannot fairly complain that it is not a newspaper, and that it does not contain public news. They must be taken to have themselves made what would otherwise be a matter of private interest, if of interest at all, "public news." I.L.R. (1942) Kar. 127 = 202 I.C. 405 = A.I.R. 1942 Sind 65 (S.B.).

SEC. 2 (6): 'NEWS SHEET'—WHAT

(b) any newspaper in respect of which security has been required under this Act, but has not been furnished as required;

(10) "unauthorised news-sheet" means any news-sheet other than a news-sheet published by a person authorised under section 15 to publish it; and

(11) "undeclared press" means any press other than a press in respect of which there is for the time being a valid declaration under section 4 of the Press and Registration of Books Act, 1867.

Control of printing-presses and newspapers.

3. (1) Any person keeping a printing-press who is required to make a declaration under section 4 of the Press and Registration of Books Act, 1867, may be required by the Magistrate before whom the declaration is made, for reasons to be recorded in writing, to deposit with the Magistrate within ten days from the day on which the declaration is made, security to such an amount, not being more than one thousand rupees, as the Magistrate may in each case think fit to require, in money or the equivalent thereof in securities of the Central Government as the person making the deposit may choose:

Provided that if a deposit has been required under sub-section (3) from any previous keeper of the printing-press, the security which may be required under this sub-section may amount to three thousand rupees.

(2) Where security required under sub-section (1) has been deposited in respect of any printing-press, and for a period of three months from the date of the declaration mentioned in sub-section (1) no order is made by the Provincial Government under section 4 in respect of such press, the security shall, on application by the keeper of the press, be refunded.

(3) Whenever it appears to the Provincial Government that any printing-press kept in any place in the territories under its administration, in respect of which security under the provisions of this Act has not been required, or having been required has been refunded under sub-section (2), is used for

CONSTITUTES.—For the matter published or commented on to fall within the definition of "News sheet" there must be an element of novelty about it. A pamphlet containing nothing but a discussion of food problems and the necessity for suppressing hoarding enforced by reference to the Bengal famine which at the date of the publication was not a very recent event and had become a matter of history might well be said not to be a news sheet within the meaning of the Act. But where the pamphlet contained references to the condition of the people of Bengal resulting from the famine at the date when the pamphlet was written and also referred to other matters like a recent parliamentary election in England which constituted public news and on which comment was made, it will make the pamphlet a "news sheet" the publication of which without being authorised by a magistrate will constitute an offence punishable under sec. 18 (1) of the Act. 58 L.W. 183=(1945) 1 M.L.J. 314. See also 1942 Lah. 203=44 P.L.R. 26 (Handbills and posters).

Sec. 3.—S. 3 (3) of the Act does not constrain the Provincial Government to do anything more than to state or describe the words, signs, or visible representations. No objection could be taken to the notice on the ground that it does not reproduce the objectionable matter verbatim. 1945 O.W.N. 25=1945 A.W.R. (C.C.) 26. The state-

ment on a notice under sec. 3 (3) of the Act is in the nature of a charge, and when such a notice mentions expressly clis. (a) and (b) of sec. 4 (1) as having been offended against or infringed by the alleged objectionable passages in a book or publication, it is not afterwards open to the Government to go behind or enlarge those particulars and to seek to justify the notice under the other clauses of sec. 4 (1). 47 Bom.L.R. 57 (S.B.).

SECS. 3 AND 7.—These sections clearly contemplate action both against the keeper of the press and the publisher of the paper and no distinction is made between the case where they are two different persons or the same person is keeper of the press and the publisher. I.L.R. (1942) Kar. 127=1942 Sind 65.

NOTICE UNDER—CONTENTS.—The notice under sec. 3 (3) and sec. 7 (3) need not specify that the offender has contravened any particular sub-section of sec. 4 of the Act. 34 Cr.L.J. 1095=38 C.W.N. 56=1933 Cal. 754 (S.B.). Neither sec. 3 (3) nor sec. 7 (3) of the Act constrains the Provincial Government to do anything more than to state or describe the words complained of. There is no obligation whatever on the Provincial Government to record its opinion in the notice as to which particular item of sub-Sec. (1) of sec. 4 applies. I.L.R. (1944) Nag. 680=1944 N.

the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations of the nature described in section 4, sub-section (1), the Provincial Government may, by notice in writing to the keeper of the press stating or describing such words, signs or visible representations, order the keeper to deposit with the Magistrate within whose jurisdiction the press is situated security to such an amount, not being less than five hundred or more than three thousand rupees as the Provincial Government may think fit to require, in money or the equivalent thereof in securities of the Central Government as the person making the deposit may choose.

(4) Such notice shall appoint a date, not being sooner than the tenth day after the date of the issue of the notice, on or before which the deposit shall be made.

4. (1) Whenever it appears to the Provincial Government that any printing press in respect of which any security has been ordered to be deposited under section 3 is used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations which—

Power to declare security or press forfeited in certain cases.

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SEC. 4: TEMPORARY AMENDMENT UNDER DEFENCE OF INDIA ACT (XXXV OF 1939).—The Indian Press (Emergency Powers) Act, 1931, shall have effect as if in sub-sec. (1) of sec. 4 thereof, after cl. (b), the following word and clause had been inserted, namely:—

“or
(bb) directly or indirectly convey any ‘confidential information’, any ‘information likely to assist the enemy’, or any ‘prejudicial report’, as defined in the rules made under the Defence of India Act, 1939, or are calculated to instigate the contravention of any of those rules.”—See Act XXXV of 1939, sec. 6.

L.J. 195=A.I.R. 1944 Nag. 278. See also 47 Bom.L.R. 57. Where the District Magistrate acting under his own powers under sec. 7 or only enforcing the previous order of the Local Government, has directed the publisher of a newspaper to deposit security on the ground that a certain article published therein came within the purview of sec. 4 (1) (d) and (e) of the Act as amended by the Ordinance of 1932, the High Court’s power of interference is confined by secs. 23 and 30 for a limited purpose to decide whether the publication or article does or does not come within the purview of sec. 4 (1) of the Act. That power of the High Court should, under sec. 30, be invoked by an application within 2 months from the date of the order. Where no such application was made, the order directing him to furnish security cannot be interfered with. The District Magistrate acting under the Act is not a Court but an executive officer and the High Court has, therefore, no power of superintendence under sec. 107 of the Government of India Act. 13 Pat. 547=35 Cr.L.J. 1022=1934 Pat. 344 (F.B.).

SECS. 3 AND 7 clearly contemplate action against both the keeper of the press and the publisher of the paper, and no distinc-

tion is drawn between the case where the printer and publisher are two different persons or one and the same. Consequently where the printer and publisher is the same person the maximum security of Rs. 6,000 can be demanded from him under secs. 3 (3) and 7 (3). I.L.R. (1942) Kar. 127=A.I.R. 1942 Sind 65 (S.B.). The Act is a penal statute and must be construed strictly. 1942 Sind 65 (S.B.).

SEC. 4: CONSTRUCTION OF OFFENDING ARTICLE.—Per C. C. Ghose, J.—“The article must, as a matter of law, be read as a whole in a fair, free and liberal spirit and should not be viewed with an eye of narrow and fastidious criticism * * * So long as criticism or expression of opinion of any sort is allowed it is not right that isolated expressions should be subjected to scrutiny under the microscope as it were and a sinister meaning ferretted out and drastic action taken under the Ordinance * * * What was considered seditious under sec. 124-A, Penal Code in 1897, may not necessarily be held to be so in 1932; one cannot shut one’s eyes to changes in political conceptions due to the march of events and to the declared objectives of the Government of the day.” 33 Cr.L.J. 949=56 C.L.J. 157=1932 C. 738 (S.B.). See also A.I.R. 1938 Rang. 417.

“GOVERNMENT ESTABLISHED BY LAW IN BRITISH INDIA.”—The words “Government established by law in British India” only means the existing political system as distinguished from any particular set of administrators. (22 B. 112, Foll.) 33 Cr.L.J. 949=56 C.L.J. 157=1932 C. 738 (S.B.). No distinction in substance can be drawn between Government established by law in British India and the Executive Government. 60 C. 408=37 C.W.N. 104=1932 C. 745 (S.B.).

ENTIRE ARTICLE TO BE TAKEN.—The Court should in every case consider the book or newspaper article as a whole and in a fair, full and liberal spirit, not dwelling too much upon isolated passages or upon strong word

(a) incite to or encourage, or tend to incite to or to encourage, the commission of any offence of murder or any cognizable offence involving violence, or

(b) directly or indirectly express approval or admiration of any such offence, or of any person, real or fictitious, who has committed or is alleged or represented to have committed any such offence,

¹[or which tend, directly or indirectly,—

(c) to seduce any officer, soldier, sailor or airman in the military, naval or air forces of His Majesty or any police-officer from his allegiance or his duty, or

(d) to bring into hatred or contempt His Majesty or the Government

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¹ Inserted by Act XXIII of 1932, sec. 16.

here and there, which may be qualified by the context but endeavouring to gather the general effect which the whole composition would have on the minds of the public. The object of a certain paragraph in respect of which security was demanded under sec. 4 was to advertise the newspaper and to secure the patronage of its readers. For that purpose it mentioned the improvements already carried out, held out a promise for future improvements and excused the delay in introducing all the improvements on the plea of the arrest of the Editor whose sufferings in the cause of the nation were claimed as a matter of pride. *Held*, that the reference to the arrest of the Editor should not be divorced from the context and the paragraph as a whole was not obnoxious to sec. 4 (1) (c) (case under Press Ord. II of 1930). 12 L. 345=32 Cr. L.J. 997=1931 L. 283 (F.B.). *See also* 47 P.L.R. 3 (F.B.). *Even a single sentence, in a newspaper article if obnoxious to sec. 4, sub-sec. (1), entails forfeiture of the security, and it is not open to the Court to apportion punishment or to reduce the penalty on any other ground.* 12 L. 345=32 Cr.L.J. 997=1931 L. 283 (F.B.). When there is nothing in the "announcement" itself which can be said to encourage, directly or indirectly, the commission of any offence; much less murder or other cognizable offence involving violence, or which makes reference, explicit or covert, to any person who has, or is supposed to have committed crimes of this nature, the mere fact that the head-line of the poster contains the words "*Long long live Revolution*" cannot lead to the conclusion that it was intended to produce literature advocating violence. 151 I.C. 943=35 Cr.L.J. 1447 (2)=1934 L. 264. An order of Government is not bad merely for the reason that it *does not state the particular clause in sec. 4 (1) which the article in question was found to have offended*. The Act itself has provided what the notice is required to contain and and it is not for the Court to impose any further restrictions. 33 Cr.L.J. 949=56 C.L.J. 157=1932 C. 738 (S.B.).

SEC. 4 (1) (a) AND (b) AND EXPL. I—

APPLICABILITY AND SCOPE—HISTORICAL OR LITERARY WORK—BIOGRAPHY OF LIVING PERSON NARRATING REVOLUTIONARY MOVEMENT OF THE PAST.—The biography of a living person containing a narrative or a historical review of the revolutionary movement in existence about thirty five years ago and which has now passed into history can be regarded as a historical work and not merely a narrative of current events though the living person has taken a prominent part in such movement; and when the work, in addition, also possesses literary style, it is also a literary work, and falls under explanation I to sec. 4 (1). There is a clear distinction between a historical or literary work on the one hand and writings such as newspaper articles, pamphlets and similar publications on the other hand. In the case of the latter approval or admiration of an offence, of murder or other violent crime is enough to attract the penal provisions of the Act; but in the case of the former, mere approval or admiration of such offence is not enough: it must be shown that it has a tendency to encourage them at the time when the work is published, in order to attract sec. 4 (1) (a) and (b). No such historical work can be regarded as objectionable unless it has the present tendency to incite people to do such violent acts as may be punishable under the law of the land. The Court has to take the alleged objectionable passages in their context at the various places in which they occur and see whether the passage in their setting in the book have the alleged tendency. It cannot be held as a general proposition that in all cases of admiration or approval of an offence or offender there must be a tendency to encourage violent offences. The Court has to look to the circumstances in each case in judging such a tendency, *viz.*, the purpose of the work, the time at which it was published, the class of people who would read it the effect it would produce on their minds, the context in which the objected words appear and the interval of time between the incidents narrated and the publication of the work. 47 Bom.L.R. 57 (S.B.). *See also* 1933 Nag. 148.

SEC. 4 (1) (d) AND (h): SCOPE OF.—Where in an article published in a news-

established by law in British India or the administration of justice in British India or any class or section of His Majesty's subjects in British India, or to excite disaffection towards His Majesty or the said Government, or

(e) to put any person in fear or to cause annoyance to him and thereby induce him to deliver to any person any property or valuable security or to do any act which he is not legally bound to do, or to omit to do any act which he is legally entitled to do, or

(f) to encourage or incite any person to interfere with the administration of the law or with the maintenance of law and order, or to commit any offence, or to refuse or defer payment of any land-revenue, tax, rate, cess or other due or amount payable to Government or to any local authority, or any rent of agricultural land or anything recoverable as arrears of or along with such rent, or

paper, the writer pointed out that people of a community were being tortured, harassed and constantly kidnapped into tribal territories by outlaws who absconded into such territories and further suggested that if a man committed cruelty he should be bombed without warning so that it may serve as a deterrent to cruel persons and he concluded the article by requesting the Government that the area where the outlaws took shelter should be razed to the ground by bombing. Held, that the article did not fall under sec. 4 (1), cl. (d) or cl. (h) as it was only an honest criticism offered with a view to persuade Government to take drastic action to stop kidnapping and raids and it could not be said that the writer in doing so had any malice or was trying to bring the Government in disrepute. 180 I.C. 252=A.I.R. 1939 Pesh. 6. The petitioner, the keeper of a press published a poem entitled "Labourers—the mainstay of the world" which *inter alia* exhorted the labourers in these words. "Labourers! Raise now the cry of Revolution. The Heavens will tremble, the universe will shake and the flames of revolution will burst forth from land and water. You who have been the subject of exploitation! Now dance the fearful dance of destruction on this earth. Truly, labourers, only total destruction will create a new world order and that will bring happiness to the whole world". Held, (1) that it could not be said that these words tended to bring into hatred or contempt any class or section of His Majesty's subjects; the words "masters or exploiters" were too wide to denote a definite or ascertainable class so as to come within cl. (d) of sec. 4 (1) of the Press Act and the poem did not therefore come within the mischief of sec. 4 (1) (d); (2) that the revolution contemplated by the poet was clearly revolution through violence, and that the exhortation was obviously an exhortation to the labourers to destroy the existing social order and to destroy it by force and violence and clearly came within sec. 4 (1) (a) of the Act. Bloody revolution and forcible and violent destruction of the present social order involved all kinds of cognisable offences involving violence and would in all probability involve murder, and it was unnecessary to show that the words tended to incite to or to encourage the commission of a parti-

cular offence or offences. 22 Pat.L.T. 260=A.I.R. 1941 Pat. 132 (S.B.)=1941 P. W.N. 151. In order to bring the words complained of within the mischief of sec. 4 (1) (d) it is not necessary that they should incite to immediate disorder. Words which deliberately create or tend to create hatred and contempt for the Government may be the prelude to public disorder. The fact that no violence occurred is irrelevant. I. L.R. (1944) Nag. 680=1944 N.L.J. 195=A.I.R. 1944 Nag. 278. For the purpose of determining whether a leaflet falls within the purview of sec. 4 (1) (d) the Court should consider the writing as a whole and in a fair, free and liberal spirit, not dwelling too much on open isolated passages or upon a strong word here and there, which may be qualified by the context but endeavouring to gather the general effect which the whole composition would have on the minds of the public. The criticism that certain policy of the Government is so unfortunate that it has created a political deadlock which has led to famine conditions resulting in a large number of deaths of people by hunger, cannot be construed as meaning that the Government that pursued that policy was guilty of murder of the people who died owing to the famine conditions in the country. Such criticism cannot be said to have the tendency to excite disaffection against the Government, and does not therefore, fall within the ambit of the section. 47 P.L.R. 3 (F.B.).

SEC. 4 (1) (e): CONSTRUCTION—"TEND DIRECTLY OR INDIRECTLY"—MEANING OF.—The words "tend directly or indirectly" in sec. 4 (1) (e) mean something more than "have as a possible result." There must be something more than a mere possibility. The effect which words will produce upon the person to whom they refer may vary widely according to the nature and temperament of that person. Not every newspaper attack defamatory though it may be, is made with the intention of obtaining payment of money by the victim, nor every such attack can be said to have the "tendency" to induce payment of money. Sec. 4 (1) (e) relates to private individuals and can be applied to protect private persons. The words in sec. 4 (1) (e) are wide enough to cover what is commonly known as blackmail, and the fact that the person put in fear or annoyance

(g) to induce a public servant or a servant of a local authority to do any act or to forbear or delay to do any act connected with the exercise of his public functions or to resign his office, or

(h) to promote feelings of enmity or hatred between different classes of His Majesty's subjects, or

may have another remedy by way of civil or criminal action, by a suit for defamation or a prosecution for extortion, does not exclude the application of sec. 4 (1) (e) in appropriate cases. I.L.R. (1942) Kar. 127 = 1942 Sind 65. To constitute an offence under sec. 4 (1) (e) it is sufficient if one of the purposes of an article falls within its purview. I.L.R. (1942) Kar. 127 = 1942 Sind 65 (S.B.).

Sec. 4 (h).—What is intended to be penalised by cl. (h) is language which in itself has tendency to promote class-hatred and thus reveals (*prima facie*) an intention to promote class-hatred. Cl. (h) was never intended to and does not cover the mere publishing of news relating to a Hindu-Muslim riot in temperate and inoffensive language by a newspaper in the ordinary course of its business when the authenticity or the good faith of the report is not challenged and when there is nothing else to show any intention to promote class-hatred thereby. A.I.R. 1939 Lah. 81 = 180 I.C. 835 = 41 P.L.R. 137 (F.B.). A riot between Indians and Burmans was followed by two articles in a newspaper. The articles pointed out that the facts recited in the articles were already of common knowledge. One of the articles contained a version of the incidents of the riot and the reasons that led up to the riot. The second article pointed out that certain locality was notorious during the riots, and that the Government knew that this locality was inhabited by Indian bad characters who lived by acts of violence. It called upon the Government to expel these bad characters from Burma, asserting that only then would Indian and Burmans be able to live in peace with one another. *Held*, as regards the first article, that as news, the facts were stated with restraint, and not in violent or provocative language, and no attempt was made to gloss over the misdeeds of one side in favour of the other. The article did not "tend to promote feeling of enmity or hatred between different classes of His Majesty's subjects", and therefore did not come within the scope of cl. (h) of sec. 4 (1). Regarding the second article, it was held that Indian bad characters were not a "class of His Majesty's subjects," as contemplated by cl. (h) of sec. 4 (1) and the article was directed against them only. Even if the article fell within the scope of cl. (h), it came within Expl. 4, and therefore could not form the basis of an order under sec. 7 (3). 178 I.C. 438 = A.I.R. 1938 Rang. 417 (S.B.).

SEDITIONOUS WORDS—CIRCUMSTANCES ATTENDING PUBLICATION—RELEVANCY OF—ARTICLE IN INSIGNIFICANT TAMIL NEWSPAPER.—In considering whether a certain publication

comes within the mischief of sec. 4 (1), one has to look to not merely the words used or the intention of writer, but the effect that the words are likely to produce on the minds of the hearers. For this purpose the circumstances under which they were published and the audience to which they were addressed must be considered. An insignificant Tamil newspaper situated at Rangoon and having small circulation published in its leading article of 23rd October, 1931, militant and seditious words purporting to exhort the readers to support the present political movement in India. *Held*, that the words though seditious and intended to inflame the readers did not come within the ambit of sec. 4 (1). (38 C. 302, Dist.) 10 R. 165 = 137 I.C. 655 = 1932 R. 69 (S.B.).

DISAPPROBATION OF CERTAIN GOVERNMENT ACTS—NO ATTRIBUTION OF BASE MOTIVE.—An article in a newspaper contained the following passages: "... What underlies this arrangement is, in the (language of) modern political dictionary "reprisal". "The jails in India are not indeed heaven. The retaliatory measures of mediæval sternness which exist are enough for the preservation of order and discipline". *Held*, that the article, on a plain reading of it, was intended to support a protest against the measure adopted by the Government; that the word "reprisal" denotes an act of retaliation for some injury or attack, and that it was borrowed from International Law for describing the relations between the Government and the people; and that the use of the word "reprisal", cannot be taken to tend to bring into hatred or contempt the Government established by law in British India, or "to excite disaffection" towards the Government, and as such do not fall under sec. 4 (1) of the Press Act (1931), as amended by sec. 16 of Act XXIII of 1932. *Held, further*, that the use of the word 'retaliatory' in the second passage was only intended to convey that the punishments provided by the jail Code were quite sufficient for subduing recalcitrant prisoners and for maintaining peace or orderliness, and that the writer was not ascribing any base motive to the Government, but only characterising the jail measures as harsh and retaliative. That the article read as a whole was not open to real objection; it only expressed disapprobation of certain measures of the Government with a view to getting them altered by lawful means without exciting or attempting to excite hatred, contempt or disaffection, and that it could not tend directly or indirectly to bring the Government into hatred or contempt. 61 Cal. 827 = 38 C.W.N. 674 (S.B.).

INCITEMENT AGAINST BRITISH RULE—OF FENCE.—The accused was shown to have by

(i) to prejudice the recruiting of persons to serve in any of His Majesty's forces, or in any police force, or to prejudice the training, discipline or administration of any such force;]

the Provincial Government may, by notice in writing to the keeper of such printing-press, stating or describing the words, signs or visible representations which in its opinion are of the nature described above,—

(i) where security has been deposited, declare such security, or any portion thereof, to be forfeited to His Majesty, or

(ii) where security has not been deposited, declare the press to be forfeited to His Majesty, and may also declare all copies of such newspaper, book or other document wherever found in British India to be forfeited to His Majesty.

Explanation ¹[1].—No expression of approval or administration made in a historical or literary work shall be deemed to be of the nature described in this sub-section unless it has the tendency described in clause (a).

¹[*Explanation* 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite hatred, contempt or disaffection shall not be deemed to be of the nature described in clause (d) of this sub-section.

LEG. REF.

¹Explanation to the sec. 4 has been re-numbered as Explanation 1 and Explanations 2 to 4 have been added by Act XXIII of 1932, sec. 16.

means of a newspaper article incited the people to deliver the country from foreign bondage and the oppression and humiliation of the country and the wrongs inflicted by foreign rule were referred to. *Held*, that the article constructed an offence under the Press Act read with Ordinance X of 1932. 142 I.C. 225=34 Cr.L.J. 316 (F.B.). Certain articles published in the *Indian Daily Mail* alleged that the Ordinances were applied ruthlessly and not reasonably, excessive sentences were passed, the way in which particular individuals were picked out for punishment and the unanimity of the magistrates in inflicting heavy sentences showed that the *Magistrates were working in consultation and in co-operation with the executive*, the abuse of powers indicated a policy of vindictiveness and that the Government should take steps against such abuse. *Held*, (i) that the general tendency of the articles was not to criticise the policy of the Government of India in promulgating the Ordinances, but to assert that the Local Government were deliberately abusing and misusing the powers conferred on them by the Ordinances; (ii) that there was no exception in sec. 4 of the Press Act making truth and public good an answer to a charge under the section; (iii) that the section made punishable, not merely the creation of hatred or contempt but also the tendency of an article to create such feelings and the article in question had such a tendency; (iv) that (on the question whether the articles tended to bring into hatred or contempt the administration of justice); (a) the special Courts under the Ordinance were acting in a judicial capacity; (b) the method of dealing with persons charged under the Ordinances was

part of the administration of justice in force in India; (c) the allegation of consultation and co-operation between the magistracy and the judiciary was such as to have a tendency to bring the administration of justice into contempt. 56 Bom. 472=33 Cr.L.J. 749=34 Bom.L.R. 917=1932 Bom. 468.

ATTACK ON POLICE OFFICERS AS SUCH.—Where there is an attack on the police as a whole it may be said that there is an attack on a class or section of His Majesty's subjects within the meaning of sec. 4 (1) (c). 149 I.C. 370=35 Cr.L.J. 966=1934 Lah. 219. The *Jana sakti* published an item of news to the effect that as soon as certain Satyagrahis went to a Congress Office, a police inspector and six constables arrested them, took them to a village and used lathis on them as a result of which one was unconscious and in a precarious condition. *Held*, (i) that in the absence of any suggestion that the misconduct of the officer was approved of by the administration or was part of a deliberate policy of repression, the words were not covered by cl. (d) (ii) that the police-officers on the one hand and Satyagrahis on the other could not be designated "different classes of His Majesty's subjects" and so the words did not fall under cl. (h). [3 Lah. 405 (S.B.), Ref.] 138 I.C. 849=36 C.W.N. 962=1932 Cal. 649.

ARTICLE INCITING MUSLIMS TO GET RID OF NON-MUSLIM GOVERNMENT.—There is a good deal of distinction between a comment upon the measures of Government and asking that steps be taken to have them charged and an exhortation to people to run out the Government which has promulgated these measures. The one is innocent and the other an offence. Where an article published by a Muslim went on to say that the Mussalmans of India were allowing a non-Muslim Government to dominate them and were submitting to the irreligious laws made by that Government, that not taking

security shall, upon proof to the satisfaction of the Magistrate and subject to the provisions hereinbefore contained, be returned to such person.

14. Where any printing-press is, or any copies of any newspaper, book or other document are, declared forfeited to His Majesty
Issue of search warrant. under section 4, section 6, section 8, section 10 or section 12, the Provincial Government may direct a Magistrate to issue a warrant empowering any police-officer, not below the rank of Sub-Inspector, to seize and detain any property ordered to be forfeited and to enter upon and search for such property in any premises—

(i) Where any such property may be or may be reasonably suspected to be, or

(ii) where any copy of such newspaper, book or other document is kept for sale, distribution, publication or public exhibition or is reasonably suspected to be so kept.

Unauthorised news-sheets and newspapers.

15. (1) The Magistrate may, by order in writing and subject to such conditions as he may think fit to impose, authorise
Authorisation of persons to publish news-sheets. any person by name to publish a news-sheet, or to publish news-sheets from time to time.

(2) A copy of an order under sub-section (1) shall be furnished to the person thereby authorised.

(3) The Magistrate may at any time revoke an order made by him under sub-section (1).

Power to seize and destroy unauthorised news-sheets and newspapers. 16. (1) Any police-officer, or any other person empowered in this behalf by the Provincial Government, may seize any unauthorised news-sheet or unauthorised newspaper, wherever found.

(2) Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class may by warrant authorise any police-officer not below the rank of Sub-Inspector to enter upon and search any place where any stock of unauthorised news-sheets or unauthorised newspapers may be or may be reasonably suspected to be, and such police-officer may seize any documents found in such place which, in his opinion, are unauthorised news-sheets or unauthorised newspapers.

(3) All documents seized under sub-section (1) shall be produced as soon as may be before a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, and all documents seized under sub-section (2) shall be produced as soon as may be before the Court of the Magistrate who issued the warrant.

(4) If, in the opinion of such Magistrate or Court, any of such documents are unauthorised news-sheets or unauthorised newspapers, the Magistrate or Court may cause them to be destroyed. If, in the opinion of such Magistrate or Court, any of such documents are not unauthorised news-sheets or unauthorised newspapers, such Magistrate or Court shall dispose of them in the manner provided in sections 523, 524 and 525 of the Code of Criminal Procedure, 1898.

17. (1) Where a Presidency Magistrate, District Magistrate or Sub-

SEC. 16: ORDER OF FORFEITURE MADE EX PARTE—VALIDITY.—An order declaring the press to be forfeited to His Majesty passed in the absence of the person who has the custody and the control of the press is invalid. 60 Cal. 1103=37 C.W.N. 821=1933 Cal. 792.

SEC. 17: SEARCH AND SEIZURE WITHOUT SEARCH WARRANT—ORDER OF FORFEITURE—

VALIDITY.—Where the police-officer has not been armed for the purpose of seizing a press under sec. 17 with a search warrant the search and the seizure of the press are illegal and the Magistrate cannot make an order of forfeiture under sec. 17 (3). 60 C. 1103=37 C.W.N. 821=1933 C. 792. See also notes under sec. 4.

Power to seize and forfeit undeclared presses producing unauthorised news-sheets and newspapers.

divisional Magistrate has reason to believe that an unauthorised news-sheet or unauthorised newspaper is being produced from an undeclared press within the limits of his jurisdiction, he may by warrant

authorise any police-officer not below the rank of Sub-Inspector to enter upon and search any place wherein such undeclared press may be or may be reasonably suspected to be, and if, in the opinion of such police-officer, any press found in such place is an undeclared press and is used to produce an unauthorised news-sheet or unauthorised newspaper, he may seize such press and any documents found in the place which in his opinion are unauthorised news-sheets or unauthorised newspapers.

(2) The police-officer shall make a report of the search to the Court which issued the warrant and shall produce before such Court, as soon as may be, all property seized:

Provided that where any press which has been seized cannot be readily removed, the police-officer may produce before the Court only such parts thereof as he may think fit.

(3) If such Court, after such inquiry as it may deem requisite, is of opinion that a press seized under this section is an undeclared press which is used to produce an unauthorised news-sheet or unauthorised newspaper, it may, by order in writing, declare the press to be forfeited to His Majesty. If, after such inquiry, the Court is not of such opinion, it shall dispose of the press in the manner provided in sections 523, 524 and 525 of the Code of Criminal Procedure, 1898.

(4) The Court shall deal with documents produced before it under this section in the manner provided in sub-section (4) of section 16.

18. (1) Whoever makes, ¹[prints or otherwise produces], sells, distributes, publishes or publicly exhibits or keeps for sale, distribution, or publication, any unauthorised news-sheet or newspaper, shall be punishable with imprisonment which may extend to six months, or with fine,

or with both.

LEG. REF.

¹ Inserted by Ord. LII of 1942.

SEC. 18: FORUM.—There is no restriction in the provisions of the Act as to the Court by which offences under sec. 18 are triable. The maximum punishment under that section is 6 months and therefore any Magistrate may try the offence. 1933 M.W.N. 911.

OFFENCE—WHAT CONSTITUTES.—Where a pamphlet published and distributed by the accused, purporting to deal with the grievances of the poor Kisan labourers as against the rich zamindars, bankers and petty shopkeepers, exhorted the labourers to assemble in very large numbers to advocate reduction of rate of interest and of rents of houses and shops, heavy taxation of the rich, enhancement of wages of all labourers and so on and it appeared that the assembly which was to meet would be so large as could not be controlled by the convener, and the feelings of the assembly would be inflamed by the pamphlet against the rich, and that thereby a breach of the peace was likely. *Held*, the pamphlet tended to create feelings of hatred and enmity between different classes of His Majesty's subjects, namely, between the rich and the poor, which were sufficiently well-defined and that it fell

within the offence contemplated by sec. 18 of the Press Act (XXIII of 1931), read with secs. 15 and 16 (h) of the Criminal Law Amendment Act. 149 I.C. 710=35 Cr.L. J. 1000=1934 A. 717. The printer of a news-sheet cannot be said to make a news-sheet and so is not liable under sec. 18 (1). 1942 Bom. 328=44 Bom.L.R. 799. A handbill or poster announcing that nearly 1000 political prisoners are detained in India without trial can hardly be described as a newspaper or news-sheet, when this information has been in possession of the public for some time. Consequently an unauthorised issue of such a poster is not an offence under sec. 18. I.L.R. (1942) Lah. 553=44 P.L.R. 26=A.I.R. 1942 Lah 203. See also (1945) 1 M.L.J. 314.

SEC. 18 (1): UNAUTHORISED NEWS-SHEET—PAINTING WORDS "BOYCOTT BRITISH GOODS" ON ROAD—OFFENCE.—"A view to cause loss" is, under sec. 3 (b) of Ordinance V of 1932 as amended by Ordinance VII of 1932, the essence of the offence of molestation but the words "Boycott British goods" cannot be supposed to incite the public to entertain the view to cause loss to the dealers in those goods and painting those words on the road does not amount to making an unauthorised news-sheet as defin-

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, any offence punishable under sub-section (1), and any abetment of any such offence, shall be cognizable.

Special provisions relating to the seizure of certain documents.

19. Where any newspaper, book or other document wherever made appears

Power to declare certain publications forfeited and to issue search warrants for same.

to the Provincial Government to contain any words, signs or visible representations of the nature described in section 4, sub-section (1), the Provincial Government may, by notification in the Official Gazette, stating the grounds of its opinion, declare every copy of the issue, of the newspaper, and every copy of such book or other document to be forfeited to His Majesty, and thereupon any police-officer may seize the same wherever found in British India, and any Magistrate may by warrant authorise any police-officer not below the rank of Sub-Inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

20. The Chief Customs-officer or other officer authorised by the Provincial

Power to detain packages containing certain publications when imported into British India.

Government in this behalf may detain any package brought, whether by land, sea or air, into British India which he suspects to contain any newspapers, books or other documents of the nature described in section 4, sub-section (1), and shall forthwith forward copies of any newspapers, books or other documents found therein to such officer as the Provincial Government may appoint in this behalf to be disposed of in such manner as the Provincial Government may direct.

Prohibition of transmission by post of certain documents.

21. No unauthorised news-sheet or unauthorised newspaper shall be transmitted by post.

22. Any officer in charge of a post-office or authorised by the Post-Master

Power to detain articles being transmitted by post.

General in this behalf may detain any article other than a letter or parcel in course of transmission by post, which he suspects to contain—

(a) any newspaper, book or other document containing words, signs or visible representations of the nature described in section 4, sub-section (1), or

(b) any unauthorised news-sheet or unauthorised newspaper.

and shall deliver all such articles to such officer as the Provincial Government may appoint in this behalf to be disposed of in such manner as the Provincial Government may direct.

Powers of High Court.

23. (1) The keeper of a printing-press who has been ordered to deposit

Application to High Court to set aside order of forfeiture.

security under sub-section (3) of section 3, or the publisher of a newspaper who has been ordered to deposit security under sub-section (3) of section 7,

or any person having an interest in any property in respect of which an order of forfeiture has been made under section 4, section

ed in sec. 2 (b), and does not constitute an offence under sec. 18 (1) of the Press Emergency Powers Act. 140 I.C. 767=63 M.L.J. 906. See also the following rulings under the Prevention of Molestation and Boycotting Ordinance V of 1932. 142 I.C. 180=34 Cr.L.J. 303=1933 P. 50; 140 I.C. 773=34 Cr.L.J. 96=1933 M. 147; 34 Cr.L.J. 277=1933 M. 337=64 M.L.J. 351. As to sentence for a conviction under the section, see 1934 A. 1031. Though an offence under sec. 18 is cognizable the power to arrest should be exercised with discre-

tion and ought not to be made without necessity. I.L.R. (1942) Lah. 553=44 P. L.R. 26=1942 Lah. 203.

Sec. 23: See 1941 N.L.J. 44 cited under sec. 30, *infra*.

ONUS.—The onus of proof in the proceedings under sec. 23 is on the petitioners. 33 Cr.L.J. 839=37 C.W.N. 104=1932 C. 745 (S.B.).

SCOPE OF INQUIRY.—Under the Act what the High Court, and indeed the Provincial Government, is primarily concerned with is whether the words complained of have or

6, section 8, section 10 or section 19 may, within two months from the date of such order, apply to the High Court for the local area in which such order was made, to set aside such order, and the High Court shall decide if the newspaper, book or other document in respect of which the order was made did or did not contain any words, signs or visible representations of the nature described in section 4, sub-section (1).

(2) The keeper of a printing-press in respect of which an order of forfeiture has been made under sub-section (2) of section 12 on the ground that it has been used in contravention of sub-section (1) of that section may apply to such High Court to set aside the order on the ground that the press was not so used.

24. Every such application shall be heard and determined by a special

Hearing by Special Bench. Bench of the High Court composed of three Judges, or, where the High Court consists of less than three

Judges, of all the Judges.

have not the prohibited tendency and are of the prohibited nature. The Act does not require that it shall be proved that this is so. The words "whenever it appears to the Provincial Government" in secs. 3 (3), 4 (1) and 7 (3) of the Act, have or are intended to have the same use and purpose. The essential condition of action under the Act is that the words complained of must have the prohibited tendency and be of the prohibited nature. It is the printing or publishing of the prohibited words which is the offence and the words must speak for themselves. In interpreting the meaning or the tendency of the words, the Judges should use their knowledge and experience of the habits and customs and thoughts of those upon whose acts they are called to sit in judgment. Indeed Sec. 114, Evidence Act, permits a Judge to use his knowledge of human conduct and affairs having regard to time, place and circumstances in which the words were used. The general context in which the words are used can also be looked into. I.L.R. (1942) Kar. 127=A.I.R. 1942 Sind 65 (S.B.). In dealing with notices issued by Government under secs. 3 (3) and 7 (3) in respect of an offence alleged to fall within sec. 4 (1) (e), the High Court is not much concerned with the promptness or lack of promptness with which Government took action. It is principally concerned with the nature of the words used in the newspaper. Nor is the question of the expediency of the action of Government a matter for the Court to consider. I.L.R. (1942) Kar. 127=A.I.R. 1942 Sind 65 (S.B.).

SECS. 23 AND 7.—High Court has jurisdiction to stay execution of order sec. 7 pending its decision on application under sec. 23. A.I.R. 1944 Pesh. 36 (1).

SECS. 23 (1) AND 27—RULES UNDER—SCOPE.—Per Davis, C.J.—The rules framed under sec. 27 by the Chief Court relating or pertaining to orders of forfeiture are not exhaustive and apply *mutatis mutandis* to orders for deposit of security falling within the first part of sec. 23 (1). I.L.R. (1942) Kar. 127=A.I.R. 1942 Sind 65 (S.B.).

LIMITATION.—Applications under sec. 23

being in the nature of the civil proceedings are treated as civil miscellaneous applications. Therefore when the period of two months for applying under sec. 23 to set aside an order made under sec. 7 expires on a day when the High Court is closed so far as civil work is concerned, such application if made on the day when the High Court reopens will be deemed to have been presented in time. 180 I.C. 252=A.I.R. 1939 Pesh. 6. The word "order" in sec. 23 contemplates the notified order. It must be read as being the notified order because there can be no forfeiture until the declaration referred to in sec. 19 has been notified. The period of limitation for an application under sec. 23 for setting aside the declaration of forfeiture made under sec. 19 therefore begins to run from the date of the notification of the order in the Official Gazette and not from the date on which the order is passed. I.L.R. (1942) Mad. 9=55 L.W. 844 (2)=A.I.R. 1942 Mad. 690=(1942) 2 M.L.J. 509 (S.B.).

ORDER OF LOCAL GOVERNMENT FORFEITING SECURITY UNDER SEC. 4 (1) (i)—APPLICATION TO SET ASIDE—CONSIDERATIONS.—In an application to the High Court under sec. 23 of the Indian Press (Emergency Powers) Act by the keeper of a press to set aside an order of the Local Government forfeiting his security on the ground that a letter set out in the issue of a newspaper printed at that press contained words which "tend directly or indirectly to promote feelings of enmity or hatred between different classes of His Majesty's subjects" within sec. 4 (1) (h) of the Act, the motive or intention of the applicant would appear to be *nilhil ad rem* except in cases which fall within Explanation 4 of sec. 4 of the Act. What has to be considered is the effect likely to be produced upon persons who may be expected to read the passages in question, and for that purpose not only ought the article to be read as a whole, but under sec. 26 of the Act it is permissible for the Court to have regard to what is contained in other issues of the same publication with a view to ascertaining what would be the probable effect of the offending passages

25. (1) If it appears to the Special Bench on an application under sub-section (1) of section 23 that the words, signs or

Order of Special Bench
setting aside forfeiture.

visible representations contained in the newspaper,
book or other document in respect of which the order

in question was made were not of the nature described in section 4, sub-section (1), the Special Bench shall set aside the order.

(2) If it appears to the Special Bench on an application under sub-section (2) of section 23 that the printing-press was not used in contravention of sub-section (1) of section 12, it shall set aside the order of forfeiture.

(3) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority (if any) of those Judges.

(4) Where there is no such majority which concurs in setting aside the order in question, the order shall stand.

26. On the hearing of an application under sub-section (1) of section 23 with reference to any newspaper, any copy of such

Evidence to prove nature
or tendency of newspapers.

newspaper published after the commencement of
this Act may be given in evidence in aid of the proof

of the nature or tendency of the words, signs or visible representations contained in such newspaper, in respect of which the order was made.

upon those persons who normally would see the articles that are published in the newspaper. The fact that the offending passages occur in a letter set out in the newspaper would make no difference. 13 Rang. 98=36 Cr.L.J. 871=1935 Rang. 120 (S.B.). For a subject nation to pray to Sri Krishna on a "Janmashtami" day for attainment of political freedom is not a thing which can be legitimately condemned. But for an innocent sentiment of such character expressions such as "uplifted hand of oppression," "oppressed and humiliated India," "India persecuted and under subjection" and "Piteous wail of a suffering people" will have no place and would be wholly inapposite. These expressions assume the presence of an agency which has oppressed and humiliated her, has uplifted its hand for oppressing her further, and has been persecuting her by keeping her under subjection and being heedless of the piteous wails of her suffering people. The only agency for which it is possible to behave in that way is the Government established by law, and the expressions, having been used with reference to it, obviously tend to bring it into hatred or contempt and are calculated to excite disaffection towards it. A.I.R. 1933 Cal. 278=34 Cr.L.J. 316 (S.B.).

HIGH COURT'S POWER—EXTENT OF.—The High Court is given jurisdiction only to decide whether or not the matter published was of the nature described in sec. 4, sub-sec. (1). 29 N.L.R. 244=143 I.C. 119=A.I.R. 1933 Nag. 148 (F.B.). The jurisdiction of the High Court under sec. 23, Press (Emergency Powers) Act, is of an extremely limited character and the Courts are not concerned with the question of the intention of the writer of the objectionable passages; all that they are concerned with is to find out whether the words used tended directly or indirectly to bring into hatred or contempt the Government or to excite

disaffection towards the Government. If they do, then the petitioners are hit by Emergency Powers Ordinance; if they do not it is competent to the High Court to set aside the orders of the Local Government. 33 Cr.L.J. 839=37 C.W.N. 104=A.I.R. 1932 Cal. 745 (S.B.). See also 1941 N.L.J. 44.

SEC. 25: SCOPE—IF EXHAUSTIVE.—Sec. 25 is not exhaustive. Where the security demanded by the Government under sec. 3 (3) or sec. 7 (3) is in excess of what is permitted by law, the High Court can interfere under sec. 25. But sec. 25 does not empower the High Court to reduce the security when the same is within the statutory limits. The fact that the maximum security of Rs. 3,000 has been demanded from the same person in his capacity as printer and publisher, is a matter for Government and not for the High Court. I.L.R. (1942) Kar. 127=A.I.R. 1942 Sind 65 (S.B.).

SEC. 26: CONSTRUCTION AND SCOPE.—Sec. 26 is merely an enabling section and is not exhaustive. It merely permits the words to be considered in their general context. I.L.R. (1942) Kar. 127=A.I.R. 1942 Sind 65 (S.B.).

SECS. 26 AND 27: PROCEDURE—EVIDENCE.—The method whereby a fact is or is not proved is a matter of procedural law. Sec. 27 itself indicates the manner in which, apart from sec. 26, the tendency of the words complained of may be proved. It does not contemplate the examination or cross-examination of witnesses. The procedure contemplated is the procedure of revision applications or references to the High Court. But even in revision applications the Court may look at statements of fact testified to in affidavits. I.L.R. (1942) Kar. 127=A.I.R. 1942 Sind 65 (S.B.). Per *Weston and Tyabji, JJ.*—Sec. 26 is nothing more than an enabling section permitting the words to be considered in their

27. Every High Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications, the amount of the costs thereof and execution of orders passed thereon, and until such rules are framed the practice of such Court in proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications.

Supplemental.

28. Every notice under this Act shall be sent to a Magistrate, who shall cause it to be served in the manner provided for the service of summonses under the Code of Criminal Procedure, 1898:

Provided that if service in such manner cannot by the exercise of the due diligence be effected, the serving officer shall, where the notice is directed to the keeper of a press, affix a copy thereof to some conspicuous part of the place where the press is situate, as described in the keeper's declaration under section 4 of the Press and Registration of Books Act, 1867, and where the notice is directed to the publisher of a newspaper, to some conspicuous part of the premises where the publication of such newspaper is conducted, as given in the publisher's declaration under section 5 of the said Act; and thereupon the notice shall be deemed to have been duly served.

29. Every warrant issued under this Act shall, so far as it relates to a search, be executed in the manner provided for the execution of search warrants under the Code of Criminal Procedure, 1898.

30. Every declaration of forfeiture purporting to be made under this Act shall, as against all persons, be conclusive evidence that the forfeiture therein referred to has taken place, and no proceeding purporting to be taken under this Act shall be called in question by any Court, except the High Court on application under section 23, and no civil or criminal proceeding, except as provided by this Act, shall be instituted against any person for anything done or in good faith intended to be done under this Act.

general context. It does not mean that the Court may consider no other evidence whatever. There is nothing in sec. 26 or in any other section of the Act to suggest that, when forming its opinion under sec. 3 or under sec. 7, the Local Government is subject to any limitations as to the evidence it may consider. When hearing an application made under sec. 23 (1), it is open to the High Court to consider evidence other than the words themselves or their context immediate or general, such as letters from aggrieved persons revealing the prohibited purpose of the articles published in a newspaper within sec. 4 (1) (e) relied on by the Provincial Government in support of the issue of notices by it under secs. 3 (3) and 7 (3) of the Act, 1942 Sind 65. Per *Davis, C.J.*—There is nothing in the Act which precludes the Provincial Government from satisfying itself before taking action either under sec. 3 or sec. 7 of the Act, that the words complained of have in fact succeeded in their purpose, and that they have not merely the tendency to cause the harm which the Act seeks to avoid but they have caused that harm. This, however, is more a matter for the prudence and good conscience of Government than of law. The answer to the question whether the Provincial Govern-

ment can lawfully support the notices issued by it under secs. 3 (3) and 7 (3) of the Act by the evidence of the aggrieved persons must be found in the Statute itself and not in the rules framed under sec. 27. I. L.R. (1942) Kar. 127=A.I.R. 1942 Sind 65 (S.B.).

SEC. 27.—Rules framed under sec. 27 by the Chief Court of Sind are not exhaustive, 1942 Sind 65 (S.B.). Rules framed by Sind Chief Court under sec. 27 do not necessarily relate to notices issued by the Provincial Government. They relate to applications made under sec. 23 by the printers and publishers. I.L.R. (1942) Kar. 127=1942 Sind 65.

SEC. 27 AND R. 5: APPLICATION TO SET ASIDE FORFEITURE ORDER—AFFIDAVIT TO SUPPORT.—Under R. 5 the applicant is entitled to support by statement of facts in affidavits the grounds on which he relies for the order of forfeiture to be set aside. A.I.R. 1942 Sind 65 (S.B.).

SECS. 30 AND 23: SCOPE AND EXTENT OF JURISDICTION OF HIGH COURT.—The Press (Emergency Powers) Act, 1931, deals with the exact scope of the powers of superintendence which the High Court is to have in respect of these matters and consequently

(b) binds, keeps, carries or consigns for carriage any animal in such manner or position as to subject it to unnecessary pain or suffering, or

(c) offers for sale or without reasonable cause has in his possession any live animal which is suffering pain by reason of mutilation, starvation, thirst, over-crowding or other ill-treatment, or

(d) offers for sale any dead animal or part of a dead animal which he has reason to believe has been killed in an unnecessarily cruel manner, or

(e) without reasonable cause abandons any animal in circumstances which render it likely that it will suffer pain by reason of starvation or thirst,

he shall be punished, in the case of a first offence, with fine which may extend to fifty rupees, or with imprisonment for a term which may extend to one month and, in the case of a second or subsequent offence committed within three years of the previous offence, with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

3-A. (1) If any person overloads any animal, he shall be punished with fine which may extend to fifty rupees, or with imprisonment for a term which may extend to one month.

(2) If the owner of any animal, or any person who, either as a trader, carrier or contractor or by virtue of his employment by a trader, carrier or contractor, is in possession of, or in control of the loading of, any animal, permits the overloading of such animal, he shall be punished with fine which may extend to one hundred rupees.

4. (1) If any person performs upon any cow or other milch animal the operation called *phooka* or *doom dev*, or permits such operation to be performed upon any such animal in his possession or under his control, he shall be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to two years, or with both, and the animal on which the operation was performed shall be forfeited to Government:

Provided that in the case of a second or subsequent conviction of a person under this section he shall be punished with fine which may extend to five hundred rupees and with imprisonment for a term which may extend to two years.

(2) A Court may order payment out of any fine imposed under this section of an amount not exceeding one-tenth of the fine to any person other than a police officer or officer of a society or institution concerned with the prevention of cruelty to animals who has given information leading to the conviction.]

preliminaries required under secs. 1 and 2 of the Act are not shown to have been made or done. These requirements are not necessary for determination of the case on the merits. The fact that the Local Government have not determined the maximum weight to be carried by animals, and that the District Magistrate's orders have not been published in the Local Gazette cannot render the prosecution incompetent. 48 L. W. 382=1938 M.W.N. 912=(1938) 2 M. L.J. 659.

SCOPE OF SECTION.—26 B. 609=4 Bom.L. R. 290 at p. 293. A *torture of cows* for getting "pire" dye in a place when the animal's sufferings could be witnessed by persons from the streets falls within this section. 14 Cr.L.J. 132=18 I.C. 884=17 C.W.N. 332.

SEC. 3 (b).—*Cf.* the Cruelty to Animals Act (1849) 12 and 13 Vic., c. 92, sec. 12.

See 41 Bom. 654=19 Bom.L.R. 524.

SEC. 3, CL. (c).—*See* 24 C. 881=1 C.W. N. 640; 26 Bom. 609. There are two branches to sec. 6 of the *Bengal Cruelty to Animals Act*. The first makes punishable the offence of performing the operation of *phooka* on a milch animal and the second lays a penalty upon the owner of an animal upon which the operation is performed. If an accused person who was charged only under the first branch is convicted under the second branch it is necessary in the interest of justice that he should be retried for the offence of which he has been convicted. 71 C.L.J. 179=44 C.W.N. 398=A.I.R. 1940 Cal. 328.

SECS. 3 AND 6: APPLICABILITY.—Working a lean pony and using bridles with leather disc studded with nails deserves conviction under sec. 3 in preference to sec. 6. 3 Bur.L.J. 155=1924 Rang. 373.

Penalty for killing animals with unnecessary cruelty anywhere.

5. If any person kills any animal in an unnecessarily cruel manner, he shall be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to six months, or with both.

Penalty for being in possession of the skin of a goat killed with unnecessary cruelty.

¹[5-A. If any person has in his possession the skin of a goat, and has reason to believe that the goat has been killed in an unnecessarily cruel manner, he shall be punished with fine which may extend to one hundred rupees or with imprisonment which may extend to three months, or with both, and the skin shall be confiscated.]

Presumptions as to possession of the skin of a goat.

¹[5-B. If any person is charged with the offence of killing a goat contrary to the provisions of section 5, or with an offence punishable under section 5-A, and it is proved that such person had in his possession at the time the offence was alleged to have been committed, the skin of a goat with any part of the skin of the head attached thereto, it shall be presumed, until the contrary be proved, that such goat was killed in an unnecessarily cruel manner, and that the person in possession of such skin had reason so to believe.]

6. If any person employs in any work or labour any animal which by reason of any disease, infirmity, wound, sore or other cause is unfit to be so employed, or permits any such unfit animal in his possession or under his control to be so employed, he shall be punished with fine which may extend to one hundred rupees.

²[* * *].

³[6-A. For the purposes of sections 3-A and 6, an owner or other person in possession or control of, an animal shall be deemed to have permitted an offence if he has failed to exercise reasonable care and supervision with a view to the prevention of such

LEG. REF.

¹ Inserted by Act XIV of 1917, sec. 2. SEC. 6.—For *Notifications* appointing infirmaries in—

(i) Burma—See *Burma Rules Manual*, Ed. 1903, Vol. I, p. 69.

(ii) The United Provinces of Agra and Oudh—See *U. P. Rules and Orders*, Ed. 1904, Part I, Vol. I, pp. 177-178.

(iii) Punjab—See *Punjab list of local Rules and Orders*.

(iv) Bengal—See *Bengal Statutory Rules and Orders*, Vol. II.

(v) Bombay—See *Bombay Rules and Orders*, Vol. II.

(vi) Central Provinces—See *C. P. Local Rules and Orders*.

² Sub-secs. (2) to (6) of sec. 6 omitted by Act XXV of 1938.

³ Secs. 6-A 6-B and 6-C inserted by Act XXV of 1938.

SECS. 5.—See 31 P.L.R. 1905=2 Cr.L.J. 187 (conviction after summary trial).

SEC. 6.—The word "permit" in sec. 6 (1) implies knowledge of that which is permitted. 20 A. 186=1898 A.W.N. 20. Where a man takes all precautions to prevent the doing of an act and in spite of his precautions such act is done it cannot be

said that he has permitted the doing of that act. 9 A.L.J. 262=14 I.C. 658; 13 Cr. L.J. 274. The word 'permits' does not involve any conscious act on the part of the person who is held to be liable under the section which aims not only at the liability of a person actually in charge of the animal but also aims at the person who owns it. 10 P. 847=13 Pat.L.T. 44=1932 P. 65. There is nothing in sec. 6 (1) restricting the prosecution of either "the coachman or the owner". The prosecution of both or one after another is not illegal. A conviction of one does not operate as a bar to the trial of the other. 15 Cr.L.J. 695=26 I.C. 143. See also 31 P.L.R. 1905=2 Cr.L.J. 187. Besides the punishment of the offender, the Prevention of Cruelty to Animals Act, contemplates two courses as affecting the animal. If it is incurable, it can be directed to be destroyed, otherwise it may be sent to an infirmary or to a *pinjrapole*. But where a Magistrate directs a bullock to be sent to the Gorakshan Sabha, it tantamounts to a confiscation of the animal which is not contemplated by the Act. 1939 N.L.J. 356. SENTENCE.—Offences under sec. 6 are punishable with fine only. 3 Bur.L.J. 155=1924 R. 373.

offence, and, for the purposes of section 4, if he fails to prove that he has exercised such care and supervision.

6-B. (1) The Provincial Government may, by general or special order, appoint infirmaries for the treatment and care of animals in respect of which offences against this Act have been committed, and may authorise the detention therein of any animal pending its production before a Magistrate.

(2) The Magistrate before whom a prosecution for an offence against this Act has been instituted may direct that the animal concerned shall be treated and cared for in an infirmary, until it is fit to perform its usual work or is otherwise fit for discharge, or that it shall be sent to a *pinjrapole*, or, if the Veterinary Officer in charge of the area in which the animal is found or such other Veterinary Officer as may be authorised in this behalf by rules made under section 15 certifies that it is incurable or cannot be removed without cruelty, that it shall be destroyed.

(3) An animal sent for care and treatment to an infirmary shall not, unless the Magistrate directs that it shall be sent to a *pinjrapole*, or that it shall be destroyed, be released from such place except upon a certificate of its fitness for discharge issued by the Veterinary Officer in charge of the area in which the infirmary is situated or such other Veterinary Officer as may be authorised in this behalf by rules made under section 15.

(4) The cost of transporting an animal to an infirmary or *pinjrapole*, and of its maintenance and treatment in an infirmary, shall be payable by the owner of the animal in accordance with a scale of rates to be prescribed by the District Magistrate or, in Presidency-towns, by the Commissioner of Police:

Provided that when the Magistrate so orders, on account of the poverty of the owner of the animal, no charge shall be payable for the treatment of the animal.

(5) If the owner refuses or neglects to pay such cost or to remove the animal within such time as a Magistrate may prescribe, the Magistrate may direct that the animal be sold and that the proceeds of the sale be applied to the payment of such cost.

(6) The surplus, if any, of the proceeds of such sale shall, on application made by the owner within two months from the date of the sale, be paid to him.

Penalty for baiting or inciting animals to fight.

6-C. If any person—

(a) incites any animal to fight, or

(b) baits any animal, or

(c) aids or abets any such incitement or baiting,

he shall be punished with fine which may extend to fifty rupees.

Exception.—It shall not be an offence under this section to incite animals to fight if such fighting is not likely to cause injury or suffering to such animals and all reasonable precautions are taken to prevent injury or suffering from being so caused.]

7. If any person wilfully permits any animal of which he is the owner ¹[or is in charge] to go at large in any street while the animal is affected with contagious or infectious disease, or without reasonable excuse permits any diseased or disabled animal of which he is the owner ¹[or is in charge] to die in any street, he shall be punished with fine which may extend to one hundred rupees, [where he is the owner of the animal, or to fifty rupees where he is in charge of, but not the owner of, the animal].¹

Penalty for permitting diseased animals to go at large or to die in public places.

¹[7-A. (1) If a police-officer, not below the rank of sub-inspector, has reason to believe that an offence under S. 5, in respect of a goat, is being or is about to be, or has been, committed in any place, or that any person has in his possession the skin of a goat with any part of skin of the head attached thereto, he may enter and search such place or any place in which he has reason to believe any such skin to be, and may seize any such skin and any article or thing used or intended to be used in the commission of such offence.

²[(2) If a police officer, not below the rank of sub-inspector, or any person specially authorised by the Provincial Government in this behalf has reason to believe, that *phooka* or *doom dev* has just been or is being performed on any animal within the limits of his jurisdiction, he may enter any place in which he has reason to believe such animal to be, and may seize the animal and produce it for examination by the Veterinary Officer in charge of the area in which the animal is seized.]

8. (1) If a Magistrate of the first ³[or second class, Presidency Magistrate,] Sub-divisional Magistrate, Commissioner of Police or District Superintendent of Police upon information in writing and after such inquiry as he thinks necessary, has reason to believe that an offence ⁴[against this Act] is being or is about to be or has been committed in any place, he may either himself enter and search or by his warrant authorise any police-officer ⁴[not below the rank of Sub-Inspector] to enter and search the place.

(2) The provisions of the Code of Criminal Procedure, 1882, relating to searches under that Code shall, so far as those provisions can be made applicable, apply to search under sub-section (1) [or under S. 7-A.]⁵.

9. A prosecution for an offence against this Act shall not be instituted after the expiration of three months from the date of the commission of the offence.

10. (1) When any Magistrate, Commissioner of Police or District Superintendent of Police has reason to believe that an offence against this Act has been committed in respect of any animal, he may direct the immediate destruction of the animal, if in his opinion, its sufferings are such as to render such a direction proper.

⁶[(2) Any police officer above the rank of a constable who finds any animal so deceased, or so severely injured, or in such a physical condition that it cannot, in his opinion, be removed without cruelty may, if the owner is absent or refuses to consent to the destruction of the animal, forthwith summon the Veterinary Officer in charge of the area in which the animal is found and, if the Veterinary Officer certifies that the animal is mortally injured, or so severely injured or in such a physical condition that its destruction is desirable, the police officer may, after obtaining orders from a Magistrate, destroy the animal or cause it to be destroyed.]

11. Nothing in this Act shall render it an offence to kill any animal in a manner required by the religion or religious rites and usages of any race, sect, tribe or class.

LEG. REF.

¹ Sec. 7-A inserted by Act XIV of 1917, sec. 3.

² Sec. 7-A, cl. (2) added by Act XXV of 1938.

³ Inserted by Act XXV of 1938.

⁴ Substituted by Act XXV of 1938.

⁵ Added by Act XIV of 1917, sec. 4.

⁶ Sec. 10 (2) inserted by Act XXV of 1938.

12. Notwithstanding anything in section 1, sections ¹[4 and 13, sections 9 and 10 and sections 6-A, 7-A, 8 and 15 so far as they relate to offences under section 4] shall extend to every local area in which any section of this Act constituting an offence is for the time being in force.

Provision supplementary to section 1, with respect to extent of Act.

Offence under section 4 to be cognizable.

²[13. Notwithstanding, anything contained in the Code of Criminal Procedure, 1898, an offence punishable under section 4 shall be a cognizable offence within the meaning of that Code.

14. Any police-officer above the rank of a constable or any person authorised by the Provincial Government in this behalf who has reason to believe that an offence against this Act has been or is being committed in respect of any animal, may, if in his opinion the circumstances so require, seize the animal and produce the same for examination by the nearest Magistrate or by such Veterinary Officer as may be designated in this behalf by rules made under section 15; and such police officer or authorised person may, when seizing the animal, require the person in charge thereof to accompany it to the place of examination.

General power of seizure for examination.

15. (1) The Provincial Government may, by notification in the official Gazette, and subject to the condition of previous publication, make rules to carry out the purposes of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, the Provincial Government may make rules—

(a) prescribing the maximum weight of loads to be carried or drawn by any animal;

(b) prescribing conditions to prevent the overcrowding of animals;

(c) prescribing the period during which, and the hours between which, buffaloes shall not be used for draught purposes;

(d) prescribing the purposes to which fines realized under this Act may be applied, including such purposes as the maintenance of infirmaries, *pinjrapoles*, and veterinary hospitals;

(e) prohibiting the use of any bit or harness involving cruelty;

(f) requiring persons carrying on the business of a farrier to be licensed and registered;

(g) requiring persons owning, or in charge of, premises in which animals are kept or milked to register such premises, to comply with prescribed conditions as to the boundary walls or surroundings of such premises, to permit their inspection for the purpose of ascertaining whether any offence against section 4 is being, or has been, committed therein, and to expose in such premises copies of section 4 of this Act in a language or languages commonly understood in the locality; and

(h) prescribing the manner in which cattle may be impounded in any

LEG. REF.

¹ Substituted by Act XXV of 1938.

² Secs. 13 to 17 added by *ibid.* See also Local Amendment by Mad. Act XX of 1942.

4. (1) Section 13 of the Prevention of Cruelty to Animals Act, 1890 shall be renumbered as sub-sec. (1) of that section and in the sub-section as so renumbered, for the words and figure "under section 4", the words "under this Act" shall be substituted.

Madras amendment of sec. 13, Act XI of 1890.

(2) After the sub-section as so renumbered, the following sub-section shall be added, namely:—

"(2) Any agent of the Society for the Prevention of Cruelty to Animals who is specially empowered by the Provincial Government in that behalf may arrest without a warrant any person committing in his view any offence punishable under this Act; and the provisions of the Code of Criminal Procedure, 1898, shall apply to an arrest made by such agent as if it had been effected by a Police officer." (Madras Act XX of 1942).

place appointed for the purpose, so as to secure the provision of adequate space, food and water.

(3) If any person contravenes, or abets the contravention of, any rule made under this section, he shall be punished with fine which may extend to fifty rupees.

Persons authorised under section 14 to be public servants. 16. Every person authorised by the Provincial Government under section 14 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

17. No suit, prosecution or other legal proceeding shall lie against any person who is, or who is deemed to be, a public servant within the meaning of section 21, of the Indian Penal Code, in respect of anything in good faith done or intended to be done under this Act.]

THE PREVENTION OF SEDITIOUS MEETINGS ACT (X OF 1911).

Year.	No.	Short title.	Amendment.
1911	X	The Prevention of Seditious Meetings Act, 1911.	Rep. in part XII of 1927.

[22nd March, 1911.

An Act to consolidate and amend the law relating to the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquillity.

WHEREAS it is expedient to consolidate and amend the law relating to the prevention of the public meetings likely to promote sedition or to cause a disturbance of public tranquillity; It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called THE PREVENTION OF SEDITIOUS MEETINGS ACT, 1911.

(2) It extends to the whole of British India, but shall have operation only in such Provinces¹ or parts of Provinces as the ²[Provincial Government] may from time to time notify in the Official Gazette.

Power of Provincial Government to notify proclaimed areas.

2. (1) The Provincial Government may, ³[* * *] by notification in the Official Gazette, declare the whole or any part of a Province, in which this Act is for the time being in operation, to be a proclaimed area.

(2) A notification made under sub-section (1) shall not remain in force for more than six months, but nothing in this sub-section shall be deemed to prevent the Provincial Government ³[* * *] from making any further notifications in respect of the same area from time to time as it may think fit.

Definition.

3. (1) In this Act, the expression “public meeting” means a meeting which is open to the public or any class or portion of the public.

LEG. REF.

¹ Not yet brought into force in Madras Presidency.

² Substituted for ‘Governor-General in Council’ by A.O., 1937.

³ Words ‘with the previous sanction of the Governor-General in Council’ omitted by A.O., 1937.

162; 19 C. 35 at pp. 44-45. Mere use of strong language is not a crime; but if the publication is of a character to excite contempt for the Government or the laws, to bring them into disrepute or to excite disaffection, or disturb public peace, then the publication is punishable. 22 B. at p. 162. As to what is public peace, see 17 All. 166. Sec. 6.—The word “promotion” implies

(2) A meeting may be a public meeting notwithstanding that it is held in a private place and notwithstanding that admission thereto may have been restricted by ticket or otherwise.

4. (1) No public meeting for the furtherance or discussion of any subject likely to cause disturbance or public excitement, or Notice to be given of public meetings. for the exhibition or distribution of any writing or printed matter relating to any such subject shall be held in any proclaimed area—

(a) unless written notice of the intention to hold such meeting and of the time and place of such meeting has been given to the District Magistrate or the Commissioner of Police, as the case may be, at least three days previously; or

(b) unless permission to hold such meeting has been obtained in writing from the District Magistrate or the Commissioner of Police, as the case may be.

(2) The District Magistrate or any Magistrate of the first class authorized by the District Magistrate in this behalf may, Power of Magistrate to cause report to be taken. by order in writing, depute one or more Police-officers, not being below the rank of head constable, or other persons, to attend any such meeting for the purpose of causing a report to be taken of the proceedings.

(3) Nothing in this section shall apply to any public meeting held under Exception. any statutory or other express legal authority, or to public meetings convened by a sheriff, or to any public meetings or class of public meetings exempted for that purpose by the Provincial Government by general or special order.

5. The District Magistrate or the Commissioner of Police, as the case may be, may at any time, by order in writing, of Power to prohibit public meetings. which public notice shall forthwith be given, prohibit any public meeting in a proclaimed area, if, in his opinion, such meeting is likely to promote sedition or disaffection or to cause a disturbance of the public tranquillity.

6. (1) Any person concerned in the promotion or conduct of a public meeting held in a proclaimed area contrary to the provisions of section 4 shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both. Penalties.

(2) Any public meeting which has been prohibited under section 5 shall be deemed to be an unlawful assembly within the meaning of Chapter VIII of the Indian Penal Code and Chapter IX of the Code of Criminal Procedure, 1898.

7. Whoever, in a proclaimed area, in a public place or a place of public resort, otherwise than at a public meeting held in accordance with, or exempted from, the provisions of section 4, without the permission in writing of the Magistrate of the District or of the Commissioner of Police, as the case may be, previously obtained, delivers any lecture, address or speech on any subject likely to cause disturbance or public excitement to persons then present, may be arrested without warrant, and shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both. Penalty for delivery of speeches in public places.

8. No Court inferior to that of a Presidency Magistrate or of a Magistrate of the first class or Sub-divisional Magistrate shall try Cognizance of offences. any offence against this Act.

Repeals.

9. [Repealed by Act XII of 1927.]

some action anterior to the existence or occurrence of the thing promoted and, therefore, when the thing is actually taking place it cannot be said to have been promoted.

There is a distinction between promotion and conduct of a public meeting. 25 Cr.L. J. 225=76 I.C. 689=1923 Lah. 342.

THE PRISONERS ACT (III OF 1900).

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[2nd February, 1900.]

Year.	No.	Short Title.	Amendments.
1900	III	The Prisoners' Act, 1900.	Repealed in part, Act VI of 1900 ; X of 1914 ; 1 of 1903; Amended, IV of 1908, XXXVIII of 1920, XVII of 1923 and Ordinance XV of 1942.

An Act to consolidate the law relating to Prisoners confined by order of a Court.

Preamble. WHEREAS it is expedient to consolidate the law relating to prisoners confined by order of a Court: It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title and extent.

1. (1) This Act may be called THE PRISONERS ACT, 1900.

(2) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas and the Pargana of Spiti: [*]¹

(3) [* * * * *]¹

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "Court" includes a Coroner and any officer lawfully exercising civil, criminal or revenue jurisdiction; and

(b) "prison" includes any place which has been declared by the Provincial Government, by general or special order, to be a subsidiary jail.

PART II.

GENERAL.

3. The officer in charge of a prison shall receive and detain all persons duly committed to his custody, under this Act or otherwise, by any Court, according to the exigency of any writ, warrant or order by which such person has been committed, or until such person is discharged or removed in due course of law.

Officers in charge of prisons to detain persons duly committed to their custody.

4. The officer in charge of a prison shall forthwith, after the execution of every such writ, order or warrant as aforesaid other than a warrant of commitment for trial, or after the discharge of the person committed thereby, return such writ, order, or warrant to the Court by which the same was issued or made, together with a

Officers in charge of prisons to return writs, etc., after execution or discharge.

LEG. REF.

¹ Rep. by Act X of 1914.

SEC. 1: PUNJAB JAIL RULES—UNDER-TRIAL PRISONER—DETENTION—INTERFERENCE BY COURT WHEN JUSTIFIED.—When a person is detained in prison he is of course subject to the provisions of the Prisons Act and the rules thereunder and if it is found that the action taken by the jail authorities is in conformity with the law the Court will have no power to interfere. But if it is found that the action is not warranted by the Prisons Act or the rules thereunder the Court has the power to issue directions re-

garding the detention. The Court however will be slow to interfere in matters of jail administration and will do so when the action of the jail authorities is found to be clearly illegal or unjustifiable and interference is necessary in the interests of justice. (50 Bom. 741, Ref.) 32 P.L.R. 586=32 Cr.L.J. 988=133 I.C. 59=1931 Lah. 562. See also 4 Lah. 443; 1924 Lah. 257.

SEC. 2.—A lock-up is not a prison. L.B.R. (1872-1892) 596; 2 A. 301. See also 1931 Lah. 353.

SEC. 3.—See 4 N.W.P. 4.

certificate, endorsed thereon and signed by him, showing how the same has been executed, or why the person committed thereby has been discharged from custody before the execution thereof.

PART III.

PRISONERS IN THE PRESIDENCY-TOWNS.

5. Every writ or warrant for the arrest of any person issued by the High Court in the exercise of its ordinary, extraordinary or other criminal jurisdiction shall be directed to and executed by a police-officer within the local limits of such jurisdiction.

Warrants, etc., to be directed to police-officers.

6. The Provincial Government may appoint officers who shall have authority to receive and detain prisoners committed to their custody under this part.

Power for Provincial Governments to appoint Superintendents of Presidency prisons.

Explanation.—Any officer so appointed, by whatever designation he may be styled, is hereinafter referred to as “the Superintendent”.

7. Where any person is sentenced by the High Court in the exercise of its original criminal jurisdiction to transportation or to death, the Court shall cause him to be delivered to the Superintendent, together with its warrant, and such warrant shall be executed by the Superintendent, and returned by him to the High Court when executed.

Delivery of persons sentenced to imprisonment or death by High Court.

8. Where any person is sentenced by the High Court in the exercise of its original criminal jurisdiction to imprisonment or penal servitude, the Court shall cause him to be delivered for intermediate custody to the Superintendent, and the transportation or penal servitude of such person shall be deemed to commence from such delivery.

Delivery of persons sentenced to transportation or penal servitude by High Court.

9. Where any person is committed by the High Court, whether in execution of a Decree or for contempt of Court, or for any other cause, the Court shall cause him to be delivered to the Superintendent, together with its warrant of commitment.

Delivery of persons committed by High Court in execution of a decree or for contempt.

10. Where any person is sentenced by a Presidency Magistrate to imprisonment, or is committed to prison for failure to find security to keep the peace, or to be of good behaviour, the Magistrate shall cause him to be delivered to the Superintendent, together with his warrant.

Delivery of persons sentenced by Presidency Magistrates.

11. Every person committed by a Magistrate or Justice of the peace, for trial by the High Court in the exercise of its original criminal jurisdiction shall be delivered to the Superintendent, together with a warrant of commitment, directing the Superintendent to produce such person before the Court for trial; and the Superintendent shall, as soon as practicable, cause such person to be taken before the Court at a Criminal Session thereof, together with the warrant of commitment, in order that he may be dealt with according to law.

Delivery of persons committed for trial by High Court.

Sec. 5.—See 27 Cal. 457=4 C.W.N. 822; 29 Cal. 286.

Sec. 6.—See 6 C.W.N. 254.

Sec. 8.—See 29 Cal. 286.

Sec. 9.—See 6 C.W.N. 254; 26 M. 494.

Sec. 11.—Coroner's commitment does not

oust Presidency Magistrate's jurisdiction. 31 Cal. 1=7 C.W.N. 889. After an inquisition has been drawn up by a coroner against a person and he has been committed to prison, the High Court alone has power to release him on bail. (*Ibid.*)

12. The High Court may, pending the hearing, under S. 350 of the Code of Civil Procedure, of any application for a declaration of insolvency, cause the judgment-debtor concerned to be delivered to the Superintendent, subject to the provisions as to release on security of sec. 349 of the said Code, and the Superintendent shall detain the said judgment-debtor in safe custody until he is re-

Custody pending hearing by High Court under S. 350 of the Code of Civil Procedure, of application for insolvency.

delivered to an officer of the High Court for the purpose of being taken before it in pursuance of its order, or until he is released in due course of law.

13. (1) Every person arrested in pursuance of a writ, warrant, or order of the High Court in the exercise of its original civil jurisdiction, or in pursuance of a warrant of any Civil Court established in a Presidency town under any law or enactment for the time being in force, or in pursuance of a warrant issued under section 5,

Delivery of persons arrested in pursuance of warrant of High Court or Civil Court in Presidency-town.

shall be brought without delay before the Court by which, or by a Judge of which, the writ, warrant, or order was issued, awarded, or made, or before a Judge thereof, if the said Court or a Judge thereof is then sitting for the exercise of original jurisdiction.

(2) If the said Court, or a Judge thereof, is not then sitting for the exercise of original jurisdiction, such person arrested as aforesaid shall, unless a Judge of the said Court otherwise directs, be delivered to the superintendent for intermediate custody, and shall be brought before the said Court, or a Judge thereof, at the next sitting of the said Court, or of a Judge thereof, for the exercise of original jurisdiction in order that such person may be dealt with according to law; and the said Court or Judge shall have power to make or award all necessary orders or warrants for that purpose.

PART IV.

PRISONERS OUTSIDE THE PRESIDENCY-TOWNS.

References in this Part to prisons, etc., to be construed as referring also to Reformatory Schools.

14. In this Part all references to prisons or to imprisonment or confinement shall be construed as referring also to Reformatory Schools or to detention therein.

Power for officers in charge of prisons to give effect to sentences of certain Courts.

15. (1) Officers in charge of prisons outside the Presidency towns may give effect to any sentence or order or warrant for the detention of any person passed or issued—

(a) by any Court or tribunal acting, whether within or without British India, under the general or special authority of Her Majesty, or ¹[of the Central Government, or of the Crown Representative, or of any Provincial Government, or of the Government of Burma]; or

(b) by any Court or tribunal in ¹[any Indian State]—

(i) If the presiding Judge, or if the Court or tribunal consists of two or more Judges, at least one of the Judges is an officer of the ¹[Crown] authorized to sit as such Judge ¹[by the State or the Ruler thereof], or by the ¹[Central Government or the Crown Representative], and

(ii) if the reception, detention or imprisonment ²[* * * *], in any province of British India, of persons sentenced by any such Court or tribunal, has been authorised by general or special order by ²[* * * *] the Provincial Government ²[* * * *]; or

(c) by any other Court or tribunal in ¹[any Indian State] with the previous sanction ²[* * * *] of the Provincial Government in the case of each such sentence, order or warrant.

³[Provided that effect shall not be given to any sentence or order or

LEG. REF.

¹ Substituted by A.O., 1937.

² Omitted by *ibid.*

³ Inserted by *ibid.*

warrant for detention passed or issued by any Court or tribunal in Burma without the previous sanction of the Provincial Government concerned].

(2) Where a Court or tribunal of such a ¹[Ruler] or State has passed a sentence which cannot be executed without the concurrence of an officer of the ¹[Crown], and such sentence has been considered on the merits and confirmed by any such officer specially authorised in that behalf, such sentence, and any order or warrant issued in pursuance thereof, shall be deemed to be the sentence, order or warrant of a Court or tribunal acting under the authority of the ¹[Central Government or the Crown Representative].

16. A warrant under the official signature of an officer of such Court or tribunal as is referred to in section 15 shall be sufficient authority for holding any person in confinement, or for sending any person for transportation, in pursuance of the sentence passed upon him.

Warrant of officer of such Court to be sufficient authority.

17. (1) Where an officer in charge of a prison doubts the legality of a warrant or order sent to him for execution under this Part, or the competency of the person whose official seal or signature is affixed thereto to pass the sentence and issue the warrant or order, he shall refer the matter to the Provincial Government, by whose order on the case he and all other public officers shall be guided as to the future disposal of the prisoner.

Procedure where officer in charge of prison doubts the legality of warrant sent to him for execution under this part.

(2) Pending a reference made under sub-section (1), the prisoner shall be detained in such manner and with such restrictions or mitigations, as may be specified in the warrant or order.

Execution in British India of certain capital sentences not ordinarily executable there.

18. (1) Where a British Court, exercising, in or with respect to territory beyond the limits of British India, jurisdiction which the ¹[Crown] has in such territory,—

(a) has sentenced any person to death, and

(b) being of opinion that such sentence should, by reason of there being in such territory no secure place for the confinement of such person, or no suitable appliances for his execution in a decent and humane manner, be executed in British India, has issued its warrant for the execution of such sentence to the officer in charge of a prison in British India, such officer shall, on receipt of the warrant, cause the execution to be carried out at such place as may be prescribed therein in the same manner, and subject to the same conditions, in all respects as if it were a warrant duly issued under the provisions of section 381 of the Code of Criminal Procedure, 1898.

(2) The prisons of which the officers in charge are to execute sentences under any such warrants as aforesaid shall ¹[in each Province be such as the Provincial Government], may, by general or special order, direct.

(3) A Court shall be deemed to be a British Court for the purposes of this section if the presiding Judge, or, if the Court consists of two or more Judges, at least one of the Judges, is an officer of the ¹[Crown] authorised to act as such Judge ¹[by any Indian State or the Ruler thereof or the Central Government or the Crown Representative]:

Provided that every warrant issued under this sub-section by any such tribunal shall, if the tribunal consists of more than one Judge, be signed by a Judge who is an officer of the ¹[Crown] authorised as aforesaid.

PART V.

PERSONS UNDER SENTENCE OF PENAL SERVITUDE.

19. (1) Every person under sentence of penal servitude may be confined in such prison within ¹[the Province] as the Provincial Government by general order, directs, and may, while so confined, be kept to hard labour, and, until he can conveniently be removed to such prison, be imprisoned, with or without hard labour, and dealt with in all other respects as persons under sentence of rigorous imprisonment may, for the time being, by law be dealt with.

Persons under sentence of penal servitude how to be dealt with.

imprisoned, with or without hard labour, and dealt with in all other respects as persons under sentence of rigorous imprisonment may, for the time being, by law be dealt with.

- (2) The time of such intermediate imprisonment, and the time of removal from one prison to another, shall be taken and reckoned in discharge or part discharge of the term of the sentence.

20. Every enactment now in force in British India with respect to persons under sentence of transportation, or under sentence of imprisonment with hard labour, shall, so far as is consistent with this Act, be construed to apply to persons under sentence of penal servitude.

- ²[21. (1) The Provincial Government may grant to any person under sentence of penal servitude a licence to be at large within such part of the Province and during such portion of his term of penal servitude as may be specified in the licence and upon such conditions as the ¹[Provincial Government] may by general or special order prescribe.

Enactments respecting persons under sentence of transportation or imprisonment with hard labour applied to persons under sentence of penal servitude.

- (2) The Provincial Government may revoke or, subject to such conditions, alter any licence granted under sub-section (1).]

22. So long as any licence granted under section 21, sub-section (1), continues in force and unrevoked, the licensee shall not be liable to imprisonment or penal servitude by reason of his sentence, but shall be allowed to go and remain at large according to the terms of the licence.

23. In case of the revocation of any such licence as aforesaid, any Secretary to the Provincial Government may, by order in writing, signify to any Justice of the Peace or Magistrate that the licence has been revoked, and require him to issue a warrant for the arrest of the licensee, and such Justice or Magistrate shall issue his warrant accordingly.

24. A warrant issued under section 23 may be executed by any officer to whom it is directed or delivered for that purpose in any part of British India, and shall have the same force in any place within British India as if it had been originally issued or subsequently endorsed by the Justice of the Peace or Magistrate or other authority having jurisdiction in the place where it is executed.

25. (1) When the licensee for whose arrest a warrant has been issued under section 23 is arrested thereunder, he shall be brought as soon as conveniently may be, before the Justice or Magistrate by whom the warrant was issued, or before some other Justice or Magistrate of the same place, or before a Justice or Magistrate having jurisdiction in the district in which the licensee has been arrested.

(2) Such Justice or Magistrate as aforesaid shall thereupon make out a warrant under his hand and seal for the re-commitment of the licensee to the prison from which he was released under the licence.

LEG. REF.
¹ Substituted by A.O., 1937.

² Substituted by Act XXXVIII of 1920.

26. When a warrant has been issued under section 25, sub-section (2), the

Re-commitment.

licensee shall be recommitted accordingly, and shall thereupon be liable to be kept in penal servitude for such further term as, with the time during which he may have been imprisoned under the original sentence and the time during which he may have been at large under an unrevoked licence, is equal to the term mentioned in the original sentence.

Penalty for breach of condition of the licence.

27. If a licence is granted under section 21 upon any condition specified therein, and the licensee—

(a) violates any condition so specified; or

(b) goes beyond the limits so specified; or

(c) knowing of the revocation of the licence, neglects forthwith to surrender himself, or conceals himself, or endeavours, to avoid arrest;

he shall be liable, upon conviction, to be sentenced to penal servitude for a term not exceeding the full term of penal servitude mentioned in the original sentence.

PART VI.

REMOVAL OF PRISONERS.

References in this Part to persons, etc., to be construed as referring also to Reformatory Schools.

28. In this Part, all references to prisons or to imprisonment or confinement shall be construed as referring also to Reformatory Schools or to detention therein.

Removal of prisoners.

¹29. (1) The ²[Provincial Government] may by general or special order, provide for the removal of any prisoner confined in a prison—

(a) under sentence of death, or

(b) under, or in lieu of, a sentence of imprisonment or transportation, or

(c) in default of payment of a fine, or

(d) in default of giving security for keeping the peace, or for maintaining good behaviour, to any other prison in ³[the Province, or with the consent of the Provincial Government concerned, to any prison in any other Province].

(2) ²[Subject to the orders, and under the control, of the Provincial Government] the Inspector-General of Prisons may, in like manner, provide for the removal of any prisoner confined as aforesaid in a prison in the Province to any other prison in the Province ³[* * * *].

30. (1) Where it appears to the Provincial Government that any person detained or imprisoned under any order or sentence of any Court is of unsound mind, the Provincial Government may, by a warrant setting forth the

Lunatic prisoners how to be dealt with.

grounds of belief that the person is of unsound mind, order his removal to a Lunatic Asylum or other place of safe custody within the Province, there to be kept and treated, as the Provincial Government directs during the remainder of the term for which he has been ordered or sentenced to be detained or imprisoned, or, if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the prisoner or others that he should be further detained under medical care or treatment, then until he is discharged according to law.

(2) Where it appears to the Provincial Government that the prisoner has become of sound mind, the Provincial Government shall, by a warrant directed

LEG. REF.

¹ Substituted by Act I of 1903, sec. 3.

Amendment of section 29 (1) Act III of 1900:—2 For so long as this Ordinance (XV of 1942) remains in force sub-sec. (1) of sec. 29 of the Prisoners Act 1900, shall have effect as if at the end of the sub-section the following words were added, namely:—

“or, with the consent of the Crown Representative, to any prison maintained by him or under his authority in any part of India”. (Ordinance XV of 1942 *see* 2).

(Ordinance XV of 1942, sec. 2).

³ The words “or, in the case of a prisoner prison in Berar” which were inserted by Act XVII of 1923, have been omitted by A.O., 1937.

to the person having charge of the prisoner, if still liable to be kept in custody, remand him to the prison from which he was removed, or to another prison within the province, or, if the prisoner is no longer liable to be kept in custody, order him to be discharged.

(3) The provisions of section 9 of the Lunatic Asylum Act, 1858,¹ shall apply to every person confined in a Lunatic Asylum under sub-section (1) after the expiration of the term for which he was ordered or sentenced to be detained or imprisoned; and the time during which a prisoner is confined in a Lunatic Asylum under that sub-section shall be reckoned as part of the term of detention or imprisonment which he may have been ordered or sentenced by the Court to undergo.

²[(4) In any case in which the Provincial Government is competent under sub-section (1) to order the removal of a prisoner to a lunatic asylum or other place of safe custody within the Province, the Provincial Government may order his removal to any such asylum or place within any other Province or within ³[any Indian State] by agreement with the Provincial Government of such other Province or with such ³[State or the ruler thereof], as the case may be and the provisions of this section respecting the custody, detention, remand and discharge of a prisoner removed under sub-section (1) shall, so far as they can be made applicable, apply to a prisoner removed under this sub-section.]

31. [Removal of prisoners from territories under one Local Government to territories under another.] Repealed by Act I of 1903.

PART VII.

PERSONS UNDER SENTENCE OF TRANSPORTATION.

⁴32. (1) The ⁵[Provincial Government] may appoint places⁶ within ⁴[the Province] to which persons under sentence of transportation shall be sent; and the Provincial Government, or some officer duly authorised in this behalf by the Provincial Government, shall give orders for the removal of such persons to the places so appointed, except when sentence of transportation is passed on a person already undergoing transportation under a sentence previously passed for another offence.

⁴[(2) In any case in which the Provincial Government is competent under sub-section (1) to appoint places within the Provinces and to order the removal thereto of persons under sentence of transportation, the Provincial Government may appoint such places in any other Province by agreement with the Provincial Government of that Province and may by like agreement give orders or duly authorize some officer to give orders for the removal thereto of such persons.]

LEG. REF.

¹ See Act XXXVI of 1858.

² Sub-sec. (4) was substituted by Act XXXVIII of 1920.

³ Substituted by A.O., 1937.

⁴ The section was re-numbered as 32 (1) and sub-sec. (2) added by Act XXXVIII of 1920. The words "the province" within brackets in sub-sec. (1) were substituted by the same Act.

⁵ Substituted by A.O., 1937, for the words "Local Government" which had been substituted by Act XXXVIII of 1920, for the words "Governor-General in Council."

⁶ For notification appointing the Central Jails at Rajamundry, Vellore, Salem, Trichinopoly, Coimbatore and Cannanore and the District Jails at Mangalore and Paumen and the Madras Penitentiary as places

to which prisoners sentenced to transportation may be sent, see Gazette of India 1900, Part I, p. 7. For similar Notifications as to Yerrawada Central Jails, Bombay, see Gazette of India. 1873, Part I, p. 732; for Raipur Jail Gazette, 1891, Part I, p. 185; Delhi and Multan Gazette, 1889, Part I, p. 339; Benares, Ahmedabad, Farrukhabad, Agra and Bareilly Jails Gazette, 1893, Part I, p. 2; Lucknow Gazette, 1893, Part I, p. 171; for Montgomery Central Jail Gazette, 1894, Part I, p. 180; for Umbala and Rawalpindi Gazette, 1895, Part I, p. 133; for Jails in Rangoon, Moulmein, Bassein Mandalay Insein and Thayet Myo Gazette, 1897, Part I, p. 320. All these notifications under Act V of 1871 are still kept in force by sec. 24 of the General Clauses Act, X of 1897.

PART VIII.

DISCHARGE OF PRISONERS.

Release on recognizance by order of High Court, of prisoner recommended for pardon.

recognizance.

33. Any Court ¹[which is a High Court for the purposes of the Government of India Act, 1935], may, in any case in which it has recommended to Her Majesty the granting of a free pardon to any prisoner, permit him to be at liberty on his own

PART IX.

PROVISIONS FOR REQUIRING THE ATTENDANCE OF PRISONERS AND OBTAINING THEIR EVIDENCE.

Attendance of Prisoners in Court.

References in this Part to prisons, etc., to be construed as referring also to Reformatory Schools.

34. In this Part, all references to prisons or to imprisonment or confinement shall be construed as referring also to Reformatory Schools or to detention therein.

35. Subject to the Power for Civil Courts to require appearance of prisoner to give evidence.

tion of the High Court pending before it, make an order in the form set forth in the first schedule, directed to the officer in charge of the prison.

District Judge in certain cases to countersign orders made under S. 35.

36. (1) Where an order under section 35 is made in any civil matter pending—

(a) in a Court subordinate to the District Judge, or

(b) in a Court of Small Causes outside a Presidency-town,

it shall not be forwarded to the officer to whom it is directed, or acted upon by him, until it has been submitted to, and countersigned by,—

(i) the District Judge to which the Court is subordinate, or

(ii) the District Judge within the local limits of whose jurisdiction the Court of Small Causes is situate.

(2) Every order submitted to the District Judge under sub-section (1) shall be accompanied by a statement under the hand of the Judge of the subordinate Court or Court of Small Causes, as the case may be, of the facts which, in his opinion, render the order necessary, and the District Judge may, after considering such statement, decline to countersign the order.

37. Subject to the provisions of section 39 any Criminal Court may, if it thinks that the evidence of any person confined in any prison within the local limits of its appellate jurisdiction, if it is a High Court, or if it is not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, is material in any matter pending before

Power for certain Criminal Courts to require attendance of prisoner to give evidence or answer to charge.

LEG. REF.

¹ Substituted by A.O., 1937.

Sec. 35.—There is no doubt that "a person confined to any prison" referred to in sec. 35 is a person who has been so confined by an order of the Court; the section does not apply to a person confined under an executive order under the Defence of India Rules, 1939. The movements of a person detained under the Defence of India Rules cannot be regulated by a Court of law

(C. C. M.—148

under sec. 35, and a Court has therefore no jurisdiction to make an order under sec. 35 for production of such a person to give evidence in a case before it. 45 Bom.L.R. 422=A.I.R. 1943 Bom. 226.

Sec. 36.—See 13 W.R. 278; 5 B.L.R. 215 (as to power of Provincial Small Cause Court Judge to require attendance of prisoners).

Sec. 37.—See 1 Weir 866; Rat. 66, 776: 19 B. 195.

45. Where it appears to a High Court that the evidence of a person confined in a prison beyond the local limits of its appellate jurisdiction is material in any civil matter pending before it or before any Court subordinate to it, the High Court may, if it thinks fit, issue a commission, under the provisions of the Code of Civil Procedure for the examination of the person in the prison in which he is confined.

Commissions for examination of prisoners beyond limits of appellate jurisdiction of High Court.

46. Every commission for the examination of a person issued under section 44 or section 45 shall be directed to the District Judge within the local limits of whose jurisdiction the prison in which the person is confined is situate, and the District Judge shall commit the execution of the commission to the officer in charge of the prison, or to such other person as he may think fit.

Commission how to be directed.

Service of Process on Prisoners.

47. When any process directed to any person confined in any prison is issued from any Criminal or Revenue Court, it may be served by exhibiting to the officer in charge of the prison the original of the process, and depositing with him a copy thereof.

Process how served on prisoners.

48. (1) Every officer in charge of a prison upon whom service is made under section 47 shall, as soon as may be, cause the copy of the process deposited with him to be shown and explained to the person to whom it is directed, and shall thereupon endorse upon the process, and sign a certificate to the effect that such person as aforesaid is confined in the prison under his charge, and has been shown and had explained to him a copy of the process.

Process served to be transmitted at prisoner's request.

(2) Such certificate as aforesaid shall be *prima facie* evidence of the service of the process, and, if the person to whom the process is directed requests that the copy shown and explained to him be sent to any other person, and provides the cost of sending it by post, the officer in charge of the prison shall cause it to be so sent.

Miscellaneous.

49. (1) For the purposes of this Part, the Courts of Small Causes established in the Presidency-towns and the Courts of Presidency Magistrates shall be deemed to be subordinate to the High Court of Judicature at Fort William, Madras, or Bombay, as the case may be.

Application of Part in certain cases.

(2) & (3) ¹[* * * * *]

50. No order in any civil matter shall be made by a Court under any of the provisions of this Part until the amount of the costs and charges of the execution of such order (to be determined by the Court) is deposited in such Court:

Deposit of costs.

Provided that, if, upon any application for such order, it appears to the Court to which the application is made that the applicant has not sufficient means to meet the said costs and charges, the Court may pay the same out of any fund applicable to the contingent expenses of such Court, and every sum so expended may be recovered by the ²[Provincial Government] from any person ordered by the Court to pay the same, as if it were costs in a suit recoverable under the Code of Civil Procedure.

LEG. REF.

¹ Sub-secs. (2) and (3) repealed by Lower Burma Courts Act (VI of 1900), sec. 48.

² Substituted by A.O., 1937.

SEC. 45.—See 2 All. 301.

SEC. 47.—See 1894 A.W.N. 176.

SEC. 48.—Jailor's signature to be taken judicial notice of by Court. 4 B.L.R. (O. C.) 51.

Power to make rules under this Part. 51. (1) The Provincial Government ¹[* *], may make rules—

(a) for regulating the escort of prisoners to and from Courts in which their attendance is required; and for their custody during the period of such attendance;

(b) for regulating the amount to be allowed for the costs and charges of such escort; and

(c) for the guidance of officers in all other matters connected with the enforcement of this Part.

(2) All rules made under sub-section (1) shall be published in the Official Gazette, ¹[* * * * *], and shall, from the date of such publication, have the same force, as if enacted by this Act.

Power to declare who shall be deemed officer in charge of prison. 52. The Provincial Government may declare what officer shall, for the purposes of this Part, be deemed to be the officer in charge of a prison.

53. [Repealed by Act X of 1914.]

THE FIRST SCHEDULE.

(See Sections 35 and 37.)

Court of

To the officer in charge of the (state name of prison).
You are hereby required to produce , now a prisoner in
under safe and sure conduct before the Court of at
on the day of next by of the clock in the forenoon of
the same day, there to give evidence in a matter now pending before the said Court and after
the said has then and there given his evidence before the said Court or the said
Court has dispensed with his further attendance, caused him to be conveyed under safe and
sure conduct back to the said prison.

The day of A.B.

(Countersigned) C.D.

THE SECOND SCHEDULE.

(See Section 37.)

Court of

To the officer in charge of the (state name of prison).
You are hereby required to produce now a prisoner in
under safe and sure conduct before the Court of at on the
day next by of the clock in the forenoon of the same
day, there to answer a charge now pending before the said Court, and, after such charge
has been disposed of, or the said Court has dispensed with his further attendance, cause
him to be conveyed under safe and sure conduct back to the said prison.

The day of A.B.

(Countersigned) C.D.

THE THIRD SCHEDULE.

(Repealed by Act X of 1914.)

RULES MADE BY THE GOVERNOR-GENERAL IN COUNCIL.

General Rules and Orders made under General Acts of the Governor-General in Council (Vol. III, Ed. 1907, pp. 1710—12).

Section 19 of Prisoners Act, 1871 (V of 1871). Applied to offences under the Penal Code mentioned in Sch. II, Act XI of 1872; No. 158, dated the 12th August, 1872. [See Gazette of India, 1872, Pt. I, p. 780.]

Barracks at Port Blair declared to be prisons for convicts sentenced to penal servitude No. 858, dated the 29th May, 1871. [See Gazette of India, 1871, Pt. I, p. 410.]

CONFINEMENT OF CONVICTS SENTENCED TO PENAL SERVITUDE.

No. 47, dated the 10th January, 1857. In order to give effect to the provisions of section VI, Act No. XXIV of 1855, the Governor-General of India in Council hereby directs that, until further orders, every person who under that Act may by any Court in the Presidency of Fort St. George be sentenced or ordered to be kept in penal servitude, shall during term of the sentence or order, be confined in the prison known as the Madras Penitentiary, and that every person who in the like manner may by any Court, within any other part of the territories in the possession, and under the Government of the East India Company, be sentenced or ordered to be kept in penal servitude, shall be confined in the prison or place of confinement in which such person would have been confined, if, instead of being sentenced or ordered to be kept in penal servitude, he had been sentenced to imprisonment with hard labour. [See Calcutta Gazette, 1857, p. 68.]

LEG. REF.

¹ Omitted by *ibid.*

THE PRISONS ACT (IX OF 1894).

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[REPEALED.]

THE PRISONS ACT (IX OF 1894) ¹

Year.	No.	Short title.	Amendments.
1894	IX	The Prisons Act, 1894.	Repealed in part, XIII of 1898; and I of 1938; Amended, XIII of 1910; X of 1914; XVII of 1925; VI of 1930; Madras Acts XIV of 1938 and V of 1940.

[22nd March, 1894.

An Act to amend the law relating to Prisons.

WHEREAS it is expedient to amend the law relating to prisons in British India, and to provide rules for the regulation of such prisons; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Title, extent and commencement.

1. (1) This Act may be called THE PRISONS ACT, 1894.

(2) It extends to the whole of British India, inclusive of ²[* * *] British Baluchistan, the Sonthal Parganas and the Pargana of Spiti; and

(3) It shall come into force on the first day of July, 1894.

(4) Nothing in this Act shall apply to civil jails in the Presidency of Bombay outside the city of Bombay, and those jails shall continue to be administered under the provisions of sections 9 to 16 (both inclusive) of Bombay Act II of 1874, as amended by subsequent enactments.

2. [Rep. by Act I of 1938].

Definitions.

3. In this Act—

(1) “prison” means any jail or place used permanently or temporarily under the general or special orders of a Provincial Government for the detention of prisoners, and includes all lands and buildings appurtenant thereto, but does not include—

(a) any place for the confinement of prisoners who are exclusively in the custody of the police;

(b) any place specially appointed by the Provincial Government under section 541 of the ³Code of Criminal Procedure, 1882; or

LEG. REF.

¹ For Statement of Objects and Reasons, see Gazette of India, 1894, Pt. V, p. 14; for Report of the Select Committee, see *ibid.*, p. 63; and for Proceedings in Council, see *ibid.*, Pt. VI, pp. 10, 21, 93, 126 and 139.

The Act was declared in force in Upper Burma, by the Burma Laws Act, 1898 (XIII of 1898), in the Sonthal Parganas, Reg. III of 1872, sec. 3, as amended by Reg. III of 1899, sec. 3.

The Act has been declared to be in force in the District of Angul, by the Angul Laws Regulation, 1913 (III of 1913), B. & O. Code, Vol. I.

² The words “Upper Burma” were repealed by the Burma Laws Act, 1898 (XIII of 1898), see the Fifth Schedule.

³ See now the Code of Criminal Procedure, 1898 (Act V of 1898).

SEC. 1.—See 32 Cr.L.J. 988=133 I.O. 59=1931 L. 562.

SEC. 3: UNDER-TRIAL PRISONER IS A PRISONER—JUDICIAL LOCK-UP IS A PRISON.—An under-trial prisoner is a prisoner. A person committed to custody in pursuance of a warrant or an order of a Court exercising criminal jurisdiction, though not convicted, is a criminal prisoner within sub-Sec. (2) of sec. 3. A judicial lock-up is a prison within the meaning of that expression used in the Prisons Act. 76 I.O. 29=4 Lah. 443=25 Cr. L.J. 93=1924 Lah. 257. See also 1931 Lah. 353.

SEC. 3 (1).—See 2 A. 301 (Havala, if a prison); L.B.R. (1872-1892) 596 (Lock-up whether a prison); on this point, see 4 Lah. 443; 1924 Lah. 257; 1931 Lah. 353; 25 Cr.L.J. 93=76 I.O. 29=1924 Lah. 257 (2). See also 1 Bur. Sel. Jud. 596.

(c) any place which has been declared by the Provincial Government, by general or special order, to be a subsidiary jail:

(2) "criminal prisoner" means any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction, or by order of a Court-martial:

(3) "convicted criminal prisoner" means any criminal prisoner under sentence of a Court or Court-martial, and includes a person detained in prison under the provisions of Chapter VIII of the Code of Criminal Procedure, 1882,¹ or under the Prisoners Act, 1871:

(4) "civil prisoner" means any prisoner who is not a criminal prisoner:

(5) "remission system" means the rules for the time being in force regulating the award of marks to, and the consequent shortening of sentences of, prisoners in jails:

(6) "history-ticket" means the ticket exhibiting such information as is required in respect of each prisoner by this Act or the rules thereunder:

(7) "Inspector-General" means the Inspector-General of Prisons:

(8) "Medical Subordinate" means an Assistant Surgeon, Apothecary or qualified Hospital Assistant: and

(9) "prohibited article" means an article the introduction or removal of which into or out of a prison is prohibited by any rule under this Act.

CHAPTER II.

MAINTENANCE AND OFFICERS OF PRISONS.

4. The Provincial Government shall provide, for the prisoners in the territories under such Government, accommodation in prisons constructed and regulated in such manner as to comply with the requisition of this Act in respect of the separation of prisoners.

5. An Inspector-General² shall be appointed for the territories subject to each Provincial Government, and shall exercise, subject to the orders of the Provincial Government, the general control and superintendence of all prisons situated in the territories under such Government.

6. For every prison there shall be a Superintendent, a Medical Officer (who may also be the Superintendent), a Medical Subordinate, a Jailer and such other officers as the Provincial Government thinks necessary:

Provided that *[the Provincial Government of Bombay] may, *[* * *] declare by order in writing that in any prison specified in the order the office of Jailer shall be held by the person appointed to be Superintendent.

7. Whenever it appears to the Inspector-General that the number of

LEG. REF.

¹ See now the Code of Criminal Procedure, 1898 (Act V of 1898).

² For notification appointing an Inspector-General for the N.W.F.P., see Gazette of India, 1901, Pt. II, p. 1805, and for Coorg, see Coorg R. and O. for Delhi, see Gazette of India, 1912, Pt. I, p. 1105.

³ A further proviso has been added to sec. 6 in its application to the Punjab by sec. 2 of Punjab Act IX of 1926.

⁴ Substituted by A.O., 1937..

⁵ Omitted by *ibid*.

SECS. 3 AND 4: "CRIMINAL PRISONER"—APPROVER ORDERED TO BE DETAINED BY COURT—CUSTODY.—An approver is not a convicted prisoner but when his detention is ordered by a Court of law under sec. 337 (3), Cr.P. Code, he comes within the category of "criminal prisoner" as defined in sec. 3 (2) of the Prisons Act and sec. 4 of that Act imposes upon the Local Government the duty of providing for prisoners' accommodation in prisons as ordained by that Act. 12 L. 635=32 Cr.L.J. 913=1931 L. 476. See also 1931 L. 353.

Temporary accommodation for prisoners.

prisoners in any prison is greater than can conveniently or safely be kept therein, and it is not convenient to transfer the excess number to some other

prison,

or whenever from the outbreak of epidemic disease within any prison, or for any other reason, it is desirable to provide for the temporary shelter and safe custody of any prisoners,

provision shall be made, by such officer and in such manner as the Provincial Government may direct, for the shelter and safe custody in temporary prisons of so many of the prisoners as cannot be conveniently or safely kept in the prison.

CHAPTER III.

DUTIES OF OFFICERS.

Generally.

8. All officers of a prison shall obey the directions of the Superintendent; Control and duties of all officers subordinate to the Jailer shall perform officers of prisons. such duties as may be imposed on them by the Jailer with the sanction of the Superintendent or be prescribed by rules under section ¹[59].

9. No officer of a prison shall sell or let, nor shall any person in trust for Officers not to have business dealings with prisoners. or employed by him sell or let, or derive any benefit from selling or letting, any article to any prisoner or have any money or other business dealings directly or indirectly with any prisoner.

10. No officer of a prison shall, nor shall any person in trust for or employed by him, have any interest, direct or indirect in any contract for the supply of the prison: nor shall he derive any benefit, directly or indirectly from the sale or purchase of any article on behalf of the prison or belonging to a prisoner. Officers not to be interested in prison contracts.

Superintendent.

11. (1) Subject to the orders of the Inspector-General, the Superintendent shall manage the prison in all matters relating to discipline, labour, expenditure, punishment and control. Superintendent.

(2) Subject to such general or special directions as may be given by the Provincial Government, the Superintendent of a prison other than a central prison or a prison situated in a presidency-town shall obey all orders not inconsistent with this Act or any rule thereunder which may be given respecting the prison by the District Magistrate, and shall report to the Inspector-General all such orders and the action taken thereon.

Records to be kept by Superintendent. 12. The Superintendent shall keep, or cause to be kept, the following records:—

- (1) a register of prisoners admitted;
- (2) a book showing when each prisoner is to be released;
- (3) a punishment-book for the entry of the punishments inflicted on prisoners for prison-offences;
- (4) a visitors' book for the entry of any observations made by the visitors touching any matters connected with the administration of the prison;

LEG. REF.

¹ Substituted for '60' by A.O., 1937.

SEC. 11.—Watchman aiding escape of prisoner—Power of Superintendent over such watchman. 4 N.W.P. 4.

- (5) a record of the money and other articles taken from prisoners; and all such other records as may be prescribed by rules under section 59 [* * *].

Medical Officer.

13. Subject to the control of the Superintendent, the Medical Officer shall have charge of the sanitary administration of the prison, and shall perform such duties as may be prescribed by rules made by the Provincial Government under section 59.

14. Whenever the Medical Officer has reason to believe that the mind of a prisoner is, or is likely to be, injuriously affected by the discipline or treatment to which he is subjected, the Medical Officer shall report the case in writing to the Superintendent, together with such observations as he may think proper.

This report, with the orders of the Superintendent thereon, shall forthwith be sent to the Inspector-General for information.

15. On the death of any prisoner, the Medical Officer shall forthwith Report on death of prisoner in a register the following particulars, so far as they can be ascertained, namely:—

(1) the day on which the deceased first complained of illness or was observed to be ill,

(2) the labour, if any, on which he was engaged on that day,

(3) the scale of his diet on that day,

(4) the day on which he was admitted to hospital,

(5) the day on which the Medical Officer was first informed of the illness,

(6) the nature of the disease,

(7) when the deceased was last seen before his death by the Medical Officer or Medical Subordinate,

(8) when the prisoner died, and

(9) (in cases where a *post-mortem* examination is made) an account of the appearances after death,

together with any special remarks that appear to the Medical Officer to be required.

Jailer.

16. (1) The Jailer shall reside in the prison, unless the Superintendent permits him in writing to reside elsewhere.

(2) The Jailer shall not, without the Inspector-General's sanction in writing, be concerned in any other employment.

17. Upon the death of a prisoner, the Jailer shall give immediate notice thereof to the Superintendent and the Medical Subordinate.

18. The Jailer shall be responsible for the safe custody of the records to be kept under section 12, for the commitment warrants and all other documents confided to his care, and for the money and other articles taken from prisoners.

19. The Jailer shall not be absent from the prison for a night without permission in writing from the Superintendent; but, if absent without leave for a night from unavoidable necessity, he shall immediately report the fact and the cause of it to the Superintendent.

LEG. REF.

¹ Omitted by A.O., 1937.

² For rules as to Medical Officer's duties

under sec. 13, see different local Rules and Orders.

³ Substituted for '60' by A.O., 1937.

20 Where a Deputy Jailer or Assistant Jailer is appointed to a prison, he shall, subject to the orders of the Superintendent, be competent to perform any of the duties, and be subject to all the responsibilities, of a Jailer under this Act or any rule thereunder.

Powers of Deputy and Assistant Jailers.

Subordinate Officers.

21. The officer acting as gate-keeper, or any other officer of the prison may examine anything carried in or out of the prison, and may stop and search or cause to be searched any person suspected of bringing any prohibited article into or out of the prison, or of carrying out any property belonging to the prison, and, if any such article or property be found, shall give immediate notice thereof to the Jailer.

Subordinate officers not to be absent without leave.

22. Officers subordinate to the Jailer shall not be absent from the prison without leave from the Superintendent or from the Jailer.

Convict officers.

23. Prisoners who have been appointed as officers of prisons shall be deemed to be public servants within the meaning of the Indian Penal Code.

CHAPTER IV.

ADMISSION, REMOVAL AND DISCHARGE OF PRISONERS.

Prisoners to be examined on admission.

24. (1) Whenever a prisoner is admitted into prison, he shall be searched, and all weapons and prohibited articles shall be taken from him.

(2) Every criminal prisoner shall also, as soon as possible after admission, be examined under the general or special orders of the Medical Officer, who shall enter or cause to be entered in a book, to be kept by the Jailer, a record of the state of the prisoner's health, and of any wounds or marks on his person, the class of labour he is fit for if sentenced to rigorous imprisonment, and any observations which the Medical Officer thinks fit to add.

(3) In the case of female prisoners the search and examination shall be carried out by the matron under the general or special orders of the Medical Officer.

25. All money or other articles in respect whereof no order of a competent Court has been made, and which may with proper authority be brought into the prison by any criminal prisoner or sent to the prison for his use, shall be placed in the custody of the Jailer.

Effects of prisoners.

Removal and discharge of prisoners.

26. (1) All prisoners, previously to being removed to any other prison, shall be examined by the Medical Officer.

(2) No prisoner shall be removed from one prison to another unless the Medical Officer certifies that the prisoner is free from any illness rendering him unfit for removal.

(3) No prisoner shall be discharged against his will from prison, if labouring under any acute or dangerous distemper, nor until, in the opinion of the Medical Officer, such discharge is safe.

CHAPTER V.

DISCIPLINE OF PRISONERS.

Separation of prisoners.

27. The requisitions of this Act with respect to the separation of prisoners are as follows:—

(1) in a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings, or separate parts of the same building, in such manner as to prevent their seeing, or conversing or holding any intercourse with, the male prisoners:

(2) in a prison where male prisoners under the age of ¹[twenty-one] are confined, means shall be provided for separating them altogether from the other prisoners and for separating those of them who have arrived at the age of puberty from those who have not:

(3) unconvicted criminal prisoners shall be kept apart from convicted criminal prisoners; and

(4) civil prisoners shall be kept apart from criminal prisoners.

28. Subject to the requirements of the last foregoing section, convicted criminal prisoners may be confined either in association or individually in cells or partly in one way and partly in the other.

29. No cell shall be used for solitary confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison, and every prisoner so confined in a cell for more than twenty-four hours, whether as a punishment or otherwise, shall be visited at least once a day by the Medical Officer or Medical Subordinate.

30. (1) Every prisoner under sentence of death shall immediately on his arrival in the prison after sentence, be searched by, or by order of, the Jailer and all articles shall be taken from him which the Jailer deems it dangerous or inexpedient to leave in his possession.

(2) Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of a guard.

CHAPTER VI.

FOOD, CLOTHING AND BEDDING OF CIVIL AND UNCONVICTED CRIMINAL PRISONERS.

31. A civil prisoner or an unconvicted criminal prisoner shall be permitted to maintain himself, and to purchase, or receive from private sources at proper hours, food, clothing, bedding or other necessities, but subject to examination and to such rules as may be approved by the Inspector-General.

32. No part of any food, clothing, bedding or other necessities belonging to any civil or unconvicted criminal prisoner shall be given, hired or sold to any other prisoner; and any prisoner transgressing the provisions of this section shall lose the privilege of purchasing food or receiving it from private sources, for such time as the Superintendent thinks proper.

33. (1) Every civil prisoner and unconvicted criminal prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary.

(2) When any civil prisoner has been committed to prison in execution of a decree in favour of a private person, such person, or his representative, shall, within forty-eight hours after the receipt by him of a demand in writing, pay to the Superintendent the cost of the clothing and bedding so supplied to the prisoner; and in default of such payment the prisoner may be released.

LEG. REF.

¹ Substituted for the word "eighteen" by Act VI of 1930.

Sec. 33.—Sec 5 Bur.L.T. 159=6 L.B.R. 61=17 I.C. 911 (Release owing to a mistake of the jail authorities is not a release for default of decree-holder).

CHAPTER VII.

EMPLOYMENT OF PRISONERS.

Employment of civil prisoners.

34. (1) Civil prisoners may, with the Superintendent's permission, work and follow any trade or profession.

(2) Civil prisoners finding their own implements, and not maintained at the expense of the prison shall be allowed to receive the whole of their earnings; but the earnings of such as are furnished with implements or are maintained at the expense of the prison shall be subject to a deduction, to be determined by the Superintendent, for the use of implements and the cost of maintenance.

35. (1) No criminal prisoner sentenced to labour or employed on labour at his own desire shall, except on an emergency with the sanction in writing of the Superintendent, be kept to labour for more than nine hours in any one day.

(2) The Medical Officer shall from time to time examine the labouring prisoners while they are employed, and shall at least once in every fortnight cause to be recorded upon the history-ticket of each prisoner employed on labour the weight of such prisoner at the time.

(3) When the Medical Officer is of opinion that the health of any prisoner suffers from employment on any kind or class of labour, such prisoner shall not be employed on that labour but shall be placed on such other kind or class of labour as the Medical Officer may consider suited for him.

36. Provision shall be made by the Superintendent for the employment (as long as they so desire) of all criminal prisoners sentenced to simple imprisonment; but no prisoner not sentenced to rigorous imprisonment shall be punished for neglect of work excepting by such alteration in the scale of diet as may be established by the rules of the prison in the case of neglect of work by such a prisoner.

Employment of criminal prisoners sentenced to simple imprisonment.

CHAPTER VIII.

HEALTH OF PRISONERS.

37. (1) The names of prisoners desiring to see the Medical Subordinate or appearing out of health in mind or body shall, without delay, be reported by the officer in immediate charge of such prisoners to the Jailer.

(2) The Jailer shall, without delay, call the attention of the Medical Subordinate to any prisoners desiring to see him, or who is ill, or whose state of mind or body appears to require attention, and shall carry into effect all written directions given by the Medical Officer or Medical Subordinate respecting alterations of the discipline or treatment of any such prisoner.

38. All directions given by the Medical Officer or Medical Subordinate in relation to any prisoner, with the exception of orders for the supply of medicines or directions relating to such matters as are carried into effect by the Medical Officer himself or under his superintendence, shall be entered day by day in the prisoner's history-ticket or in such other record as the Provincial Government may by rule direct, and the Jailer shall make an entry in its proper place stating in respect of each direction the fact of its having been or not having been complied with, accompanied by such observations, if any, as the Jailer thinks fit to make, and the date of the entry.

Record of directions of Medical Officers.

Hospital.

39. In every prison an hospital or proper place for the reception of sick prisoners shall be provided.

CHAPTER IX.

VISITS TO PRISONERS.

40. Due provision shall be made for the admission, at proper times and under proper restrictions, into every prison of

Visits to civil and uncon-
victed criminal prisoners.

persons with whom civil or unconvicted criminal prisoners may desire to communicate, care being taken that so far as may be consistent with the interests of justice, prisoners under trial may see their duly qualified legal advisers without the presence of any other person.

41. (1) The Jailer may demand the name and address of any visitor to a prisoner, and, when the Jailer has any ground for

Search of visitors.

suspicion, may search any visitor, or cause him to be searched, but the search shall not be made in the presence of any prisoner or of another visitor.

(2) In case of any such visitor refusing to permit himself to be searched, the Jailer may deny him admission; and the grounds of such proceeding, with the particulars thereof, shall be entered in such record as the Provincial Government may direct.

CHAPTER X.

OFFENCES IN RELATION TO PRISONS.

42. Whoever, contrary to any rule under

LEG. REF.

MADRAS AMENDMENTS.—Secs. 39-A to 39-C added:—After sec. 39 of the Prisons Act, 1894, the following section shall be inserted, namely:—

“39-A. The Superintendent may, if in his opinion, a prisoner requires special treatment in a hospital outside the prison or in an asylum as defined in the Indian Lunacy Act, 1912, send him to such hospital or asylum subject to the prisoner or any relative or friend of the prisoner executing such bond and abiding by such other conditions, if any, as the Provincial Government may by rule or order prescribe. Any period during which the prisoner is undergoing treatment in such hospital or asylum or spent by him in going thereto or returning therefrom shall be deemed to be part of the period of his detention in the prison.

Explanation.—Nothing contained in this section shall be deemed to affect the operation of sec. 30 of the Prisoners Act, 1900, in cases to which that section applies”. (See Madras Act XIV of 1938).

After sec. 39-A of the said Act, the following sections shall be inserted, namely:—

“39-B. If any prisoner dealt with under sec. 39-A escapes or attempts to escape from the hospital or asylum to which he has been sent or when going thereto or returning therefrom, he shall be punished with im-

prisonment for a term which may extend to two years, or with fine, or with both.

The punishment under this section shall be in addition to the punishment for which the prisoner was liable for the offence of which he was already convicted.

39-C. The provisions of Chapter XLII of the Code applicable to of Criminal Procedure, bonds referred 1898, shall, so far as may be, apply to the bonds referred to in sec. 39-A.” (See Madras Act V of 1940).

SEC. 40: “PERSONS” MEAN “ALL PERSONS”.—The word “person” can only mean “all persons” or “any person” and not “a certain class of persons”. 137 I.C. 851=33 Cr.L.J. 531=1932 Lah. 390.

COMPLIANCE BY SUPERINTENDENT OF JAIL.—JURISDICTION OF COURT TO DECIDE.—Courts under whose warrants under-trial prisoners are detained in jail or the High Court have no jurisdiction to go into the question whether the Superintendent of the Jail has or has not disregarded or observed the provisions of sec. 40. The prisoner’s redress lies to the superior executive authority. The jurisdiction of the Court extends only to insistence on the due observance of the terms of the writ which it has issued in exercise of its legal powers. 137 I.C. 851=33 Cr.L.J. 531=1932 Lah. 390.

SEC. 42.—See 14 P.B. 1895 (Cr.) (Imprisonment in default of payment of fine); 17 Cr.L.J. 480=36 Ind. Cas. 160 (Detention in civil prison, if imprisonment). Carrying newspapers from a prisoner inside jail to

Penalty for introduction or removal of prohibited articles into or from prison and communication with prisoners.

section ¹[59] introduces or removes or attempts by any means whatever to introduce or remove, into or from any prison, or supplies or attempts to supply to any prisoner outside the limits of a prison, any prohibited article,

and every officer of a prison who, contrary to any such rule, knowingly suffers any such article to be introduced into or removed from any prison, to be possessed by any prisoner, or to be supplied to any prisoner outside the limits of a prison.

and whoever, contrary to any such rule, communicates or attempts to communicate with any prisoner.

and whoever abets any offence made punishable by this section.

shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.

43. When any person, in the presence of any officer of a prison, commits

Power to arrest for offence under section 42.

any offence specified in the last foregoing section, and refuses on demand of such officer to state his name and residence, or gives a name or residence

which such officer knows, or has reason to believe, to be false, such officer may arrest him, and shall without unnecessary delay make him over to a Police-officer, and thereupon such Police-officer shall proceed as if the offence had been committed in his presence.

44. The Superintendent shall cause to be affixed, in a conspicuous place

Publication of penalties.

outside the prison, a notice in English and the Vernacular setting forth the acts prohibited under section 42 and the penalties incurred by their commission.

CHAPTER XI.

PRISON-OFFENCES.

Prison-offences.

45 The following acts are declared to be prison-offences when committed by a prisoner:—

(1) such wilful disobedience to any regulation of the prison as shall have been declared by rules made under section 59 to be a prison-offence;

(2) any assault or use of criminal force;

(3) the use of insulting or threatening language;

(4) immoral or indecent or disorderly behaviour;

(5) wilfully disabling himself from labour;

(6) contumaciously refusing to work;

(7) filing, cutting, altering or removing handcuffs, fetters or bars without due authority;

(8) wilful idleness or negligence at work by any prisoner sentenced to rigorous imprisonment;

(9) wilful mismanagement of work by any prisoner sentenced to rigorous imprisonment,

(10) wilful damage to prison-property;

LEG. REF.

¹ Substituted for "60" by A.O., 1937.

outside people for illegal gratification is an offence. 26 Bom.L.R. 267. *Communicating* or attempting to communicate with a prisoner is an offence under sec. 42. 4 Lah. 448 = 25 Cr.L.J. 93 = 76 I.C. 29 = 1924 Lah. 257. *Assault on a Police constable* who prevents such communication is also an offence under sec. 353, Penal Code. (*Ibid.*) A prisoner can abet the communication of information to himself—Communication through

jail warder. See 44 M.L.J. 585 = 72 I.C. 609 = 34 Cr.L.J. 449 = 1923 Mad. 596.

CARRYING A BUNDLE OF NEWSPAPERS FROM A PRISONER IS AN OFFENCE.—Carrying a bundle of newspapers from a prisoner inside the jail, to one, outside the jail premises, is an offence under sec. 42 read with Art. 485 of the Bombay Jail Manual, 1911. 83 I.C. 342 = 26 Bom.L.R. 267 = 25 Cr.L.J. 1382 = 1924 Bom. 385.

SEC. 45.—See U.B.R. (1892-1896), Vol. I, p. 298; see also 1894 A.W.N. 176.

- (11) tampering with or defacing history-tickets, records or documents;
- (12) receiving, possessing or transferring any prohibited article;
- (13) feigning illness;
- (14) wilfully bringing a false accusation against any officer or prisoner;
- (15) omitting or refusing to report, as soon as it comes to his knowledge, the occurrence of any fire, any plot or conspiracy, any escape, attempt or preparation to escape, and any attack or preparation for attack upon any prisoner or prison-official; and
- (16) conspiring, to escape, or to assist in escaping, or to commit any other of the offences aforesaid.

Punishment of such offences. **46.** ¹The Superintendent may examine any person touching any such offence, and determine thereupon, and punish such offence by—

- (1) a formal warning:

Explanation.—A formal warning shall mean a warning personally addressed to a prisoner by the Superintendent and recorded in the punishment-book and on the prisoner's history-ticket;

- (2) change of labour to some more irksome or severe form ²[for such period as may be prescribed by rules made by the ³(Provincial Government)];

- (3) hard labour for a period not exceeding seven days in the case of convicted criminal prisoners not sentenced to rigorous imprisonment;

- (4) such loss of privileges admissible under the remission system for the time being in force as may be prescribed by rules made by the ³[Provincial Government];

- (5) the substitution of gunny or other coarse fabric for clothing of other material, not being woollen, for a period which shall not exceed three months;

- (6) imposition of handcuffs of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by the ³[Provincial Government];

- (7) imposition of fetters of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by the ³[Provincial Government];

- (8) separate confinement for any period not exceeding ⁴[three] months.

Explanation.—Separate confinement means such confinement with or without labour as secludes a prisoner from communication with, but not from sight of, other prisoners, and allows him not less than one hour's exercise per diem and to have his meals in association with one or more other prisoners;

- (9) penal diet,—that is, restriction of diet in such manner and subject to such conditions regarding labour as may be prescribed by the Provincial Government:

Provided that such restriction of diet shall in no case be applied to a prisoner for more than ninety-six consecutive hours, and shall not be repeated except for a fresh offence nor until after an interval of one week;

- (10) cellular confinement for any period not exceeding fourteen days:

Provided that after each period of cellular confinement an interval of not less duration than such period must elapse before the prisoner is again sentenced to cellular or solitary confinement.

Explanation.—Cellular confinement means such confinement with or without labour as entirely secludes a prisoner from communication with, but not from sight of, other prisoners:

LEG. REF.

¹ For rules issued with reference to clauses (4), (6) and (7) of section 46, see Genl. R. and O., Vol. III.

² These words were inserted by sec. 2 (a) of the Prisons (Amendment) Act, 1925

(XVII of 1925).

³ Substituted for "Governor-General in Council" by A.O., 1937.

⁴ This word was substituted for the word "six" by sec. 2 (b) of Act XVII of 1925.

¹[* * * * *]
¹[(11)] penal diet as defined in clause (9) combined with ²[cellular] confinement ²[* * *]

¹[(12)] whipping, provided that the number of stripes shall not exceed thirty:

Provided that nothing in this section shall render any female or civil prisoner liable to the imposition of any form of handcuffs or fetters, or to whipping.

²[47. (1)] Any two of the punishments enumerated in the last foregoing Plurality of punishments under section 46. section may be awarded for any such offence in combination, subject to the following exceptions, namely:—

(1) formal warning shall not be combined with any other punishment, except loss of privileges under clause (4) of that section;

(2) penal diet shall not be combined with change of labour under clause (2) of that section, nor shall any additional period of penal diet awarded singly be combined with any period of penal diet awarded in combination with ³[cellular] confinement;

³[(3)] cellular confinement shall not be combined with separate confinement, so as to prolong the total period of seclusion to which the prisoner shall be liable;]

(4) whipping shall not be combined with any other form of punishment except cellular ⁴[and] separate confinement and loss of privileges admissible under the remission system;

⁵[(5)] no punishment will be combined with any other punishment in contravention of rules made by the "(Provincial Government)].

⁶[(2)] No punishment shall be awarded for any such offence so as to combine, with the punishment awarded for any other such offence, two of the punishments which may not be awarded in combination for any such offence.]

48. (1) The Superintendent shall have power to award any of the punishments enumerated in the two last foregoing sections, subject, in the case of separate confinement for a period exceeding one month, to the previous confirmation of the Inspector-General.

(2) No officer subordinate to the Superintendent shall have power to award any punishment whatever.

49. Except by order of a Court of justice, no punishment other than the punishments specified in the foregoing sections shall be inflicted on any prisoner, and no punishment shall be inflicted on any prisoner otherwise than in accordance with the provisions of those sections.

50. (1) No punishment of penal diet, either singly or in combination or of whipping, or of change of labour under section 46, clause (2) shall be executed until the prisoner to whom such punishment has been awarded has been examined by the Medical Officer, who, if he considers the prisoner fit to undergo the punishment, shall certify accordingly in the appropriate column of the punishment book prescribed in section 12.

LEG. REF.

¹Original clause (11) was repealed and clauses (12) and (13) were renumbered (11) and (12), respectively, by sec. 2 of Act XVII of 1925.

²The word "cellular" was substituted for the word "solitary" and the words "as defined in clause (11)" were omitted by sec. 2, of Act XVII of 1925.

³Sec. 47 was renumbered sec. 47 (1); in

exception (2) the word "cellular" was substituted for the word "solitary" and exception (3) was substituted by sec. 3, *ibid*.

⁴This word was substituted for the word "or" by the Repealing and Amending Act, 1914 (X of 1914).

⁵Exception (5) and sub-sec. (2) were inserted by sec. 3 of Act XVII of 1925.

⁶Substituted for "Governor-General in Council" by A.O., 1937.

(2) If he considers the prisoner unfit, to undergo the punishment, he shall in like manner record his opinion in writing and shall state whether the prisoner is absolutely unfit for punishment of the kind awarded, or whether he considers any modification necessary.

(3) In the latter case he shall state what extent of punishment he thinks the prisoner can undergo without injury to his health.

51. (1) In the punishment book prescribed in section 12 there shall be recorded, in respect of every punishment inflicted, the prisoner's name, register number and the class (whether habitual or not) to which he belongs, the prison-offence of which he was guilty, the date on which such prison-offence was committed, the number of previous prison-offences recorded against the prisoner, and the date of his last prison-offence, the punishment awarded, and the date of infliction.

(2) In the case of every serious prison-offence, the names of the witnesses proving the offence shall be recorded, and, in the case of offences for which whipping is awarded, the Superintendent shall record the substance of the evidence of the witnesses, the defence of the prisoner, and the finding with the reasons therefor.

(3) Against the entries relating to each punishment the Jailor and Superintendent shall affix their initials as evidence of the correctness of the entries.

52. If any prisoner is guilty of any offence against prison-discipline which by reason of his having frequently committed such offences or otherwise, in the opinion of the Superintendent, is not adequately punishable by the infliction of any punishment which he has power under this Act to award, the Superintendent may forward such prisoner to the Court of the District Magistrate or of any Magistrate of the first class¹ [or Presidency Magistrate] having jurisdiction, together with a statement of the circumstances, and such Magistrate shall thereupon inquire into and try the charge so brought against the prisoner, and upon conviction, may sentence him to imprisonment which may extend to one year, such term to be in addition to any term for which such prisoner was undergoing imprisonment when he committed such offence, or may sentence him to any of the punishments enumerated in section 46:

²[Provided that any such case may be transferred for inquiry and trial by the District Magistrate to any Magistrate of the first class and by a Chief Presidency Magistrate to any other Presidency Magistrate: and]

Provided also that no person shall be punished twice for the same offence.

53. (1) No punishment of whipping shall be inflicted in instalments, or except in the presence of the Superintendent and Medical Officer or Medical Subordinate.

(2) Whipping shall be inflicted with a light ratan not less than half an inch in diameter on the buttocks, and in case of prisoners under the age of sixteen it shall be inflicted, in the way of school discipline, with a lighter ratan.

54. (1) Every Jailor or officer of a prison subordinate to him who shall

LIG. REF.

¹ These words were inserted by sec. 2 (1) of the Prisons (Amendment) Act, 1910 (XIII of 1910).

² This proviso was substituted by sec. 2 (2) *ibid.*

SEC. 52.—See U.B.R. (1892—1896), Vol. I, p. 208, *ibid.* 299; 1900 A.W.N. 183; 32 M. 308. Jurisdiction of Magistrate—Absence of statement regarding adequacy of powers of Superintendent of Jail and of

finding of Magistrate on the point—Does not vitiate trial and conviction. 23 Pat. 499—A.I.R. 1944 Pat. 388.

SEC. 54.—Where a medical officer suspected by the Jailor to be conveying a letter to a prisoner refused to submit himself for search, the offence is one under sec. 186, I.P.A. Code and not under sec. 54 of the Prisons Act. 7 S.L.R. 49; 14 Cr.L.J. 619—21 I.C. 667. See also U.B.R. (1892—1896), Vol. I, p. 299. On this section, see also 4 N.W.P. 4.

Offences by prison sub-ordinates.

be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice in writing of his intention for the period of two months, or who shall wilfully overstay any leave granted to him, or who shall engage without authority in any employment other than his prison duty, or who shall be guilty of cowardice, shall be liable, on conviction before a Magistrate, to fine not exceeding two hundred rupees, or to imprisonment for a period not exceeding three months, or to both.

(2) No person shall under this section be punished twice for the same offence.

CHAPTER XII.

MISCELLANEOUS.

55. A prisoner, when being taken to or from any prison in which he may be lawfully confined, or whenever he is working outside or is otherwise beyond the limits of any such prison in or under the lawful custody or control of a prison officer belonging to such prison, shall be deemed to be in prison and shall be subject to all the same incidents as if he were actually in prison.

56. Whenever the Superintendent considers it necessary (with reference either to the state of the prison or the character of the prisoners) for the safe custody of any prisoners that they should be confined in irons, he may, subject to such rules and instructions as may be laid down by the Inspector-General with the sanction of the Provincial Government, so confine them.

Confinement of prisoners under sentence of transportation in irons.

57. (1) Prisoners under sentence of transportation may, subject to any rules made under section ¹[59], be confined in fetters for the first three months after admission to prison.

(2) Should the Superintendent consider it necessary, either for the safe custody of the prisoner himself or for any other reason, that fetters should be retained on any such prisoner for more than three months, he shall apply to the Inspector-General for sanction to their retention for the period for which he considers their retention necessary, and the Inspector-General may sanction such retention accordingly.

Prisoners not to be ironed by Jailer except under necessity.

58. No prisoner shall be put in irons or under mechanical restraint by the Jailer of his own authority, except in case of urgent necessity, in which case notice thereof shall be forthwith given to the Superintendent.

Power to make rules.

²59. ³[The Provincial Government] may make rules consistent with this Act—

- (1) defining the acts which shall constitute prison offences;
- (2) determining the classification of prison-offences into serious and minor offences;
- (3) fixing the punishments admissible under this Act which shall be awardable for commission of prison-offences or classes thereof;
- (4) declaring the circumstances in which acts constituting both a prison-offence and an offence under the Indian Penal Code may or may not be dealt with as a prison-offence;

LEG. REF.

¹ Substituted for '60' by A.O., 1937.

² For rules by the Governor-General in Council under this section, see Genl. R. &

O., Vol. III, p. 225; for rules by different Local Governments, see different local Rules and Orders.

³ Substituted by A.O., 1937.

- (5) for the award of marks and the shortening of sentences;
- (6) regulating the use of arms against any prisoner or body of prisoners in the case of an outbreak or attempt to escape;
- (7) defining the circumstances and regulating the conditions under which prisoners in danger of death may be released;
- ¹[(8) for the classification of prisons and description and construction of wards, cells and other places of detention;
- (9) for the regulation by numbers, length or character of sentences, or otherwise, of the prisoners to be confined in each class of prisons;
- (10) for the Government of prisons and for the appointment of all officers appointed under this Act;
- (11) as to the food, bedding and clothing of criminal prisoners and of civil prisoners maintained otherwise than at their own cost;
- (12) for the employment, instruction and control of convicts within or without prisons;
- (13) for defining articles the introduction or removal of which into or out of prisons without due authority is prohibited;
- (14) for classifying and prescribing the forms of labour and regulating the periods of rest from labour;
- (15) for regulating the disposal of the proceeds of the employment of prisoners;
- (16) for regulating the confinement in fetters of prisoners sentenced to transportation;
- (17) for the classification and the separation of prisoners;
- (18) for regulating the confinement of convicted criminal prisoners under section 28;
- (19) for the preparation and maintenance of history-tickets;
- (20) for the selection and appointment of prisoners as officers of prisons;
- (21) for rewards for good conduct;
- (22) for regulating the transfer of prisoners whose term of transportation or imprisonment is about to expire; subject, however, to the consent of the Provincial Government of any other Province to which a prisoner is to be transferred;
- (23) for the treatment, transfer and disposal of criminal lunatics or recovered criminal lunatics confined in prisons;
- (24) for regulating the transmission of appeals and petitions from prisoners and their communications with their friends;
- (25) for the appointment and guidance of visitors of prisons;
- (26) for extending any or all of the provisions of this Act and of the rules thereunder to subsidiary jails or special places of confinement appointed under section 541 of the ²Code of Criminal Procedure, 1882. and to the officers employed, and the prisoners confined, therein;
- (27) in regard to the admission, custody, employment, dieting, treatment and release of prisoners; and
- (28) generally for carrying into effect the purposes of this Act].

³60. [Power of Local Government to make rules.]. Omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

LEG. REF.

¹ Substituted by A.G., 1937, for the original cls. (8) and (9).

² See now the Code of Original Procedure, 1898 (Act V of 1898).

³ This section has been incorporated with slight modifications in cls. (8) to (27) of sec. 59.

61. Copies of rules, under '[section 59] so far as they affect the government of prisons, shall be exhibited, both in English and in the Vernacular, in some place to which all persons employed within a prison have access.

62. All or any of the powers² and duties conferred and imposed by this Act on a Superintendent or Medical Officer may in his absence be exercised and performed by such other officer as the Provincial Government may appoint in this behalf either by name or by his official designation.

THE SCHEDULE.

ENACTMENTS REPEALED.

[*Repealed by Act I of 1938.*]

THE PRISONERS ACT (V OF 1871).

[*Rep. by Act I of 1938.*]

THE PROVINCIAL INSOLVENCY ACT (V OF 1920). (Extracts.)

* * * * *

PART IV.

PENALTIES.

Offences by debtors.

69. If a debtor, whether before or after the making of an order of adjudication,—

LEG. REF.

¹Substituted by A.O., 1937, for "Secs. 59 and 60".

²For notification empowering certain officers in Burma to perform the duties of a Superintendent of a jail during his absence, see Bur. Gazette, 1908, Pt. I, p. 134.

SEC. 69: NATURE OF OFFENCES.—The offences are in the nature of disciplinary offences and offences against criminal law. 39 A. 171=37 I.C. 996. Penal action against insolvent is not to be taken on mere suspicion. 24 L.W. 486=97 I.C. 590=1926 M. 1159.

PROCEDURE.—Difference between this and the next section. See 106 I.C. 486 (2)=1928 S. 85. The proceedings should be carried on in analogy with the Cr. P. Code. 38 I.C. 969; see contra 45 I.C. 675. Proceedings under the section cannot be taken after a petition for adjudication has been dismissed. A conviction based on report of the receiver and not on evidence is unsustainable. 18 C. W.N. 692=27 I.C. 129; 37 A. 429=29 I.C. 993. But District Court can grant permission to O. R. to prosecute insolvent under secs. 421 and 424, I. P. Code, on the strength of the receiver's report. 42 I.C. 608=16 L. W. 283. Opportunity should be given for answering a charge framed. 19 I.C. 920=19 C.L.J. 430. Official Receiver is merely an ordinary litigant who may be entitled to move the Court in the usual manner that is, by presentation of a proper application which is to be heard in the presence of the parties and proceedings taken in his absence by the Court must be set aside on the proper application before the Court. 1929 L.

805. The Insolvency Court has jurisdiction to issue such processes as prohibition and injunction to prevent alienation by debtor. But where such process is full of defects and does not purport to give notice to the debtor of the admission of any insolvency petition at all, failure to comply with the same will not render him criminally liable. A.I.R. 1936 Nag. 237.

CONCEALMENT.—If the insolvent having the means to find out where his properties are, though not a party to his active concealment, keeps quiet, his conduct amounts to concealment. 43 A. 406=64 I.C. 37. See also 1931 M.W.N. 1312. Disposal of Provident Fund by insolvent is not fraudulent. 44 B. 673=56 I.C. 450. In order to make out an offence under sec. 69 (a) there must be proof that the account books require to be produced were in the possession and power of the debtor (insolvent). 61 C. 537=149 I. C. 352=38 C.W.N. 642=1934 C. 409. On a charge framed under sec. 69 (a), the Court cannot convict under sec. 69 (b). 61 C. 537 *supra*. A creditor whose allegations against the insolvent are disbelieved, has no right of appeal. 39 A. 171=37 I.C. 996; 1 L. 213. See also 56 I.C. 744; 39 P.L.R. 213=170 I.C. 849=A.I.R. 1937 Lah. 432; see contra 45 M.L.J. 804=1924 M. 185; 1937 O.W.N. 236=166 I.C. 858=A.I.R. 1937 Oudh 247; 1937 O.W.N. 762=170 I.C. 542. No appeal lies from an order declining to take action against insolvent. 48 I.C. 333=22 C.W.N. 958; 11 L.W. 145=38 M.L.J. 338; 1931 A.L.J. 999. Punishment can be suspended till disposal of appeal. 44 B. 673=56 I.C. 449.

(a) wilfully fails to perform the duties imposed on him by section 22 or to deliver up possession of any part of his property which is divisible among his creditors under this Act, and which is for the time being in his possession or under his control to the Court or to any person authorized by the Court to take possession of it, or

(b) fraudulently with intent to conceal the state of his affairs or to defeat the objects of this Act,—

(i) has destroyed or otherwise wilfully prevented or purposely withheld the production of any document relating to such of his affairs as are subject to investigation under this Act, or

(ii) has kept or caused to be kept false books, or

(iii) has made false entries in or withheld entries from or wilfully altered or falsified any document relating to such of his affairs as are subject to investigation under this Act, or

(c) fraudulently with intent to diminish the sum to be divided among his creditors or to give an undue preference to any of his creditors,—

(i) has discharged or concealed any debt due to or from him, or

(ii) has made away with, charged, mortgaged or concealed any part of his property of any kind whatsoever,

he shall be punishable on conviction ¹[* * *] with imprisonment which may extend to one year.

²[70. Where the Court is satisfied, after such preliminary inquiry, if any,

Procedure on charge
under S. 69.

as it thinks necessary, that there is ground for enquiring into any offence referred to in section 69, and appearing to have been committed by the insolvent, the Court may record a finding to that effect and make a complaint of the offence in writing to a Magistrate of the first class having jurisdiction, and such Magistrate shall deal with such complaint in the manner laid down in the Code of Criminal Procedure, 1898.]

71. Where an insolvent has been guilty of any of the offences specified in section 69, he shall not be exempt from being

Criminal liability after
discharge or composition.

proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

72. (1) An undischarged insolvent obtaining credit to the extent of fifty

LEG. REF.

¹ The words "by the Court" repealed by Act XII of 1927 as consequential on the amendment of sec. 70 by Act IX of 1926.

² Substituted by Act IX of 1926, sec. 11 as amended by Act X of 1927, sec. 3 and 2nd Sch. for the original section.

SEC. 69 (c) (i).—Refers to debts incurred before the order of adjudication and not to debts incurred after that order. 27 N.L.R. 304. Fraudulent gift is as much a punishable offence as a fraudulent mortgage. 8 O. W.N. 1318. Where an adjudicated insolvent removes away certain vital parts of his flour mill which he was not entitled to, as it has been sold away by the Insolvency Court to a third party, his conduct is such that the only possible inference is that he intended to cause wrongful loss to the creditors. His conviction under sec. 69 (c) (i) of the Act is proper and will not be interfered with in revision. 1938 A.L.J. 1217=A.I.R. 1939 All. 166.

SEC. 70.—Nature of notice. See 106 I.C.

486 (2); 1928 S. 85. Option to hold enquiry under the new section is given (*ibid*); also 47 C.L.J. 250=1928 C. 211. As to jurisdiction, see 1933 N. 33=145 I.C. 550. Under this section as amended discretion is given to the Judge even as to holding any preliminary inquiry as to any offence under sec. 69. It is not, therefore, obligatory on the Judge to give notice to the insolvent before holding that there are *prima facie* grounds for inquiry into an offence under sec. 69. 38 P.L.R. 1160=A.I.R. 1936 Lah. 871.

SECS. 71 AND 72.—See 24 N.L.R. 304; 61 C. 605=59 C.L.J. 399=1934 C. 764.

SEC. 72.—Application by a firm to be adjudicated as insolvents — Adjudication—Subsequent adjudication of one of the partners in another insolvency—Effect. 23 S.L.R. 63. The only person who can appeal is the debtor himself. 28 N.L.R. 286. An insolvent has a right of appeal against an order of the Court directing his prosecution for an offence under sec. 72 of the Provincial Insolvency Act. 1940 M.W.N. 1069=(1940) 2 M.L.J. 672.

Undischarged insolvent obtaining credit. rupees or upwards from any person without informing such person that he is an undischarged insolvent shall, on conviction by a Magistrate, be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where the Court has reason to believe that an undischarged insolvent has committed the offence referred to in sub-section (1), the Court, after making any preliminary inquiry that may be necessary, may send the case for trial to the nearest Magistrate of the first class, and may send the accused in custody or take sufficient security for his appearance before such Magistrate; and may bind over any person to appear and give evidence on such trial.

Disqualifications of insolvent.

73. (1) Where a debtor is adjudged or re-adjudged insolvent under this Act, he shall, subject to the provisions of this section, be disqualified from—

(a) being appointed or acting as a Magistrate;

(b) being elected to any office of any local authority where the appointment to such office is by election or holding or exercising any such office to which no salary is attached; and

(c) being elected or sitting or voting as member of any local authority.

(2) The disqualifications which an insolvent is subject to under this section shall be removed, and shall cease if—

(a) the order of adjudication is annulled under section 35, or

(b) he obtains from the Court an order of discharge, whether absolute or conditional, with a certificate that his insolvency was caused by misfortune without any misconduct on his part.

(3) The Court may grant or refuse such certificate as it thinks fit, but any order of refusal shall be subject to appeal.

* * * * *

THE PUBLIC ACCOUNTANTS' DEFAULT ACT (XII OF 1850).¹

Year.	No.	Short title.	Amendment.
1850	XII	The Public Accountants' Default Act, 1850.	Repealed in part, Act XIV of 1870.

[22nd March, 1850.

For avoiding loss by the default of Public Accountants.

Preamble.

For better avoidance of loss through the default of public accountants; it is enacted as follows:—

1. Every public accountant shall give security for the due discharge of the trusts of his office, and for the due account of all moneys which shall come into his possession or control, by reason of his office.

Public Accountants to give security.

LEG. REF.

¹ Short title. "The Public Accountants' Default Act, 1850". See the Indian Short Titles Act, 1897 (XIV of 1897).

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act, 1874 (XV of 1874), sec. 3.

It has been declared to be in force in the Santhal Parganas by the Santhal Parganas Settlement Regulation (III of 1872), sec. 3, as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899), B.

& O. Code, Vol. I, and in Upper Burma generally (except the Shan States) by sec. 4 (1) of the Burma Laws Act, 1898 (XIII of 1898).

It has been declared, by notification under sec. 3 (a) of the Scheduled Districts Act, 1874, (XIV of 1874), to be in force in the following other Scheduled Districts, namely:—

Sec. 73.—See 131 I.C. 252; 14 L. 426=146 I.C. 686=1933 L. 769; (1940) 2 M.L.J. 590.

2. In default of any Act having special reference to the office of public accountant, the security given shall be of such amount and kind, real or personal, or both, and with such sureties (regard being had to the nature of the office), as shall be required by any rules made or to be made from time to time, by the authority by which each public accountant is appointed to his office,

²[* * * * *].

³[3. For the purposes of sections 1 and 2 of this Act, the expression 'public accountant' means any person who as Official Assignee or Trustee, or as sarbarahkar, is entrusted with the receipt, custody or control of any moneys or securities for money, or the management of any lands belonging to any other person or persons; and for the purposes of sections 4 and 5 of this Act the expression shall also include any person who, by reason of any office held by him in the service of the Crown in India, is entrusted with the receipt, custody or control of any moneys or securities for money, or the management of any lands belonging to the Crown].

4. The person or persons at the head of the office to which any public accountant belongs may proceed against any such public accountant and his sureties for any loss or defalcation in his accounts, as if the amount thereof were an arrear of land-revenue due to Government.

LEG. REF.

The Districts of Thar and Parkar, and the Upper Sindh Frontier ...	See Gazette of India, 1880, Pt. I, p. 672.
West Jalpaiguri the Western Hills of Darjeeling, the Darjeeling Tarai and the Damson Sub-Division of the Darjeeling District ...	Ditto 1881, Pt. I, p. 74.
The Districts of Hazaribagh, Lohardaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Manbhum, and Pargana Dalbhum and the Kolhan in the District of Singhbhum ...	Ditto 1881, Pt. I, p. 504.
Kumaon and Garhwal ...	Ditto 1876, Pt. I, p. 605.
The Scheduled portion of the Mirzapur District ...	Ditto 1879, Pt. I, p. 383.
Jaunsar Bawar ...	Ditto 1879, Pt. I, p. 382.
The Scheduled Districts of the Central Provinces ...	Ditto 1879, Pt. I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam ...	Ditto 1898, Pt. I, p. 870 and Fort St. George Gazette, 1898, Pt. I, p. 666.

It has been extended, by notification under sec. 5 of the last-mentioned Act, to the following Scheduled Districts, namely:—

The Tarai of the Province of Agra ...	See Gazette of India, 1876, Pt. I, p. 06.
The Scheduled Districts of the Punjab (some of the Districts now form part of N.-W.F. Province, see Appendix, Punj. & N.-W. Code) ...	Ditto 1883, Pt. I, p. 505.
Ajmer and Merwara ...	Ditto 1878, Pt. I, p. 380.
Coorg ...	Ditto 1911, Pt. I, p. 1477.

As to the partial repeal of the Act in the Bombay Presidency, see the Bombay Land-revenue Code, 1879 (Bom. Act V of 1879), sec. 2, and Sch. A, Bom. Code, Vol. II. As to its repeal in Assam, in which it was declared to be in force by notifications under sec. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), Gazette of India, 1878 and 1879, Pt. I, pp. 523 and 631, respectively, see the Assam Land and Revenue Regulation, I of 1880, Assam Code.

¹ For rules made by the Government of—

(1) Bombay, see Sindh Official Gazette 1896, Pt. I, pp. 198, 228, 244, 262 and 276.
(2) Madras, see No. 130 of the Standing Orders of the Board of Revenue.

(3) United Provinces, see List 3, p. 1 of Vol. I, of, U.P. Loc. R. & O.

² Omitted by A.O., 1937.

³ Sec. 3 substituted by *ibid.*

Sec. 4.—The High Court has no jurisdiction under sec. 115, C. P. Code, to revise an

5. All Regulations and Acts now or hereafter to be in force for the recovery of arrears of land-revenue due to Government, and for recovery of damages by any person wrongfully proceeded against for any such arrear shall apply, with such changes in the forms of procedure as are necessary to make them applicable to the case, to the proceedings against and by such public accountant.¹

6. [Validation of former rules.] Rep. by the Repealing Act, 1870 (XIV of 1870).

THE PUBLIC GAMBLING ACT (III OF 1867).²

[Local Act of the Governor-General in Council in force in the Punjab and in the North-West Frontier Province.]

Year.	No.	Short title.	Where in force.	Effect of Subsequent Legislation.
1867	III	The Public Gambling Act, 1867.	Punjab and the North-West Frontier Province.	Rep. in part, Act XVI of 1874. " Act XVII of 1914. Amended, Act XII of 1891. " Act I of 1903.

CONTENTS.

SECTIONS.

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2. Power to extend Act.
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4. Penalty for being found in gaming-house.
5. Power to enter and authorise police to enter and search.
6. Finding cards, etc., in suspected houses, to be evidence that such houses are common gaming-houses.
7. Penalty on persons arrested for giving false names and addresses.
8. On conviction for keeping a gaming-house, instruments of gaming to be destroyed.

SECTIONS.

9. Proof of playing for stakes unnecessary.
10. Magistrate may require any person apprehended to be sworn and give evidence.
11. Witnesses indemnified.
12. Act not to apply to certain games.
13. Gaming and setting birds and animals to fight in public streets. Destruction of instruments of gaming found in public streets.
14. Offences, by whom triable.
15. Penalty for subsequent offence.
16. Portion of fine may be paid to informer.
17. Recovery and application of fines.
18. Repealed.

[25th January, 1867.

An Act to provide for the punishment of public gambling and the keeping of common gaming-houses in the North-Western Provinces of the Presidency of Fort William, and in the Punjab, Oudh, [and the Central Provinces.]

WHEREAS it is expedient to make provision for the punishment of public gambling and the keeping of common gaming-houses in the territories, respectively, subject to the Govern-

Preamble.

LEG. REF.

¹ For the law relating to the recovery of revenue-arrears, see the Revenue Recovery Act, 1890 (I of 1890).

² For Statement of Objects and Reasons, see Gazette of India, 1866, p. 976; for Report of the Select Committee, see *ibid.*, 1867, Supplement, dated January, 19th, p. 44; for Proceedings in Council, see *ibid.*, 1866, Supplement, dated December 29th, p. 662; *ibid.*, 1867, Supplement, dated January 26th, and

February 2nd, pp. 48 and 52.

Short title, "The Public Gambling Act, 1867". See the Amending Act (V of 1897).

³ The words "and the Central Provinces" were substituted for the words "the Central Provinces and British Burma" by the Amending Act (I of 1903).

order passed by a District Judge under sec. 4 of the Public Accountants' Default Act, 1850. 19 Bom.L.R. 926=42 B. 119,

ments of the ¹Lieutenant-Governor of the North-Western Provinces of the Presidency of Fort William ²[and] of the ³Lieutenant-Governor of the Punjab, and to the administrations of the Chief Commissioner of Oudh, ⁴[and of the Chief Commissioner of the Central Provinces].

It is hereby enacted as follows:—

Interpretation clause. 1. In this Act—

⁵[* * * * *],
 “Common gaming-house” means any house, walled enclosure, room or place in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, enclosure, room or place, whether by way of charge for the use of the instruments of gaming, or of the house, enclosure, room or place, or otherwise howsoever.

⁶[* * * * *]
 2. ⁷[Sections 13 and 17] of this Act shall extend to the whole of the said territories; and it shall be competent to the ⁸[Provincial Government], whenever ⁹[it] may think fit, to extend, by a notification¹⁰ to be published in three successive numbers of the Official Gazette, all or any of the remaining sections of this Act to any city, town, suburb, railway station-house and place being not more than three miles distant from any part of such station-house within the territories subject to ¹¹[its]

LEG. REF.

¹ To be construed now “Governor of the United Provinces of Agra and Oudh”. See sec. 31 of the General Clauses Act (X of 1897).

² The word “and” was inserted by the Amending Act (XII of 1891), Sch. II.

³ To be construed now “Governor of the Punjab”. See sec. 31 of the General Clauses Act (X of 1897).

⁴ The words were substituted for the words “of the Chief Commissioner of the Central Provinces and of the Chief Commissioner of British Burma” by the Amending Act (I of 1903), but to be construed now the Governor of the Central Provinces. See sec. 31 of the General Clauses Act (X of 1897).

⁵ Definitions of ‘Lieut.-Governor’ and ‘Chief Commissioner’ omitted by A.O., 1937.

⁶ Certain words after this repealed by Act XVII of 1914.

⁷ These words and figures were substituted for the original words and figures by the Amending Act (XII of 1891), Sch. II.

⁸ Substituted for ‘Lieut.-Governor or the Chief Commissioner as the case may be’ by A.O., 1937.

⁹ Substituted by *ibid.*, for the word ‘he’.

¹⁰ For list of notifications extending the Act to towns in the Punjab, see also Punjab Gazette, 1907, Pt. I, p. 861; *ibid.*, 1913, Pt. I, pp. 380, 404.

For notification extending the Act to the town of Tang in the Dera Ismail Khan District, see N.-W.F. Gazette, 1914, Pt. I-A, p. 159.

For notifications under the Cantonment Act, 1889, extending this Act to cantonments in the Punjab and to the Cantonments of Peshawar and Nowshera in the N.-W.F. Province, see Gazette of India, 1906, Pt. I, pp. 155, 519.

¹¹ Substituted by A.O., 1937 for the word ‘his’.

SEC. 1: CONSTRUCTION OF THE ACT.—Act must be construed strictly. See L.B.R. (1872-1882), 429; *ibid.*, pp. 53, 86, 281; 1890 A.W.N. 226.

SCOPE AND OBJECT OF THE ACT.—See 2 N. W.P. 289. By a Government notification the Act was extended to the north bank of the Gauges. Certain persons were found gambling in the mid-stream. *Held*, it was no offence. 88 I.C. 5 (1)=26 Cr.L.J. 1061 (1)=23 A.L.J. 457=1925 A. 518=45 A. 258. It is not all gaming of digits which constitutes the house, vessel, etc., in which the instruments of gaming are kept, a common gaming house. If the winning number is to be ascertained, in some manner other than that mentioned in para. 1 of sec. 1 of the Public Gambling Act, then the place where the gaming was taking place would not be a common gaming house unless the occupier was obtaining some profit from the use of the place. L.L.B. (1940) All. 559=190 I.C. 252=1940 A.L.J. 456=1940 A.W.R. (H. C.) 391=A.I.R. 1940 All. 412. See also A.I.R. 1941 Cal. 32. Dara gambling is a specified form of Satta gambling and in such a case the omission on the part of the prosecution to prove the commodity concerned is not a fatal defect. Where betting slips are recovered in a house searched under a warrant under sec. 5 of the Act, they constitute instruments of gaming within the meaning of the Act and give rise to a presumption under sec. 6 that the house is a common gaming house. 1941 O.W.N. 794=1941 A.Cr.C. 138=1941 All. 330=I.L.B. (1941) All. 576.

APPLICABILITY.—The Habitual Offenders Restriction Act cannot be applied in respect of persons dealt with under the Gambling Acts. See 5 Bur.L.J. 228=101 I.C. 668=28 Cr.L.J. 490=1927 E. 122; 7 E. 1=117 I.C. 255=30 Cr.L.J. 755=1929 R. 147. Sec. 562, Cr. P. Code, has no application to a case

government or administration, and in such notification to define, for the purposes of this Act, the limits of such city, town, suburb or station-house, and from time to time to alter the limits so defined.

From the date of any such extension, so much of any rule having the force of law which shall be in operation in the territories to which such extension shall have been made, as shall be inconsistent with or repugnant to any section so extended, shall cease to have effect in such territories.

3. Whoever, being the owner or occupier, or having the use, of ¹[any house, walled enclosure, room or place] situate within the limits to which this Act applies, opens, keeps or uses the same as a common gaming-house; and

Penalty for owning or keeping, or having charge of a gaming-house.

LEG. REF.

¹ These words have been amended in the U. P. by U. P. Act (I of 1917), in the Punjab by Punjab Act (I of 1929) and in the C. P. by C. P. Act (III of 1927).

under the Gambling Act. 71 I.C. 62=1922 Oudh 224; 1924 L. 224.

"COMMON GAMING HOUSE"—WHAT IS.—See notes under secs. 3 and 13. Under the C.P. Amendment Act (III of 1927) the term would include a public road. I.L.R. (1936) Nag. 89=162 I.C. 332=A.I.R. 1936 Nag. 78. See also 1941 N.L.J. 297; A.I.R. 1940 All. 412. Under sec. 1 of the Act as amended by the C. P. Act, III of 1927, 'gaming' includes wagering or betting and 'common gaming house' includes in the case of gaming on the occurrence of rain or other natural event any enclosure, space, etc., in which such gaming takes place. Betting on the number of carts that would enter the cotton markets on a particular day cannot possibly come under cl. (1) (d). The word 'natural' seems to have been deliberately used in juxtaposition to the word 'rain' in order to make it clear that a reference is intended to an event dependent on natural and not on human causes. 1939 N.L.J. 401.

SECS. 1 AND 2: LIMITS WITHIN WHICH ACT IN FORCE.—Where the Lieut.-Governor, declared by notification that the Act should be in force within the boundaries of a Municipality and those boundaries were subsequently revised, and an offence was committed within the boundaries as existing at the time of the notification but without the boundaries as revised, held, that the boundaries for the purpose of Act must be taken to be those existing at the time of the notification under that Act. 1906 A.W.N. 133=3 Cr.L.J. 439.

NOTIFICATION EXTENDING PROVISIONS OF THE ACT—VALIDITY.—The notification in the Punjab Gazette extending the whole of the Act to a town, are not ineffectual by reason of their defining the limits of the town. 12 P.R. 1886 (Cr.). Notification extending the Act to a 'town'—Cantonment not included. 23 P.R. 1887 (Cr.). The Act, or any of its provisions, cannot be extended to a town or place, to which the Act does not *ipso facto* apply, under the terms of sec. 2, by the mere publication of a notification in one issue of the Gazette only. 3 P.R. 1885 (Cr.). Gambli-

ing on a kachcha public road outside the limits of a Municipality, to which the Act has been extended, is an offence under sec. 13 because the words "limits aforesaid", in that section refer to the whole of the territories under administration of a Lieut.-Governor. 12 Cr.L.J. 107=9 I.C. 630. Although the Act as amended by the Punjab Amendment, 1929, has been extended by a notification to the Cantonment of Ambala, it does not apply to Sadar Bazar which has been excluded from the limits of that cantonment by a later notification. 38 P.L.R. 432.

QUESTION OF WHAT PROVISION OF THE ACT HAS BEEN EXTENDED TO A PARTICULAR LOCALITY—WHETHER A QUESTION OF LAW OR FACT.—Whether or not portions of the Act had been extended to a particular locality, and whether the steps taken in this view were sufficient in law to effect it, are questions of law and fact, which the Criminal Court has to decide for itself before convicting the accused. When once a decision has been arrived at, the point cannot be reopened in a subsequent case except where the facts of a particular case bring it within sec. 44, Evidence Act. 41 P.R. 1885 (Cr.). It would not be an offence if gambling takes place outside the area to which the Act has been applied by notification. 88 I.C. 5=23 A.L.J. 457=26 Cr.L.J. 1061. Trial by Magistrate who issued warrant not desirable—Conviction by such Magistrate may not stand. 4 A.W.R. 345.

SECS. 3 AND 4.—[See also notes under secs. 4 to 6 and 13].

ESSENTIALS OF OFFENCE UNDER SECS. 3 AND 4.—A person who is simply caught on one occasion gambling on a public road cannot be said to use the same as a common gaming house. Sec. 3 contemplates a more serious offence than sec. 4 as the respective punishments will show, and it is evidently aimed at the keeper of a gaming house or other persons who habitually come within the same category. I.L.R. (1936) Nag. 89=162 I.C. 332=37 Cr.L.J. 538=A.I.R. 1936 Nag. 78. Indulging in a common friendly amusement where the idea of making a profit by levying a commission was not present to the mind of the owner of the house is no offence. 20 O.C. 4=18 Cr.L.J. 494=39 I.C. 334. In order to bring the case under the Act, it is not necessary to prove that pro-

whoever, being the owner or occupier of any such ¹[house, walled enclosure, room, or place] as aforesaid, knowingly or wilfully permits the same to be opened, occupied, used or kept by any other person as a commons gaming-house; and

whoever has the care or management of, or in any manner assists in conducting, the business of any ¹[house, walled enclosure, room or place] as aforesaid, opened, occupied, used or kept for the purpose aforesaid; and

whoever advances or furnishes money for the purpose of gaming with persons frequenting such ¹[house, walled enclosure, room or place],

shall be liable to a fine not exceeding two-hundred rupees, or to imprisonment of either description,² as defined in the Indian Penal Code, for any term not exceeding three months.³

LEG. REF.

¹ *Vide* foot-note 1 at p. 1203.

² *See* sec. 53 of Act XLV of 1860.

³ As to enhanced punishment for a second conviction of an offence under sec. 3 or sec. 4, *see* sec. 15 of this Act.

It is certain to result. A mere expectation of profit would suffice. 49 A. 562=25 A.L.J. 346=1927 A. 480. But *see also* 26 Cr.L.J. 872=23 A.L.J. 185=47 A. 405=1925 A. 309. Manipulation to avert loss in any event—Offence. 81 I.C. 438=22 A.L.J. 249=46 A. 447=1924 A. 338 (F.B.). Sums set apart for those ministering to comforts is not advantage to keeper of the house. 62 I. C. 322=22 Cr.L.J. 498 (Nag.). It must be established that owner or occupier takes a fixed commission which is irrespective of the result of the gambling, or at the outside, that he manipulates the conditions in such manner that he cannot possibly lose. 45 A. 258=21 A.L.J. 236=76 I.C. 96; 46 A. 447 (F.B.); 19 P.R. 187 (Cr.). To sustain conviction for keeping a common gaming-house the prosecution must prove not only that he owned the house, or was the occupier of it and that the instruments of gambling were kept or used in it, but that they were kept or used for his profit or gain. 19 Cr.L.J. 958=47 I.C. 810=16 A.L.J. 760. *See also* 90 I.C. 713=2 O.W.N. 638=12 O.L.J. 646=1926 Oudh 674; 30 Cr.L.J. 557=1929 Oudh 151. Gambling in itself is not an offence and only becomes punishable as an offence, when it takes place in a common gaming house or in a public place, S.C. 203, Oudh. Gambling in Dewali should not be considered an offence but the law will not countenance gambling even in Dewali if it is in contravention of the Act. 7 O.W.N. 757=1930 Oudh 403. *See also* 37 S.L.R. 32=34 Cr.L.J. 356=1932 Sind 42. As to essentials for conviction, *see* 31 P.L.R. 184=1930 Lah. 314. Racing in partnership—Validity. *See* 27 C.W.N. 442=80 I.C. 498=1923 Cal. 445. Definition of gaming is only indicative. All that has to be seen is whether the game that was going on for money staked on the result of the game which was to be lost or won according to success or failure of the person who has staked provided it was not a lottery—If lottery is excluded. *See* 57 Cal. 520=125 I.C. 642=33 C.W.N. 910=1929 C. 769. Receipt of

money from one of the players or winners on a single occasion is not sufficient for a conviction. There ought to be other incriminating evidences. 75 I.C. 357=24 Cr.L.J. 933=1923 Rang. 144.

UNDER THE C. P. AMENDMENT ACT (III of 1927).—In the case of a public place, such as a road used as a gaming house, sec. 3 would apply to a man who habitually uses that spot and has his regular beat or stand there, but not a casual gambler whether he hands over or accepts the money staked. I. L.R. (1936) Nag. 89=37 Cr.L.J. 588=A.I.R. 1936 Nag. 78.

JURISDICTION OF MAGISTRATE.—*See* I.L.R. (1872-1892) 486.

MEANING OF TERMS.—A 'person' not only includes a natural person but a juristic person such as Municipal Committee. 24 Cr. L.J. 463; 72 I.C. 623. The words "for the profit or gain of" used in the definition of "common gaming-house" in sec. 1 cannot be read as meaning for the purpose of carrying on the gaming. 20 A.L.J. 218; 23 Cr. L.J. 196; 65 I.C. 852. Sec. 3 of the Bombay Gaming Act makes "gaming" within the meaning of the Act the collection or soliciting of bets, and it makes no difference if these bets are brought by a messenger or person or sent by telephone or sent and received by telephone. It is gaming within the definition of sec. 3, and in sec. 7 the word "persons" includes "person", the plural includes the singular. Hence, a person caught actually in the act of taking bets over telephone can be convicted of gaming under sec. 5. I.L.R. (1940) Kar. 150=187 I.C. 78=41 Cr.L.J. 399=A.I.R. 1940 Sind 28. Common gaming-houses are houses, etc., in which instruments of gambling are kept or used for the profit or gain of the owner or occupier, whether by way of charge for the use of the instruments of gaming or of the house, or otherwise howsoever. 3 N.W.P. 134. *See also* 20 A.L.J. 218=65 I.C. 852. Instruments of gaming include articles used as a means or appurtenance of, or for the purpose of, carrying on, or facilitating gaming. 20 A.L.J. 218=23 Cr.L.J. 196=65 I.C. 852. *See also* I.L.R. (1940) All. 559=1940 A.L.J. 456=A.I.R. 1940 All. 412 (slip with numbers and a register); A.I.R. 1940 Bom. 18 (Marked coins). A lottery or sweep ticket is not an instrument of gaming within the meaning of sec. 13. Mere betting

without gaming is no offence in the Central Provinces and Berar. 47 I.C. 433=19 Cr.L.J. 917=14 N.L.R. 137. So also books used for registering or recording gaming transactions. 53 R. 367=31 Bom.L.R. 158=30 Cr.L.J. 595=1929 Bom. 157 (case law discussed); so also register or record of transactions in American futures as books registering Kacha Mandi transactions and Tej Mandi transactions (*ibid.*); so also advertisements of Satta gambling and accounts of Satta gambling are "instruments of gaming". 49 A. 562=23 A.L.J. 346=1927 A. 408 (1924 A. 338, Foll.). Anything which assists gaming or which is used for furtherance of gaming would be instrument of gaming. It is not possible to give an exhaustive list of such articles. It will be necessary to consider the article in question with reference to the game that is played. Slips of papers found in the house held to be instruments of gaming. (65 I.C. 852; 46 A. 447 and 49 A. 562, Rel.) 1933 A. 554. Telegrams and documents which enabled gamblers to settle differences but could not be deciphered are not implements of gaming within the meaning of the Act such as, if found in a house, would enable a Court to presume that the house was a common gaming-house. 21 A.L.J. 318=76 I.C. 28=25 Cr.L.J. 92. Cowries, if instruments of gaming, 90 I.C. 713=3 O.W.N. 638=26 Cr.L.J. 160=1925 O. 674; 3 P.R. 1896 (Cr.). See also 6 C.P.L.R. 17 (Cr.); 18 A. 23; 12 Cr.L.J. 28=8 I.C. 1127=6 N.L.R. 168; 19 A. 311. The expression "using or keeping" in sec. 3 of the Bombay Prevention of Gambling Act means having a right to use or keep as in sec. 4 (a) and if the accused was not a person having a right to use this passage, then it would be irrelevant to prove that he was making a profit out of the gaming carried on there. To bring a case within the definition, it would be necessary to show that profit was to be made for the person owning, keeping or using the passage, that is, presumably the landlord. I.L.R. (1940) Bom. 322=42 Bom.L.R. 161=A.I.R. 1940 Bom. 129. See also A.I.R. 1940 Bom. 18.

"OWNER OR OCCUPIER OF HOUSE".—Meaning of. See 41 Bom.L.R. 1826=A.I.R. 1940 Bom. 62. "Having the use of"—Meaning of. See A.I.R. 1940 Bom. 18.

COMMON GAMING-HOUSE — PRESUMPTIVE EVIDENCE.—[See also Notes under secs. 5 and 6]. It is only in the case of a house searched under the provisions of sec. 5 that a presumption arises, under sec. 6, from the mere discovery of cards, dice, or other instruments of gaming, that it is a common gaming house. L.B.R. (1872-1892) 548; 101 I.C. 659=28 Cr.L.J. 483. See also 155 I.C. 496=41 L.W. 679=68 M.L.J. 421; 1941 O.W.N. 794. The presence of implements of gaming, which were not actually being used at the time does not give rise to a presumption that the house was a common gaming-house. 45 A. 258=21 A.L.J. 36=76 I.C. 969; 25 Cr.L.J. 297=1923 A. 192. To

justify conviction of the accused for keeping a common gaming-house it must be established that the owner or occupier of the house takes a fixed commission which is irrespective of the result of the gaming, or that he manipulates the conditions in such a manner that he cannot possibly lose, 20 A.L.J. 218=65 I.C. 852. Where chance of loss is extremely rare, offence is complete. 23 A.L.J. 185=47 A. 405=1925 A. 309; 2 Bur. L.J. 5=75 I.C. 71=1923 R. 141. Where in pursuance of a warrant issued under sec. 5 of the Act, certain slips with numbers upon them and a register were found in the house of the accused, in the absence of any explanation as to the purpose of these slips, it should be inferred that they are instruments of gaming and consequently the discovery of them is evidence, until the contrary is made to appear, that the place was being used as a common gaming house. I.L.R. (1940) All. 559=1940 A.L.J. 456=1940 A.W.R. (H.C.) 391=A.I.R. 1940 All. 12. See also 1941 O.W.N. 794.

"PUBLIC PLACE", WHAT IS.—[See also Notes under secs. 4 and 13]. When the public have access to a place without their access being refused or interfered with, that place is a public place whether the public have a right to go there or not. 20 A.L.J. 31=44 A. 205=65 I.C. 419. See also 9 N.J.R. 134; L.B.R. (1872-1892) 57, 59. Consequently gambling in a private grove frequented by the public on the occasion of a fair is an offence. 20 A.L.J. 80; 44 A. 265=65 I.C. 419. A garden enclosed with a hedge or ditch where gambling takes place, cannot be considered as a "common gaming-house". 14 P.R. 1896 (Cr.). Conviction under secs. 3 and 4 for gambling in a temporarily constructed shelter is irregular. 20 Cr.L.J. 303=50 I.C. 351 (A). A bullock run surrounded by low wall of loose bricks is a place. 38 A. 47=31 I.C. 1002.

"PASSAGE".—If common gaming house. See A.I.R. 1940 Bom. 18=186 I.C. 242.

"COMMON GAMING-HOUSE" — "RING-GAME" KEPT AS ONE OF ITEMS IN VARIETY ENTERTAINMENT.—In an enclosure erected for a variety entertainment one of the items was the ring-game. This was a game where the public may, if they so desire, try to throw brass rings, which they buy from the management at four to the anna, over small coin placed on a table. The coins were ranged from one anna to a rupee. *Held*, that this enclosure could not be properly described as a "common gaming-house", nor could the table on which the coins were spread be described as an instrument of gaming and that even if technically it could be so described, this was clearly a case of *de minimis non curat lex*, a principle of law well recognized by Courts and enunciated by sec. 95, I. P. Code. *Held*, further, that this type of game when played for such small prizes was not the mischief aimed at by the Public Gambling Act. 1935 L. 225. See also 1940 N.L.J. 297.

GOVERNMENT OFFICE if used for gambling would come under the definition of "com-

mon gaming-house". 26 A.L.J. 400=29 Cr. L.J. 448=1928 A. 215.

PRESUMPTION.—If there is a fair presumption under sec. 6 that the person is the occupier or has the use of a room within sec. 3 as a common gaming-house the issue of a warrant is not illegal. 21 Cr.L.J. 442=56 I.C. 234 (A.). To substantiate a conviction under sec. 4 it is sufficient if the accused persons were seen on the premises on the entry of the police in the course of a lawful search though most of them managed to evade arrest at the moment. 22 Cr.L.J. 508=62 I.C. 332=17 N.L.R. 59. Where a house is not proved to be a common gaming-house, the presence of other persons therein will not raise a presumption against them and even if it were one, no presumption will arise against such persons unless it can be shown that gambling was going on at the time when they were present. 19 Cr.L.J. 958=47 I.C. 810=16 A.L.J. 760. In a case under secs. 3 and 4, the owner of the house should be allowed to prove that the house was not used as a common gaming-house. L.B.R. (1871-1892), 53.

EVIDENCE OF USE OF INSTRUMENTS OF GAMING ESSENTIAL FOR CONVICTION.—In order to support a conviction under sec. 3 of keeping a common gaming-house as defined by sec. 1 there must be evidence that instruments of gaming were kept or used. L.B.R. (1872-1892), 532. See also 116 I.C. 57=1929 O. 1151=6 O.W.N. 45. The mere finding of cards, dice, etc., is not evidence that the house is a common gaming-house. The owner or tenant must derive profit or gain from the gambling. 19 P.R. 1871 (Cr.). The fact that certain instruments of gaming, such as race-books, were found in the house is not sufficient to show that the house is a common gaming house, though they might be treated as evidence. A.I.R. 1941 Cal. 32. See also A.I.R. 1940 All. 412; 1941 O. W.N. 794 (finding of betting slips).

SEARCH WARRANT—CREDIBLE INFORMATION—PRESUMPTION.—When a search warrant purported to be issued upon credible information and after enquiry signed by the District Superintendent of Police, *held*, that it was open to the Magistrate to presume until the contrary was made to appear, that it was open to the Magistrate to presume the warrant was issued on credible information after sufficient enquiry and that the prosecution need not give evidence, in the enquiry, if any, held thereupon. 29 P.R. 1881 (Cr.) See 5 O.C. 37. (See also notes under secs. 5 and 6). Where at the time when the Magistrate signed the warrant the place used as public gaming-house is not stated at all in the body and the warrant was issued on credible information it should be presumed that the Magistrate signing the warrant had such information. A police report is *prima facie* credible information. 14 Cr.L.J. 293=19 I.C. 949=9 N.L.R. 68. As to imperfect description in the warrant of the house to be searched, see 1905 A.W. N. 105=2 Cr.L.J. 243. Where there was no

credible information and no enquiry was made for the purpose of being satisfied that a house was used as a common gaming house and a warrant is issued by the Magistrate, it could not be legal and hence sec. 6 of the Act could not be invoked to raise a presumption against the accused in such a case. 1939 N.L.J. 357.

JOINT TRIAL.—Joint trial of keeper of house and persons found in the house is not illegal. 3 Lah. 359. See also 104 I.C. 441=28 Cr.L.J. 825=1927 Lah. 699 (case-law discussed). Offences under secs. 3 and 4 are inter-dependent and are compliments of one another. 1930 A.L.J. 229=31 Cr.L.J. 35=1929 A. 937. Two accused under secs. 3 and 4 can be tried in the same trial. 35 P. R. 1914 (Cr.); 9 N.L.R. 68. The offence of keeping the gaming-house and the offence of using it, both appear to be offences committed in the same transaction. 20 A.L.J. 967=71 I.C. 507=1923 All. 88 (1). Offences under secs. 3 and 4 are different offences. The offence under sec. 3 is that the owner or occupier opens or keeps the house as a common gaming-house. He may do this without himself taking part in the gaming under sec. 4. 81 I.C. 186=25 Cr.L.J. 698=1924 Oudh 403.

MISJOINDER OF CHARGES—DISCRETION OF CHIEF COURT TO HEAR PLEADER IN REVISION.—A person accused under sec. 3 cannot be tried together with the person accused under sec. 4 on the ground of misjoinder of charges. See 5 P.W.R. 1910 (Cr.). See also 31 Cr.L.J. 35=1930 A.L.J. 229=1929 All. 937. *Obiter*:—When the District Magistrate has refused to appoint a legal practitioner to represent the Crown in revision, the Chief Court must decline to hear him. 5 P.W.R. 1910 (Cr.).

CONVICTIONS UNDER SECTIONS, ESSENTIAL FOR.—In order to sustain a conviction under secs. 3 and 4 it must be shown that the house in which the alleged offence was committed was a common gaming-house within the meaning of sec. 1. 46 P.R. 1867 (Cr.). See also 6 C. P.L.R. 17 (Cr.); 116 I.C. 57=1929 Oudh 151. A man, who keeps a common gaming-house and gambles in it himself, cannot be convicted and separately sentenced under secs. 3 and 4. L.B.R. (1893-1900), 459.

CONVICTION WHEN SUSTAINABLE.—Before a conviction could be had under sec. 3 or sec. 4 it should be proved that cards, dice, tables or other instruments of gaming were "kept or used for the profit or gain of the person owning, occupying, using or keeping the house". 6 C.P.L.R. 17 (Cr.). Where a Magistrate convicted certain persons under secs. 3 and 4 but directed their release on their entering into a personal bond for good behaviour for one year, held, that the order was illegal inasmuch as sec. 562, Cr. P. Code, had no application to the case. 25 O.C. 111=71 I.C. 62; 24 Cr.L.J. 14=1922 Oudh 224. The law does not contemplate the confiscation of money found on the persons of the accused convicted under secs. 3 and 4. 41 All. 366=21 Cr.L.J. 42=54 I.C. 250=17 A.

4. Whoever is found in any such ¹[house, walled enclosure, room or place], playing or gaming with cards, dice, counters,

Penalty for being found money or other instruments of gaming, or is found in gaming-house.

there present for the purpose of gaming, whether playing for any money, wager, stake or otherwise, shall be liable to a fine not exceeding one hundred rupees, or to imprisonment of either description,² as defined in the Indian Penal Code, for any term not exceeding one month;³

and any person found in any common gaming-house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.

LEG. REF.

1 *Vide* footnote 1 at p. 1203.

2 *Vide* footnote 2 at p. 1204.

3 *Vide* footnote 3 at p. 1204.

L.J. 368. In the case of an offence under sec. 3 of the Public Gambling Act, for keeping a shop as a gaming house for satta gambling, it is incumbent for the prosecution under the law to prove by definite evidence the commodity in respect of which the alleged satta gambling was going on. Mere vague and general statement by prosecution witnesses that satta gambling was going on prove nothing in law. 1939 A.W.R. (H.C.) 736=1930 A.L.J. 990=A.I.R. 1939 All. 734.

FRIENDLY AMUSEMENTS NO OFFENCE.—It is not unusual for persons to gamble on the occasion of the Deepavali festival by way of a common friendly amusement rather than for the purpose of making any profit or reaping a commission. 25 O.O. 111=71 I.C. 62=24 Cr.L.J. 14=1922 Oudh 224; 7 O.W.N. 757=1930 Oudh 403; 90 I.C. 713=1925 Oudh 674. *See also* 20 O.C. 4=39 I.C. 334=11 Cr.L.J. 494. A person simply allowing the use of his house to gamblers during a Deepavali festival without any idea of demanding rent, etc., cannot be said to keep a common gaming-house within secs. 3 and 4. 20 Cr.L.J. 283=50 I.C. 171 (All.).

SENTENCE OF IMPRISONMENT AND FINE.—A sentence of imprisonment and fine under sec. 3 or sec. 4 is illegal. L.B.R. (1872-892) 434; 28 P.L.R. 577=28 Cr.L.J. 790=1927 Lah. 672. Fine is a more appropriate form of punishment, for a first offence under sec. 4 than imprisonment. A Magistrate should strongly mark the distinction between offences under secs. 3 and 4. L.B. (1872-1892), 428. It is not proper to convict the accused person under the two sections and pass a cumulative sentence on him on count only. 31 Cr.L.J. 35=1930 A.L.J. 29=1929 All. 937.

REWARDS TO INFORMERS.—There is no justification in sec. 16 for the payment of any portion of a fine imposed under sec. 13 to the informer. There is no authority for awarding an arresting officer out of the fine imposed under secs. 3 and 4, or out of the moneys or sale proceeds of articles seized and ordered to be forfeited under the Act. B.R. (1872-1892), 407.

JURISDICTION OF MAGISTRATE.—Accused has a right to examine the Magistrate

issuing warrant as a witness to enquire from him what was the information received by him and how the warrant was filled up; and therefore accused would be materially prejudiced by trial by the very Magistrate who issued the warrant. 73 I.C. 521=24 Cr. L.J. 633=1924 Lah. 247.

SEC. 4.—*See also* notes under secs. 3, 5 and 13.

ESSENTIALS FOR CONVICTION.—The only crime under the Public Gambling Act is being found in the place where gambling is going on and it is no offence to gamble in a public place as long as a person is not found doing it. The persons not found in the place where gambling was going on cannot therefore be convicted under sec. 4 of the Act. [35 P.R. 1894 (Cr.), Foll.] 177 I.C. 298=40 P.L.R. 916=A.I.R. 1938 Lah. 631.

GAMBLING IN A PRIVATE HOUSE.—Sec. 13 punishes gambling in a public street or place. Sec. 4 punishes gambling in a common gaming-house. Gambling in a private house is not an offence under the Act. 2 N.W.N. 289. *See also* 1941 Nag. 16 (open space in front of panstall).

GAMBLING IN A COMMON GAMING-HOUSE.—In order to support a conviction, the accused must actually be found in the house when search was made. 36 P.R. 1894 (Cr.). Where a panstall is very small and customers never actually enter it as there is no room for them, but they stand in front of it, and carry on the betting or gaming, the area in which the customers usually stand should be included in the definition of 'common gaming house' when the place is so used. 190 I.C. 764=1940 N.L.J. 297; A.I.R. 1940 B. 120. Persons present during game—Presumption. *See* A.I.R. 1938 Nag. 63. *See also* A.I.R. 1941 Nag. 16.

BEING FOUND IN A COMMON GAMING-HOUSE.—A person seen actually in a gaming-house by the officer executing the warrant at the time of their reaching the house is "found" in the house within the meaning of sec. 4. It is not necessary that he should be actually arrested in the house. 22 P.R. 1895 (Cr.). [35 P.R. 1894 (Cr.), Expl.] In order to make person punishable under sec. 4, it is not necessary either that he should be found by a Magistrate or by a police-officer acting in the manner provided by sec. 5, or that information should be given by a police-officer. A Magistrate may take action under sec. 4 upon information given by a private

5. If the Magistrate of a district¹ or other officer invested with the full powers of a Magistrate,¹ or the District Superintendent of Police, upon credible information, and after Powers to enter and authorise police to enter and search. such enquiry as he may think necessary, has reason to believe that any ²[house, walled enclosure, room, or place] is used as a common gaming-house,

he may either himself enter, or by his warrant authorise any officer of police, not below such rank as the ³[Provincial Government]: shall appoint in this behalf to enter with such assistance as may be found necessary, by night or by day, and by force if necessary, any such ²[house, walled enclosure, room or place],

LEG. REF.

¹ Read District Magistrate and Magistrate of the first class, respectively. See Code of Criminal Procedure 1898 (Act V of 1898), sec. 3.

² Vide footnote 1 at p. 1203.

³ Substituted for "Lieutenant-Governor or Chief Commissioner" by A.O., 1937.

individual, and may convict upon the evidence of a private individual L.B.R. (1893-1900), 321.

COMMON GAMING-HOUSE — EVIDENCE — "CREDIBLE INFORMATION".—When a house is searched by the Police on information that it is a common gaming-house the finding of instruments of gaming will be admissible evidence that the house is used as a common gaming-house, notwithstanding that the warrant is defective, though the finding of such articles may not be evidence to the extent mentioned in sec. 6. "Credible information" as used in sec. 5 has not the same meaning as "credible evidence". The "credible information" there mentioned need not be in writing. 28 A. 210; 30 A. 60. "Credible information" includes any information which in the judgment of the officer to whom it is given appears entitled to credit on the particular instance and which he believes. It need not be sworn information. 116 I.C. 455=30 Cr.L.J. 625=1929 L. 720. The Public Gambling Act does not require the Magistrate to make an inquiry before issuing a search warrant. All that the Act requires is that the Magistrate should have credible information. He may, but he is not, bound to make an inquiry. I.L.R. (1938) A. 422=175 I.C. 233=1938 A.W.R. (H.C.) 147=1938 A.L.J. 222=A.I.R. 1938 All. 252. Sec. 5 of the Act merely requires that the search warrant should be issued after the receipt of credible information. The warrant is, therefore not invalid if it does not state that it was issued after the receipt of credible information. 171 I.C. 1007=39 Cr.L.J. 55=A.I.R. 1938 Nag. 63; A.I.R. 1939 Nag. 357. As to information being credible the presumption as to regularity of official act applies. 81 I.C. 186=15 Cr.L.J. 698=1924 O. 403.

SEC. 5: SEARCH WARRANT — CONDITIONS FOR ISSUING.—Before issuing a search warrant under sec. 5, the officer, whether Magistrate or Police shall have, upon credible in-

formation, reason to believe that the premises to be searched are used as a common gaming house. It is not necessary that the informant should be examined upon oath or affirmation, or that further enquiry should be made or that a record should be prepared. 7 P.R. 1892 (Cr.) (F.B.) [19 P.R. 1871 (Cr.); 9 P.R. 1876 (Cr.) Ref.] To apply sec. 6 the premises must be entered or searched under the provisions of sec. 5. The credible information, which the police officer must obtain before he can enter a place must show that the gambling is being carried on for the profit of the owner or occupier, and there ought to be evidence to describe either how the game itself was played or how a toll, if any, was levied. The mere fact that small sums are set aside for remunerating those who minister to the comfort of the persons assembled, does not show that such payments represent any advantage whatsoever to the person occupying or keeping the premises. A police-officer is not at liberty to raid premises merely because a number of persons are collected to gamble there, and a conviction based on such information cannot be sustained. 62 I.C. 332=22 Cr.L.J. 498 (Nag.) The body of the search warrant issued under sec. 5 of the Act need not be filled up by the Magistrate or his clerk. All that the Magistrate has to do is to satisfy himself, that there is credible information that the accused's house is being used as a common gaming house. 1945 N.L.J. 237. There is no provision in the Public Gambling Act about the execution of search warrants. Warrants issued under sec. 5 of the Act to a police officer may be endorsed by him to another police officer in accordance with the provisions of sec. 79, Cr. P. Code. 1945 N.L.J. 237.

SEARCH BY OFFICER OTHER THAN THE ONE NAMED IN THE SEARCH-WARRANT.—The only person authorised to make a search is the officer named in the warrant. The officer named in the warrant is not competent to authorize any one else to make the search. 22 P.R. 1895 (Cr.). A charge of being the owner or keeper of a common gaming-house may be proved and conviction sustained even if there has been no legal warrant and search. 22 P.R. 1895 (Cr.) Assistant Superintendent of Police is not authorised to search without warrant. 23 A.L.J. 137=26 Cr.L.J. 896=1925 A. 301. Superintendent

and may either himself take into custody, or authorise such officer to take into custody, all persons whom he or such officer finds therein, whether or not then actually gaming;

of Police certifying warrant that "he had reason to believe". Warrant valid. 7 L. 310=27 P.L.R. 466=27 Cr.L.J. 990=1926 Lah. 459.

GUILT OR INNOCENCE OF ACCUSED.—IF AFFECTED BY LEGALITY OF ARREST.—Under sec. 5 the District Superintendent of Police may arrest without a warrant. In order that an offence may be cognizable offence it is not necessary that every police officer should have the power to arrest without a warrant. The fact that District Superintendent of Police has such power makes it a cognizable offence. The question whether the arrest was valid or not would not affect the question of the guilt or otherwise of the accused, because even if it was illegal, the Court would still have jurisdiction under sec. 190, Cr. P. Code, to take cognizance of the offence. 1941 N.L.J. 465=A.I.R. 1941 Nag. 338.

LIMIT OF SENTENCE.—See 190 I.C. 703=A.I.R. 1940 Sind 187 (case under Bombay Gambling Act). A person who had been seven times previously convicted under the Gambling Act was convicted of being found in a gaming house and was sentenced under secs. 4 and 15 to rigorous imprisonment for six months. *Held*, that the utmost punishment allowed by the law being a fine of Rs. 200 or rigorous imprisonment for two months, the sentence passed was illegal. 1881 A.W.N. 129. (See also notes under sec. 3.) Where either of two offences under the two different Acts are constituted by the same acts the offender cannot be punished for both. 25 Cr.L.J. 225=76 I.C. 689=1923 Lah. 342. Where the prosecution have relied upon the same facts and upon the same acts of the accused to prove that the offences under secs. 4 and 5 (Bombay Gambling Act), were committed the convictions under both sections may be confirmed, but there should be one punishment for both. He should not be punished twice over for the same acts. I. L.R. (1940) Kar. 150=187 I.C. 78=41 Cr. L.J. 399=A.I.R. 1940 Sind 28.

DAING should be punished much more heavily than an ordinary gambler. It is the *Daing* who makes opportunity for other people to commit gambling. 6 R. 655=117 I.C. 60=30 Cr.L.J. 709=1929 Rang. 30.

IMPRISONMENT IN DEFAULT OF FINE.—As the maximum term of imprisonment under sec. 4 is one month, the accused could not, under sec. 65, I. P. Code, be sentenced to more than one week's imprisonment in default of payment of fine. Sec. 65 has been made applicable to fines imposed under the Gambling Act by sec. 25 of the General Clauses Act, 1897. L.B.R. (1893-1900), 385. It is ordinarily undesirable that a Magistrate who believes that the information that a house is credible and issues a search warrant, should try the case. He cannot, however, be said to be personally interested in the case,

and sec. 526, Cr. P. Code, would not apply. 171 I.C. 1007=39 Cr.L.J. 55=A.I.R. 1938 Nag. 68.

SECS. 5, 6 AND 7.—(See also notes under secs. 3, 4, 6 and 13). It is ordinarily undesirable that a Magistrate who believes that the information that a house has been used as a public gaming house is credible and issues a search warrant, should not try the case. He cannot, however, be said to be personally interested in the case, and sec. 526, Cr. P. Code, would not apply. 171 I.C. 1007. As to who can issue search warrant see 42 Bom.L.R. 203=A.I.R. 1940 Bom. 127. An additional Superintendent of Police appointed under sec. 6 of the Bombay District Police Act, has no power to authorise the issue of a search warrant under sec. 6 of Gambling Act. Where a search warrant is issued by an Assistant Superintendent of Police the presumption under sec. 7 of the Act does not arise, and a conviction based on such presumption cannot be sustained. 187 I.C. 459=42 Bom.L.R. 203=A.I.R. 1940 Bom. 127.

SEARCH WARRANT.—APPLICABILITY OF PROVISIONS OF CR. P. CODE.—The provisions of Ch. VII of the Cr. P. Code relating to search do not apply to a search conducted under a warrant issued under sec. 5 of the Gambling Act. 3 Lah. 359=23 Cr.L.J. 621=1922 L. 458. See also 31 Cr.L.J. 35=1930 A.L.J. 229=A.I.R. 1929 A. 937. The object of the legislature is to ensure that searches are conducted fairly and that there is no "planting" of articles by officers engaged in the search. Where, therefore, the witnesses are given an opportunity of satisfying themselves that the police had nothing on their persons, the mere fact that the witnesses actually helped the officers in making the search will not invalidate the search nor prevent presumption arising under the Gambling Act. 5 R. 291=28 Cr.L.J. 701=1927 Rang. 241. *Dara* gambling is a specified form of Satta gambling and in such a case the omission on the part of the prosecution to prove the commodity concerned is not a fatal defect. Where betting slips are recovered in a house searched under a warrant under sec. 5 of the Public Gambling Act, they constitute instruments of gaming within the meaning of the Act and give rise to a presumption under sec. 6 of the Act that the house is a common gaming house. I.L.R. (1941) All. 576=1941 A.L.J. 421=A.I.R. 1941 All. 330.

WARRANT FOR SEARCH, WHEN CAN BE ISSUED.—A warrant cannot be issued under sec. 5 unless the house is used as a gaming house. It is not justifiable where it is issued on the information that it was going to be so used. In the latter case, issue of a warrant is illegal, and does not give rise to any presumption under sec. 6 or any examina-

and may seize or authorise such officer to seize all instruments of gaming, and all moneys and securities for money, and articles of value, reasonably suspected to have been used or intended to be used for the purpose of gaming which are found therein;

and may search or authorise such officer to search all parts of the ¹[house, walled enclosure, room, or place] which he or such officer shall have so entered when he or such officer has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he or such officer so takes into custody;

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¹ *Vide* footnote 1 at p. 1203.

tion under sec. 10 19 A.L.J. 691. A warrant issued under sec. 5 of the Bengal Public Gambling Act must indicate that the Magistrate has reason to believe that the house which he directs to be searched is used as a common gaming-house, or, in other words, as a house which is used by its owner or occupier for the purpose of making profit out of gambling transactions which take place therein. A warrant which merely states that the Magistrate has reason to believe that the house is used for certain gambling is not legal, and if the house is searched under such a warrant, the presumption which is raised under sec. 6 of the Act cannot arise from the instruments of gaming found therein. In such a case, it must be proved by independent evidence that the owner or occupier of the house derived a profit from the use of these instruments of gaming. 45 C.W.N. 24. The expression "a common gaming-house" has a special meaning under the Public Gambling Act and unless that expression is used in the search warrant, the prosecution cannot avail themselves of that special provision of sec. 6 of the Act. 71 C.L.J. 542=44 C.W.N. 1123.

GENERAL WARRANT.—To issue a warrant to raid houses where gambling goes on at the time of Deepavali is highly undesirable as the police are merely encouraged to run on members or perfectly innocent persons in order to get a reward. 7 O.W.N. 757=1930 Cr. C. 943=1930 O. 403=126 I.C. 702. Place used for public gaming not stated in the warrant—Warrant illegal. *See* 73 I.C. 521=24 Cr.L.J. 633=1924 L. 247. But a warrant for the search of a house is not invalid merely because its boundaries are not specified and particularly so where it is described by the name of the owner or occupier and where there is no likelihood of anybody being in doubt as to the identity of the house to be searched. 1938 A.L.J. 222. If the description in the search warrant is otherwise adequate to identify the place without ambiguity, it is immaterial that the boundaries are not specified. 190 I.C. 764=1940 N.L.J. 297. The omission to describe a house by its boundaries or number renders a warrant ineffective. Where the prosecution is not entitled to the presumption under sec. 6 of the Gambling Act, the burden of proof lies on the prosecution. 1939 N.L.J. 257. *see also* 1941 Nag. 16. A warrant for the search of a house is not invalid merely because bound-

aries are not specified and particularly so where it is described by the name of the owner or occupier and where there is no likelihood of anybody being in doubt as to the identity of the house to be searched. I.L.R. (1938) All. 422=1938 A.L.R. 389=1938 A.W.R. (H.C.) 147=1938 A.L.J. 222=A.I.R. 1938 All. 252.

SEARCH OF TWO OR MORE HOUSES.—Two or more houses may be specified in one warrant provided that they are clearly disjoined in it. 17 P.R. 1897 (Cr.). A warrant in the alternative to different police-officers is not bad. 17 P.R. 1897 (Cr.). A Magistrate cannot issue a warrant of search leaving it to the discretion of the police to determine whether it shall or shall not be executed. L.B.R. (1872-1892) 86. Search under gambling Act—Cr. P. Code, sec. 103 not applicable—Entry by Police Officer scaling walls at midnight does not invalidate the search. 9 Luck. 355=11 O. W.N. 62=147 I.C. 317=36 Cr.L.J. 397=1934 O. 90 (68 I.C. 845; 1 Luck. 301, Foll.). If the search warrant is executed by an officer different from the one to whom it is issued, the search is illegal. 71 C.L.J. 542=44 C.W.N. 1123. Failure to examine panchas and to produce independent evidence as to what was found at raid—Effect. *See* 185 I.C. 203=12 R.B. 229=41 Cr.L.J. 127.

SIGNING A WARRANT—MEANING.—Sec. 5 merely requires that the search warrant should be issued after the receipt of credible information. The warrant is, therefore, not invalid if it does not state that it was issued after the receipt of credible information. 171 I.C. 1007. The Act does not require the Magistrate to make an inquiry before issuing a search warrant. All that the Act requires is that the Magistrate should have credible information. He may but, he is not, bound to make an inquiry. 1938 A.L.J. 222. When a warrant, signed by a District Superintendent of Police contained the following words "there is reason to believe," *held*, that the signatory had reason to believe, and acted upon credible information, within the meaning of sec. 5. 17 P.R. 1897 (Cr.). The term "credible information" includes any information which, in the judgment of the officer to whom it is given, appears entitled to credit and which he believes. It is not necessary that such information should be taken upon oath or affirmation. 7 P.R. 1882 (Cr.) (F.B.) [19 P.R. 1871 (Cr.) and 9 P.R. 1876 (Cr.), Ref.] To apply sec. 6 the premises must be entered or searched under the provisions of sec. 5. The credible information, which the police-officer must obtain before he can enter a place must show that the gambling is being carried on for the profit of the owner or occupier, and there ought to be evidence to describe either how the game itself was played, or how a toll, if any, was levied. 62 I.C. 322

and may seize or authorize such officer to seize and take possession of all instruments of gaming found upon such search.

=22 Cr. L.J. 198 (Nag.). See also 1889 A.W.N. 162. The mere fact that small sums are set aside for remunerating those who ministered to the comfort of the persons assembled, does not show that such payments represent any advantage whatsoever to the person occupying or keeping the premises. 62 I.C. 322=22 Cr.L.J. 198 (Nag.). A police-officer is not at liberty to raid premises merely because a number of persons are collected to gamble there, and a conviction based on such information cannot be sustained. 62 I.C. 322=22 Cr.L.J. 198 (Nag.). A search warrant cannot be issued on the mere report or information of a police-officer, as such information does not amount to "credible information". 9 P.R. 1876 (Cr.). An accused under the Act has the right to examine the Magistrate issuing the warrant as a witness to enquire from him what was the information received by him and how the warrant was filled up and therefore he is materially prejudiced by the trial of the case by the very Magistrate who issued the warrant. 73 I.C. 521=24 Cr.L.J. 633=1924 L. 247.

MAGISTERIAL PROCEEDINGS AGAINST PERSONS NOT APPREHENDED BY THE POLICE ON THE SPOT.—Although a magistrate is not restrained from trying an offence punishable under sec. 13 when the police have failed to exercise the power of arrest without warrant conferred upon them in respect of offences punishable under sec. 12; yet it is not indiscreet and ill-advised for a Magistrate to issue a warrant of arrest against a person found gambling, who was apprehended by the police on the spot. L.B.R. (1893-1900), 251.

ENTRY AND SEARCH UNDER THE SECTION, WHEN JUSTIFIED.—To justify action under the section, the Magistrate must have "credible information" and reason to believe that the house is used as a "common gaming-house" within the meaning of the term. 2 N.-W.P. 476. [Ref. to in 9 B.L.R. 695=31 B. 438.] Where a warrant did not show that the officer issuing it (the District Superintendent of Police) had reason to believe that the house in respect of which it was framed, was a common gaming-house, and there was nothing on the record to show that such belief was entertained "upon credible information," and where the accused, who were in the house at the time of the search were charged with and convicted of offences under the Act, held, that the convictions and sentences obtained and imposed under the above circumstances could not be sustained. (1891) A. W.N. 111. See also 1890 A.W.N. 226.

FINDING OF CARDS—WHEN PRIMA FACIE EVIDENCE.—[See also under sec. 13, *supra*.] Only when a house is entered and searched under the provisions of sec. 5 is the finding of cards, dice, etc., sufficient evidence against the accused, until the contrary is made to appear. 2 N. W.P. 476. See also 146 I.C. 244=34 Cr. L.J. 1232=1933 A. 574 (as to the presumption under sec. 6). Presumption would not arise if the warrant is not a legal warrant. 1930 A. 740; nor where it is found that the search is illegal. 86 I.C. 832=23 A.L.J. 137=1925 A. 301; 105 I.C. 825=50 A. 412=1928 A. 20; 104 I.C. 441=28 Cr.L.J. 825=1927 L. 699; 73 I.C. 518=A.I.R. 1924 A. 128; 51 C.L.J. 224=1930 C. 365; 1940 Bom. 18 (Presumption from

finding of marked coins). The mere finding of cards, dice, etc., without the house being searched under the provision of sec. 5, is not evidence that the house is a common gaming-house. See 19 P.R. 1871 (Cr.); 141 I.C. 659=33 Cr.L.J. 252=1933 L. 234. There is a presumption under sec. 6 of the Act that a house is a public gaming house if instruments of gaming are found therein in pursuance of a search made in accordance with a warrant under sec. 5 of the Act. Where the warrant is quite legal and instruments of gaming in the form of *Satta slips* are found in a house, it has to be presumed that the house is a gaming house, which includes the presumption that it was used for the profit of the owner or occupier. 1938 All. 252=I.L.R. (1938) All 422=175 I.C. 233=1938 A.W.R. (H.C.) 147. See also A.I.R. 1940 Bom. 18; A.I.R. 1940 Bom. 129. Under sec. 7 of the Bombay Prevention of Gambling Act, certain presumptions arise when two things are proved. It must be proved first that there was a house, room or place, entered under sec. 6; and secondly that an instrument of gaming was found in such a house, room or place on the occasion of the raid under sec. 6 or upon the person of any one found therein. When these two facts are proved, then two presumptions arise: (1) that the house, room or place is used as a common gaming house, and (2) that the persons found therein were there for the purposes of gaming. I.L.R. (1940) Bom. 322=188 I.C. 316=42 Bom.L.R. 161=A.I.R. 1940 Bom. 129. A search warrant can only be issued on credible information that the house is a common gaming-house. 19 P.R. 1871 (Cr.). See also 9 P.R. 1876 (Cr.). Instruments of gaming found, use of—Evidence. See 146 I.C. 293=34 Cr.L.J. 1244=1933 A. 554. On this point, see also I.L.R. (1940) Bom. 105=41 Bom.L.R. 1326=1940 Bom. 62.

"PUBLIC PLACE"—MEANING.—A place to which persons are in the habit of going, even without having any strict legal right to do so, is a public place. S.C. 91 Oudh. A public place is one which is in full view of the public and one to which the public have access. 7 O.W.N. 621=1930 O. 394 (1922 O. 275; 51 I.C. 971; 1922 O. 196, Dist.) See also 147 I.C. 1028=35 Cr.L.J. 564=1934 A.L.J. 360=1934 A. 17; 1940 N.L.J. 297 (Pannal in front of shop). The words "any public street, place or thoroughfare" in sec. 13 does not include the *verandah* of a private house facing such street, place or thoroughfare. 49 A. 913=103 I.C. 202=1927 A. 560. A "public place" is a place appropriated to the use of the public. A place near a public road and exposed to public view is not a public place. 17 P.R. 1882 (Cr.). As to what constitutes common gaming-house, see 71 I.C. 238=45 Mad. 843=1923 M. 191; 77 I.C. 303=47 M. 426=1924 M. 729=46 M.L.J. 309; 119 I.C. 165=1929 M. 603; 122 I.C. 788=31 Cr.L.J. 459=1930 M. 128. See also notes under sec. 13, *infra*. Private place open to public view is not necessarily a public place. 49 A. 913=25 A.L.J. 578=28 Cr.L.J. 666=1927 A. 560. It is not necessary that the public should have legal right to go to it. A place which is in full view of the public and

7. If any person found in any common gaming-house entered by any Magistrate or officer of police under the provisions of this

Penalty on persons arrested for giving false names and addresses.

Act, upon being arrested, by any such officer or upon being brought before any Magistrate, on being required by such officer or Magistrate to give his name and address, shall refuse or neglect to give the same, or shall give any false name or address, he may upon conviction before the same or any other Magistrate be adjudged to pay any penalty not exceeding five hundred rupees, together with such costs as to such Magistrate shall appear reasonable, and on the non-payment of such penalty, and costs, or in the first instance, if to such Magistrate it shall seem fit, may be imprisoned for any period not exceeding one month.

8. On conviction of any person for keeping or using any such common gaming-house, or being present therein for the purpose of gaming, the convicting Magistrate may order

On conviction for keeping a gaming-house instruments of gaming to be destroyed.

all the instruments of gaming found therein to be destroyed, and may also order all or any of the securities for money and other articles seized, not being instruments of gaming, to be sold and converted into money, and the proceeds thereof with all moneys seized therein to be forfeited, or, in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.

ambiguity on that point it must be held that a second warrant can only issue on the strength of a fresh sworn testimony. 1935 Sind 102.

DEFECT IN WARRANT OF SEARCH—EFFECT.—The defect in the form of a warrant of search under Act III of 1867 in that it did not direct the search of a house but only the arrest of a person, is an irregularity that renders the rule of evidence in sec. 6 inapplicable. But it does not vitiate the conviction if it had not caused any failure of justice and if the presumption ordinarily raised under sec. 114 of the Evidence Act by the evidence as to search and the other evidence in the case support the conviction. 1884 A.W.N. 291 (Foll. in 12 Cr.L.J. 28=8 I.C. 1127=6 N.L.R. 168). See also 104 I.C. 441=28 Cr.L.J. 825=1927 L. 699 (case-law reviewed); 21 A.L.J. 602=73 I.C. 518=24 Cr.L.J. 630=1924 A. 128. Powers of Superintendent—Warrant for search of house—Omissions corrected by Sub-Inspector—Legality of arrest. See 1924 A. 128. Irregularity in a warrant issued under sec. 5 will not *per se* vitiate a conviction following on a search made under it, if there is evidence on which such conviction can be supported without invoking the presumptions prescribed by sec. 6. But those presumptions only arise when a search has been duly made under sec. 5, and a conviction cannot be sustained, merely on the strength of such presumptions in a case where the search was not duly made. 6 N.L.R. 168 (1881 A.W.N. 286; 4 C. 710; 4 C. 659, Foll.; 14 A.W.N. 291, discussed).

SEARCH BY SUB-INSPECTOR—EFFECT.—The entrustment of a search-warrant issued under Act III of 1867, to a police-officer of a rank not competent to execute such warrants under sec. 5 and the rules framed by the Government, is an irregularity which renders the special rule of evidence in sec. 6 inapplicable to the case. The word "evidence" in the latter section means "proof." The irregularity, however, is not such as to vitiate the whole trial, under sec. 537 of the Cr. P. Code. 1884 A.W.N. 286.

The entrustment of a search warrant to a Sub-Inspector of Police at a station where there is an Inspector, though not proper under sec. 6, is an irregularity that could be covered by sec. 537 of the Cr. P. Code, and cannot have the effect of nullifying the evidence of the Sub-Inspector. 1884 A.W.N. 59 (1884 A.W.N. 286, Ref.).

SEC. 7: COMMON GAMING-HOUSE—PRIVATE ROOM CONTAINING ALL PARAPHERNALIA OF CLUB.—A private room containing all the paraphernalia of a club and rented by members of only one caste is not *prima facie* a common gaming-house within the meaning of the Act, even if the members indulge in a game of cards and even if there is a certain amount of money at stake upon the issue of the game. 1935 Sind 52. See also 155 I.C. 496=41 L.W. 679=68 M.L.J. 421.

SEC. 8: FORFEITURE—MONEY FOUND ON PERSON.—Sec. 8 justifies the confiscation of money found not only in a gambling house and not found on the person of the gamblers. 19 A.L.J. 765=63 I. C. 408=22 Cr.L.J. 648. See also I.L.R. (1938) All. 422=1938 A.L.J. 422=A.I.R. 1938 All. 452; I.L.R. (1940) Kar. 125=A.I.R. 1940 Sind 22; 25 Cr.L.J. 321=77 I.C. 177=1924 Pat. 42; 24 O.C. 264; 121 I.C. 657=31 Cr.L.J. 277=1930 Nag. 49. So also, it would be unsafe to order confiscation of all moneys or valuables, such as gold watches, rings and other ornaments found on the person of a man arrested in a gaming-house. 8 Lah. 320=28 P.L.R. 332=1927 Lah. 338. But see 1938 A.L.J. 222=A.I.R. 1938 All. 252. See also notes under sec. 5. Search must be limited to instruments of gaming, not money. 96 I.C. 503=27 Cr.L.J. 951=1926 Lah. 290 (previous case-law discussed). In the ordinary case of money found in the possession of a person who is discovered in a gaming-house such money is not capable of being forfeited. Everything found on the premises or on the persons there which is surely tainted with the gaming mark, that

9. It shall not be necessary, in order to convict any person of keeping a

Proof of playing for stake unnecessary.

common gaming-house, or of being concerned in the management of any common gaming-house, to prove that any person found playing at any game was playing

for any money, wager or stake.

10. It shall be lawful for the Magistrate before whom any persons shall be

Magistrate may require an person apprehended to be sworn and give evidence.

brought, who have been found in any ¹[house, walled enclosure, room or place] entered under the provisions of this Act, to require any such persons to be examined on oath or solemn affirmation, and give evidence

touching any unlawful gaming in such ¹[house, walled enclosure, room or place] or touching any act done for the purpose of preventing, obstructing or delaying the entry into such ¹[house, walled enclosure, room or place], or any part thereof, of any Magistrate or officer authorised as aforesaid.

No person so required to be examined as a witness shall be excused from being so examined when brought before such magistrate as aforesaid, or from being so examined at any subsequent time by or before the same or any other Magistrate, or by or before any Court on any proceeding or trial in any ways relating to such unlawful gaming or any such acts as aforesaid, or from answering any question put to him touching the matters aforesaid, on the ground that his evidence will tend to criminate himself.

Any such person so required to be examined as a witness, who refuses to make oath or take affirmation accordingly or to answer any such question as aforesaid, shall be subject to be dealt with in all respects as any person committing the offence described in section 178 or section 179 (as the case may be) of the Indian Penal Code.

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¹ Vide footnote 1 at p. 1203.

is to say, "reasonably suspected to have been used or intended to be used for the purpose of gaming" is liable to forfeiture and may or may not be returned under the discretion of the Magistrate under the provisions of sec. 8, but not otherwise. 4 Pat. L.T. 622=77 I.C. 177=25 Cr.L.J. 321. It was not the intention of the Legislature that moneys should be forfeited when there was no reason to believe that these moneys were connected with the gaming. The power of forfeiture exercisable by the Magistrate under sec. 8 is discretionary. Where the money was found in the coat pocket of the accused convicted of gaming, it cannot be said, in the absence of any satisfactory explanation by the accused that this money cannot be seized under sec. 6 and was not connected with the gaming of which the accused had been convicted. I.L.R. (1940) Kar. 150=41 Cr.L.J. 399=A.I.R. 1940 Sind 28. Under sec. 8 of the Public Gambling Act it is only the instruments of gaming that could be dealt with by the Magistrate. *Petromax lamps found in the house searched* could not be so dealt with as they are not instruments of gaming. 1939 N.L.J. 357. The money seized under sec. 5 and forfeited under sec. 8 of the Public Gambling Act is money seized as found on the premises and connected with gaming by suspicion, not money found in the pockets of those taken into custody. It follows that a ring seized in personal search cannot also be forfeited. I.L.R. (1943) Nag. 667=210 I.C. 123=1916 R.N. 144=45 Cr.L.J. 93=1943 N.L.J. 430=A.I.R. 1943 Nag. 286.

SEC. 10: APPLICABILITY OF SECTION.—The

prosecution can proceed only against some only of the persons found gaming or present in a common gambling-house and can call others not prosecuted as witnesses. Sec. 10 does not apply to such persons. It applies to persons converted by the Magistrate into witnesses, out of persons brought before him for trial. 19 I.C. 949=14 Cr.L.J. 293=9 N.L.R. 68.

EVIDENCE OF PERSONS EXAMINED UNDER SEC. 10 SHOULD BE RECEIVED WITH CAUTION.—A person examined under sec. 10 remains liable to prosecution till he succeeds in satisfying the Magistrate that he has made a true and full faithful discovery. Evidence of such persons should be received with caution. It is usually the evidence of an accomplice and is given under certain inducement to make a statement favourable to the prosecution in order to secure certificate of indemnity for himself. These considerations bear upon the weight to be attached but have nothing to do with its inadmissibility. 42 A. 385=18 A.L.J. 383=21 Cr.L.J. 737. Where the warrant was not a legal one, it would not be open to the Magistrate to examine one of the gamblers arrested at the time of the search. He could no doubt examine them though they are accomplices and their evidence would be admissible by virtue of sec. 10 of the Act only, if the search was made in accordance with law. 1939 N.L.J. 357. Persons illegally arrested cannot be examined under this section. 86 I.C. 832=23 A.L.J. 137=26 Cr.L.J. 896=1925 A. 301.

SECS. 10 AND 11.—Trying Magistrate has power to grant pardon to co-accused. 9 Luck. 355=147 I.C. 317=35 Cr.L.J. 397=1934 Oudh 90.

11. Any person who shall have been concerned in gaming contrary to this Act, and who shall be examined as a witness before a Magistrate on the trial of any person for a breach of any of the provisions of this Act relating to gaming, and who upon such examination, shall, in the opinion of the Magistrate make true and faithful discovery, to the best of his knowledge, of all things as to which he shall be so examined, shall thereupon receive from the said Magistrate a certificate in writing to that effect, and shall be freed from all prosecutions under this Act for anything done before that time in respect of such gaming.

12. Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill wherever played.

13. A police-officer may apprehend without warrant—any person found ¹[playing for money or other valuable thing with cards, dice, counters or other instruments of gaming, used in playing any game not being a game of mere skill] in any public street, place or thoroughfare situated within the limits aforesaid, or

any person setting any birds or animals to fight in any public street, place or thoroughfare situated within the limits aforesaid, or

any person there present aiding and abetting such public fighting of birds and animals.

Such person when apprehended shall be brought without delay before a Magistrate, and shall be liable to a fine not exceeding fifty rupees, or to imprisonment, either simple or rigorous for any term not exceeding one calendar month ; .

LEG. REF.

¹ For these words the word "gaming" has been substituted in the U. P. by the U. P. Act I of 1917 and in the Punjab by the Punjab Act I of 1929.

SEC. 11.—Sec. 11 allows an approver to be acquitted only if a disclosure made is true and faithful. 20 O.C. 4=18 Cr.L.J. 494=39 I.C. 334=4 O.L.J. 88. See also 42 A. 385=18 A.L.J. 383.

SEC. 13.—(See also notes under secs. 3 to 6).

ESSENTIALS OF OFFENCE.—Gambling in itself is not an offence, and only becomes punishable as an offence, when it takes place in a common gaming-house or in a public place. S.C. 203, Oudh. To obtain a conviction under sec. 13 the accused must have been found playing for money or other valuable thing with some instrument of gaming used in playing any game not being a game of mere skill. 47 I.C. 433; 19 Cr.L.J. 917; 14 N.L.R. 137. Recording bets about an uncertain event beyond the control of the betters or recorders is not an offence under sec. 13 and a book recording bets is not an instrument of gaming. 47 I.C. 433; 19 Cr.L.J. 917; 14 N.L.R. 137.

LOTTERY AND GAMBLING.—Articles ranging in value from 2 pice to above one rupee—Number of tickets equal to number of articles—Each ticket available for one anna—This is lottery and a harmless one and not gambling. 34 Cr.L.J. 1128=1933 A.L.J. 925=1933 A. 482. See also 57 Cal. 520=31 Cr.L.J. 901=33 C.W.N. 910=1929 Cal. 769.

MERE GAME OF SKILL.—GAME OF CHANCE.—Playing game of skill in public place is no offence. See 90 I.C. 40=48 All. 220=27 Cr.L.J. 8=24

A.L.J. 150=1926 A. 187. A game which consists of throwing a ring over a pin is a game of chance and not a mere game of skill, and is consequently punishable under sec. 13. 8 A.L.J. 1262=12 I.C. 988=12 Cr.L.J. 612; 15 Cr.L.J. 276=23 I.C. 484; 110 I.C. 674=29 Cr.L.J. 738. On this point, see also 152 I.C. 209=1934 Nag. 225 (*Dart game and Ring up or table game*); 1939 N.L.J. 401.

ILLUSTRATIVE CASES.—A game of throwing a ring over a pin is not a game of skill and the element of chance in it is very strong. It is punishable under sec. 13. 34 All. 96=12 I.C. 988=12 Cr.L.J. 612=8 A.L.J. 1262. The conduct of a ring game is not an offence under the Gambling Act. 40 Cal. 702=14 Cr.L.J. 452=20 I.C. 612=17 C.W.N. 883. As to recording bets about an uncertain event, see 47 I.C. 433=19 Cr.L.J. 917=14 N.L.R. 137. A mere discount on odds does not come within the meaning of commission so as to make it an offence under the Act. 45 A. 258=21 A.L.J. 36=76 I.C. 969; 25 Cr.L.J. 297=1923 A. 192. Cock-fighting, see L.B.R. (1872-1892) 163. *Solihins* which are *covries* used for gaming are instruments of gaming within sec. 2. L.R. 1 A. (Cr.) 101.

MEANING OF TERMS.—The whole of the territories under the administration of a Lieutenant-Governor are referred to by the term 'limits aforesaid.' Hence gambling in a *kachcha public road* outside municipal limits is an offence. 9 I.C. 630=12 Cr.L.J. 107 (All.).

"PUBLIC PLACE"—MEANING OF.—The word "public place" in sec. 13 signify a place, to which the public resort as a matter of fact whether as of right or with the permission of the private owner. There is a well-established difference between betting and gaming for the

and such police-officer may seize all instruments of gaming found in such public place or on the person of those whom he shall so arrest, and the magistrate may on conviction of the offender order such instruments to be forthwith destroyed

Offences; by whom triable. **14.** Offences punishable under this Act shall be triable by any Magistrate having jurisdiction in the place where the offence is committed.

But such magistrate shall be restrained within the limits of its jurisdiction under the Code of Criminal Procedure,¹ as to the amount of fine or imprisonment he may inflict.

15. Whoever, having been convicted of an offence punishable under section 3 of section 4 of this Act, shall again be guilty of any offence punishable under either of such sections, shall be subject for every such subsequent offence to double the amount of punishment to which he would have been liable for the first commission of an offence of the same description :

Provided that he shall not be liable in any case to a fine exceeding six hundred rupees, or to imprisonment for a term exceeding one year.

16. The magistrate trying the case, may direct any portion of any fine which shall be levied under sections 3 and 4 of this Act, or any part of the moneys or proceeds of articles seized and ordered to be forfeited under this Act, to be paid to an informer.

LEG. REF.

¹ See now the Code of Criminal Procedure (Act V of 1898).

purposes of the Criminal Law and in the absence of special enactments, the Courts have always refused to punish betting as an instance of gaming. 47 I.C. 433=19 Cr.L.J. 917=14 N.L.R. 137. See also 1939 N.L.J. 401. A public place must be interpreted in connection with a public street and public thoroughfare, with which it is joined. The fact that the gaming was going on at a place which was exposed to public view and not shut out does not make the place a public place. 1944 N.L.J. 383=A.I.R. 1944 Nag. 328. If the public have access to a place without its being refused or otherwise interfered with, that place is a public place, irrespective of the fact whether the public have a right to go there or not. *Groves in Indian villages are open to any body to sit in*, and there is normally no interference with anybody who wishes to have access to such groves. Where the accused were gambling on the edge of a grove, a few paces away from a public pathway, which is not shown to have been enclosed in any way or that the public were excluded from it, the place was held to be a public place within the meaning of the Act. I.L.R. 1938 All. 348=174 I.C. 556=1938 A.L.J. 102=A.I.R. 1938 All. 209; see also 41 Bom. L.R. 1326=A.I.R. 1940 Bom. 62.

WHAT ARE AND WHAT ARE NOT PUBLIC PLACES.—ILLUSTRATIVE CASES.—Gambling at a place near a public street and exposed to public view but which was not a part of the public street is not an offence under sec. 13. 56 I.C. 672=21 Cr.L.J. 512=104 P.L.R. 1920. The expression "public place" in sec. 13 must be interpreted in the same way as "public street",

"public thoroughfare" with which it is joined. 21 I.C. 910=14 Cr.L.J. 670=9 N.L.R. 164. The gist of the offence under sec. 13 is such publicity of action that the ordinary passer-by cannot avoid seeing it and get enticed in consequence. A private property though not dedicated to the public use may yet become public according to its locality and the actual use it is put to. 21 I.C. 910=14 Cr.L.J. 670=9 N.L.R. 164. A public place must be a place which is either open to the public or is used by the public and the publicity of its situation is not a necessary element of the offence any more than public ownership. 26 O.C. 41=68 I.C. 613=23 Cr.L.J. 581=1922 Oudh 275 (31 C. 542; 20 A.L.J. 80, Ref.). When the public have access to a place without their access being refused or interfered with, that place is a public place, whether the public have a right to go there or not. 44 A. 265=20 A.L.J. 80=23 Cr.L.J. 67=1922 All. 542 (1). The accused were found gambling in a grove which was a private property but was used by the public on the occasion of fairs without interference and the visitors on such occasions penetrated all parts of the grove. Held, the accused were gambling in a public place. 44 All. 265=20 A.L.J. 80=65 I.C. 419=23 Cr.L.J. 67=1924 All. 542 (1); 1938 A.L.J. 102. The words "public place" in sec. 13 signify a place to which the public resort as a matter of fact whether as of right or with the permission of the private owner. 47 I.C. 433=19 Cr.L.J. 917=14 N.L.R. 137. A blind alley removed a considerable distance from a public road and approached only by a circuitous lane is not a public place within the meaning of the section, and a conviction for gambling in a public place could not stand. 23 Cr.L.J. 624=68 I.C. 848=1923 L. 278 V of 1898.

17. All fines imposed under this Act may be recovered in the manner prescribed by section 61¹ of the Code of Criminal Procedure. ²[* * * * *]

18. [Offences under this Act to be "offences" within the meaning of Penal Code.] Rep. by Act (XVI of 1874), S. 1, Sch., Part I.

LEG. REF.

¹ See now secs. 356, 357, and 389 of Act V of 1938.

² Omitted by A.O., 1937.

(2). In order to be a public place or a public thoroughfare within the meaning of sec. 13, the place or the thoroughfare must either be open to the public or actually used by the public, and mere publicity of the gambling place or its visibility from a public place or a public thoroughfare is not sufficient. 147 I.C. 1038 (2)=50 Cr.L.J. 564=1934 A.L.J. 300=1934 A. 17. The answer to the question whether a foot-path passing through a grove is a public place depends on nature of the foot-path and the nature of the right or permission by whom it is used. If the path is used by the public as of right, it is public place. 25 O.C. 114=68 I.C. 611=23 Cr.L.J. 579=1922 Oudh 196. The bank of a canal belonging to the Government, whether or not accessible to the public, is not a public place. 3 L.L.J. 53. The premises of a Railway Station, i.e., that part of the compound to which the public have no right to go is not a public place within sec. 13. 21 Cr.L.J. 691=57 I.C. 931 (Lah.).

MAGISTERIAL PROCEEDINGS AGAINST PERSONS NOT APPREHENDED BY THE POLICE ON THE SPOT.—Although a Magistrate is not restrained from trying an offence punishable under sec. 13 when the police have failed to exercise the power of arrest without warrant conferred upon them in respect of offences punishable under sec. 13, yet it is not indiscreet and ill-advised for a Magistrate to issue a warrant of arrest against a person found gambling, who was apprehended by the police on the spot. L.B.R. (1893-1900) 251. An offence under sec. 12, Bombay Prevention of Gambling Act, though not a very serious one, is still an offence, and a conviction for such offence will be a "previous conviction" for the purpose of sec. 562 (1), Cr. P. Code, so as to disentitle the offender to the benefit of sec. 562 (1). 37 Bom.L.R. 182=1935 Bom. 188.

INSTRUMENTS OF GAMING, SEIZURE OF.—On a conviction under sec. 13, the Magistrate may order all instruments of gaming found in a public place, or on the persons of those arrested to be forthwith destroyed, but that section contains no provision such as is found in sec. 8 authorising the forfeiture of money seized. 26 A. 270.

CONFISCATION OF MONEY IN ACCUSED'S POSSESSION.—IF LEGAL.—Only the instruments of gaming can be confiscated under sec. 13, not money in the possession of accu-

sed. 40 A. 617=19 Cr.L.J. 700=46 I.C. 156=16 A.L.J. 428; 1939 N.L.J. 403. See also A.L.R. 1938 A. 209; 20 O.C. 264; S. C. (Oudh) 63=18 P.R. 1891 (Or.); 1937 A.L.J. 975=A.L.R. 1938 A. 11. But the Magistrate has authority to confiscate the money under sec. 517, Cr. P. Code, where it is found on the person and it was not possible to say to which of the accused it belonged. It is an order for the disposal of the property in the custody of a Court or produced before it. 1938 A.L.J. 102=I.L.R. (1938) All. 348=A.L.R. 1938 All. 209. A Magistrate has no power on a conviction under the Act to order confiscation of the money found on the persons of the accused. Such an order is clearly in the teeth of the provisions of sec. 13 of the Act and is illegal. See also 1939 N.L.J. 403=172 I.C. 793=1937 A.W.H. 960 (1)=1937 A.L.J. 973 (1)=A.L.R. 1938 All. 11.

FINE AND IMPRISONMENT.—Under sec. 13 it is not legal to impose double punishment of fine and imprisonment. 25 P.R. 1880 (Or.). As to liability of persons who aid and abet gambling, see 141 I.C. 543=34 Cr. L.J. 174=34 P.L.R. 173=1933 Lah. 513.

ORDER FOR AWARD TO POLICE.—An order for award to the police officer, who arrested, of half the fine imposed under sec. 13, is illegal. Colm. Dig. Cr. 93 of 1887. See also 18 P.R. 1891 (Or.). As to order for security for good behaviour, see 1906 A.W.N. 13; 3 Cr.L.J. 91. As to arrest, see L.B.R. (1893-1900), 256. On this section, see also U.B.R. (1897-1901), Vol. I, p. 125.

CASES UNDER THE ACT—IF COGNISABLE—SUMMONS TO DEFENCE WITNESSES.—COURT, IF CAN CALL UPON ACCUSED TO PAY PROCESS FEES.—Arrests of persons who are supposed to have committed offences under sec. 11 or sec. 12 are made under sec. 6 (1) (b) of the Burma Gambling Act. Under this section, it is not any and every police-officer who can effect an arrest without a warrant. It is only the District Superintendent of Police who can do so and even he, only if he has received credible information or has other sufficient grounds upon which to believe that the place is used as a common gaming-house, and furthermore, has recorded in writing the information or the grounds of his belief. Accordingly cases under secs. 11 and 12 are not cognizable and in consequence a Magistrate can call upon the accused to pay process fees on his application to have certain defence witnesses summoned. 13 B. 130.

SEC. 16.—See 2 P.R. 1870 (Cr.) (Payment of reward to Police-officers); L.B.R. (1872-1892) 378 payment of reward to informers,

THE PUBLIC SERVANTS INQUIRIES ACT (XXXVII OF 1850).¹

Year.	No.	Short title.	Amendments.
1850	XXXVII	The Public Servants (Inquiries) Act, 1850,	Repealed in part, XIV of 1870; XIV of 1874; XII of 1876. Amended, I of 1897; X of 1914.

[1st November, 1850.]

For regulating Inquiries into the behaviour of Public Servants.

WHEREAS it is expedient to amend the law for regulating inquiries into

LEG. REF.

¹ Short title, "The Public Servants (Inquiries Act, 1850". See the Public Servants (Inquiries) Act (1850) Amendment Act, 1897 (I of 1897), sec. 1, Genl. Acts, Vol. IV.

This Act has been declared to be in force in the whole of British India except as regards the Scheduled District, by the Laws Local Extent Act, 1874 (XV of 1874), sec. 3, General Acts, Vol. II.

It has been declared in force in the Santhal Parganas by the Santhal Parganas Settlement Regulation (III of 1872), sec. 3, as amended by the Santhal Parganas Laws and

Justice Regulation, 1899 (III of 1899), sec. 3, Ben. Code, Vol. I, the Arakan Hill District by the Arakan Hill District Laws Regulation, 1874 (IX of 1874). Sec. 3, Bur. Code; in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (XII of 1898), sec. 4 (1), and Sch. I, Bur. Code.

It has been declared, by notification under sec. 3 (a) of the Scheduled District Act, 1874 (XIV of 1874), General Acts, Vol. II, to be in force in the following Scheduled Districts, namely:—

Sind	...	See Gazette of India, 1880, Pt. I, p. 672.
West Jalpaiguri	...	Ditto 1881, Pt. I, p. 74.
The Districts of Hazaribagh, Lohardaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Manbhum, and Pargana Dalbhum and the Kolhan in the District of Singhum	...	Ditto 1881, Pt. I, p. 504.
The Schedule portion of the Mirzapur District	...	Ditto 1879, Pt. I, p. 383.
Jaunsar Bawar	...	Ditto 1897, Pt. I, p. 382.
The Districts of Peshawar, Hazara, Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khan. [Portions of the Districts of Hazara, Bannu, Dera Ismail Khan and Dera Ghazi Khan and the Districts of Peshawar and Kohat now form the North-West Frontier Province, see Gazette of India, 1901, Pt. I, p. 857, and <i>ibid.</i> , 1902, Pt. I, p. 575; but its application has been barred in that part of the Hazara District known as Upper Tanawal, by the Hazara (Upper Tanawal) Regulation (II of 1900), sec. 3, Punjab and N.-W. Code.]	...	Ditto 1886, Pt. I, p. 48.
The District of Lahaul	...	Ditto 1886, Pt. I, p. 301.
The Scheduled Districts of the Central Provinces	...	Ditto 1879, Pt. I, p. 771.
The Scheduled Districts in Ganjam and Vizagapatam	...	Ditto 1898, Pt. I, p. 870.
The District of Sylhet	...	Ditto 1879, Pt. I, p. 631.
The rest of Assam (except the North Lushai Hills)	...	Ditto 1897, Pt. I, p. 299.
The Porahat Estate in the Singbhum District	...	Ditto 1897, Pt. I, p. 1059.

the behaviour of public servants not removable ¹[from their appointments] without the sanction of Government, and to make the same uniform throughout the territories under the Government of ²[India]; It is enacted as follows:—

1. [*Repeal of Acts.*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

2. Whenever the Government shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour by any person in the service of [the Government not removable from his appointment without the sanction of the Government],³ it ⁴[may] cause the substance of the imputations to be drawn into distinct articles of charge, and ⁴[may] order a formal and public inquiry to be made into the truth thereof.

3. The inquiry may be committed either to the Court, Board or other authority to which the person accused is subordinate, or to any other person or persons, to be specially appointed by the Government, commissioners for the purpose: notice of which commission shall be given to the person accused ten days at least before the beginning of the inquiry.

Authorities to whom inquiry may be committed.
Notice to accused.

4. When the Government shall think fit to conduct the prosecution, it shall nominate some person to conduct the same on its behalf.

5. When the charge shall be brought by an accuser, the Government shall require the accusation to be reduced to writing, and verified by the oath or solemn affirmation of the accuser; and every person who shall wilfully and maliciously make any false accusation under this Act, upon such oath or affirmation, shall be liable to the penalties of perjury, but this enactment shall not be construed to prevent the Government from instituting any inquiry which it shall think fit, without such accusation on oath or solemn affirmation as aforesaid.

Charge by accused to be written and verified.
Penalty for false accusation.
Institution of inquiry by Government.

6. Where the imputations shall have been made by an accuser, and the Government shall think fit to leave to him the conduct of the prosecution, the Government before appointing the commission shall require him to furnish reasonable security that he will attend and prosecute the charge thoroughly and effectually, and also will be forthcoming to answer any countercharge or action which may be afterwards brought against him for malicious prosecution or perjury or subornation of perjury, as the case may be.

Security from accuser left by Government to prosecute.

LEG. REF.

It has been extended, notification under sec. 5 of the last mentioned Act, to the following Scheduled Districts, namely:—

Kumaon and Garhwal ...
The Tarai of the Province of Agra ...

As to the application of this Act in cases under the Bombay and Madras Civil Courts Acts, see the Bombay Civil Courts Act, 1869 (XIV of 1869), sec. 33, and the Madras Civil Courts Act, 1873 (III of 1873), sec. 20, Bom. Code, Vol. I, and the Mad. Code, Vol. I. For application of this Act to enquiries

into the alleged misconduct of a Munsiff, See Gazette of India, 1876, Pt. I, p. 606.
Ditto 1876, Pt. I, p. 505.

See the Bengal North-Western Provinces and Assam Civil Courts Act, 1887 (XII of 1887), sec. 28 (3), E.B. & A. Code, Vol. I.

¹ Inserted by Act I of 1897.

² Substituted by *ibid.*

³ Substituted by Act I of 1897.

⁴ Substituted for "shall" by A.O., 1937.

7. At any subsequent stage of the proceedings, the Government may, if it think fit, abandon the prosecution, and in such case, may, if it think fit, on the application of the accuser, allow him to continue the prosecution, if he is desirous of so doing, on his furnishing such security as is hereinbefore mentioned.

8. The commissioners shall have the same power of punishing contempts and obstructions to their proceedings, as is given to Civil and Criminal Courts by ¹[the Code of Criminal Procedure, 1898,] and shall have the same powers for the summons of witnesses, and for compelling the production of documents, and for the discharge of their duty under the commission, and shall be entitled to the same protection as the Zila and City Judges, except that all process to cause the attendance of witnesses or other compulsory process, shall be served through and executed by the Zila or City Judge in whose jurisdiction the witness or other person resides, on whom the process is to be served, and if he resides within Calcutta, Madras or Bombay, then through the Supreme Court of Judicature² there. When the commission has been issued to a Court, or other person or persons having power to issue such process in the exercise of their ordinary authority, they may also use all such power for the purposes of the commission.

9. All persons disobeying any lawful process issued as aforesaid for the purposes of the commission shall be liable to the same penalties as if the same had issued originally from the Court or other authority through whom it is executed.

10. A copy of the articles of charge, and list of the documents and witnesses by which each charge is to be sustained, shall be delivered to the person accused, at least three days before the beginning of the inquiry, exclusive of the day of delivery and the first day of the inquiry.

11. At the beginning of the inquiry the prosecutor shall exhibit the articles of charge to the commissioners, which shall be openly read, and the person accused shall thereupon be required to plead "guilty" or "not guilty" to each of them, which pleas shall be forthwith recorded with the articles of charge. If the person accused refuses, or without reasonable cause neglects, to appear to answer the charge either personally or by his counsel or agent, he shall be taken to admit the truth of the articles of charge.

12. The prosecutor shall then be entitled to address the commissioners in explanation of the articles of charge, and of the evidence by which they are to be proved: his address shall not be recorded.

13. The oral and documentary evidence for the prosecution shall then be exhibited; the witnesses shall be examined by or on behalf of the prosecutor and may be cross-examined by or on behalf of the person accused. The prosecutor shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without leave of the commissioners, who also may put such questions as they think fit.

LEG. REF.

¹ Substituted by Act X of 1914.

² See the Indian High Courts Act, 1861 (24

and 25, Vict., c. 104), sec. 11, which was repealed and re-enacted by the Government of India Act,

14. If it shall appear necessary before the close of the case for the prosecution, the commissioners may in their discretion allow the prosecutor to exhibit evidence not included in the list given to the person accused, or may themselves call for new evidence; and in such case the person accused shall be entitled to have, if he demand it, an adjournment of the proceedings for three clear days, before the exhibition of such new evidence exclusive of the day of adjournment and of the day to which the proceedings are adjourned.

Power to admit or call for new evidence for prosecution.

Accused's right to adjournment.

15. When the case for the prosecution is closed, the person accused shall be required to make his defence, orally or in writing, as he shall prefer. If made orally, it shall not be recorded; if made in writing, it shall be recorded, after being openly read, and in that case a copy shall be given at the same time to the prosecutor.

Defence of accused.

To be recorded only when written.

16. The evidence for the defence shall then be exhibited, and the witnesses examined, who shall be liable to cross-examination and re-examination and to examination by the commissioners according to the like rules as the witnesses for the prosecution.

Evidence for defence, and examination of witnesses.

17. [*Examination of witnesses and evidence by prosecutor.*] *Rep. by the Repealing Act, 1876 (XII of 1876).*

18. The commissioners or some person appointed by them shall take notes in English of all the oral evidence, which shall be read aloud to each witness by whom the same was given, and if necessary, explained to him in the language in which it was given, and shall be recorded with the proceedings.

Notes of oral evidence.

19. If the person accused makes only an oral defence, and exhibits no evidence, the inquiry shall end with his defence; if he records a written defence, or exhibits evidence, the prosecutor shall be entitled to a general oral reply on the whole case and may also exhibit evidence to contradict any evidence exhibited for the defence, in which case the person accused shall not be entitled to any adjournment of the proceedings, although such new evidence were not included in the list furnished to him.

Inquiry when closed with defence.

Prosecutor when entitled to reply and give evidence.

Accused not entitled to adjournment.

20. When the commissioners shall be of opinion that the articles of charge or any of them, are not drawn with sufficient clearness and precision, the commissioners may, in their discretion, require the same to be amended, and may thereupon, on the application of the person accused, adjourn the inquiry for a reasonable time. The commissioners may also, if they think fit, adjourn the inquiry from time to time, on the application of either the prosecutor or the person accused, on the ground of sickness or unavoidable absence of any witness or other reasonable cause. When such application is made and refused, the commissioners shall record the application, and their reasons for refusing to comply with it.

Power to require amendment of charge and to adjourn.

Reasons for refusing adjournment to be recorded.

21. After the close of the inquiry the commissioners shall forthwith report to Government their proceedings under the commission, and shall send with the record thereof their opinion upon each of the articles of charge separately, with such observations as they think fit on the whole case.

Report of commissioners' proceedings.

22. The Government, on consideration of the report of the commissioners may order them to take further evidence, or give

Power to call for further evidence or explanation.

Inquiry into additional articles of charge.

Reference of report of special commissioners.

Final orders.

further explanation of their opinions. It may also order additional articles of charge to be framed in which case the inquiry into the truth of such additional articles shall be made in the same manner as is herein directed with respect to the original charges. When special commissioners have been appointed, the Government may also, if it thinks fit refer the report

of the commissioners to the Court or other authority to which the person accused is subordinate, for their opinion on the case; and will finally pass such orders thereon as appear just and consistent with its powers in such cases.

23.¹[In this Act, "the Government" means the Central Government in the case of persons employed under that Government and

Definition of Government.

the Provincial Government in the case of persons employed under that Government.]

24. Nothing in this Act shall be construed to repeal any Act or Regulation

Saving of enactments as to dismissal of certain officers.

Commission under Act for their trial.

in force for the suspension or dismissal of Principal and other Sadr Amins or of Deputy Magistrates or Deputy Collectors, but a commission may be issued for the trial of any charge against any of the said officers, under this Act, in any case in which the Government shall think it expedient.

Saving of power of removal without inquiry under Act.

25. Nothing in this Act shall be construed to affect the authority of Government, for suspending or removing any public servant for any cause without an inquiry under this Act.

THE RAILWAYS ACT (IX OF 1890)² (Extracts).

Year.	No.	Short title.	Amendments.
1890	IX	The Railways Act, 1890.	Repealed in part XIII of 1898; I of 1938. Repealed in part and amendment IX of 1896; XI of 1923. Supplemented IV of 1905; Amended, XVIII of 1919; XXXII of 1925; X of 1927; XIV of 1930; XIX of 1933; XXXV of 1934; XXXIII of 1939; XXXIV of 1939; VI of 1941; III of 1943.

* * * *

CHAPTER IX.

PENALTIES AND OFFENCES.

87. If a railway company fails to comply with any requisition made under section 13, it shall forfeit to the ³[safety controlling authority] the sum of two hundred rupees for the default and a further sum of fifty rupees for every day after the first during which the default continues.

Penalty for default in compliance with requisition under section 13.

LEG. REF.

¹ Originally substituted by Act I of 1897, sec. 4, and the present one has been substituted in its place by A.O., 1937.

² Repealed, as to the Lower Provinces and N.-W.P. of Bengal, by the Principal Sadr Amins Act (XVI of 1868).

³ For Statement of Objects and Reasons

see Gazette of India, 1888, Pt. V, p. 133; Report of the Select Committee, see *ibid.*, 1890, Pt. V, p. 23 and for debates in Council, see *ibid.*, 1888, Pt. VI, pp. 124 and 137; and *ibid.*, 1890, Pt. VI, pp. 15 and 48.

⁴ Substituted for 'Government' by A.O., 1937.

88. If a railway company moves any rolling-stock upon a railway by steam or other motive power in contravention of section 16, sub-section (2), or opens or uses any railway or work in contravention of section 18, section 19, section 20 or section 21, or reopens any railway or uses any rolling-stock in contravention of section 24, it shall forfeit to the ¹[safety controlling authority] the sum of two hundred rupees for every day during which the motive power, railway, work or rolling-stock is used in contravention of any of those sections.

89. If a railway company fails to comply with the provisions of ²* * * * * ³[section 54, sub-section (2), or section 65, with respect to the books or other documents to be kept open to inspection or conspicuously posted at stations on its railway, it shall forfeit to the ¹[Federal Railway Authority] the sum of fifty rupees for every day during which the default continues.

90. If the railway company fails to comply with the provisions of section 47 with respect to the making of general rules ³[and the keeping thereof open to inspection] it shall forfeit to the ¹[general controlling authority] the sum of fifty rupees for every day during whom the default continues:

³[Provided that where the safety controlling authority is different from the general controlling authority, the safety controlling authority may take proceedings for the recovery of the said penalty if in the opinion of the safety controlling authority the default is a default which relates to safety.]

LEG. REF.

¹ Substituted by Government by A.O. 1937.

² Omitted by *ibid*.

³ Inserted by A.O., 1937.

SEC. 89.—Scope of Chapter IX and the nature of offences and penalties contemplated therein. See 11 C.W.N. 583=5 C.L.J. 47; 11 C.W.N. 100.

There would ordinarily be no difficulty in prosecuting a railway company in a suitable case in respect of a breach of a statutory provision for which a penalty had been provided, and a State Railway does not occupy a more favourable position with reference to such matters. The general manager of a state railway is a legal entity in the same degree as a railway company is such an entity and it would be legal to prosecute him in his representative capacity in suitable cases. To such a prosecution no sanction under sec. 197, Cr. P. Code, and sec. 270 of the Government of India Act is necessary, as it is not sought to enforce against him personally any criminal liability which he has incurred in his personal capacity but merely to prosecute the railway administration for breach of statutory provision. I.L.R. (1941) 1 Cal. 345=45 C.W.N. 347=A.I.R. 1941 Cal. 319.

POWER OF MAGISTRATE TO INQUIRE ABOUT HEIRS OF DECEASED RAILWAY SERVANT.—The Railways Act does not empower a Magistrate to make an inquiry as to the true heirs of a deceased Railway servant. 17 Cr.L.J.

368=35 I.C. 672=10 S.L.R. 64.

JURISDICTION OF MAGISTRATE UNDER RAILWAYS ACT—CASE-LAW—RULINGS UNDER THE OLD LAW.—A Subordinate Magistrate (First Class) has no jurisdiction to punish for an offence under sec. 17 of Act XVIII of 1854. It was suggested that the Act in this respect required amendment so as to give Subordinate Magistrates such jurisdiction. 3 B.H.C. (Cr.) 54. See also 7 M.H.C. App. 8; 4 M.H.C. App. 9. A full power Magistrate had no jurisdiction to convict a person of an offence punishable under sec. 26 of Act XVIII of 1854, 3 B.H.C. (Cr.) 10 S. 30 of Act XVIII of 1854 and S. 2 of the Cr. P. Code, show that offences under the former Act punishable with fine exceeding twenty rupees are not triable by Magistrates inferior to a First-class Magistrate. Rat. Un. Cr. C. 83=Cr. Rg. 28—74. A Sessions Judge had no authority to direct a fresh trial of a charge of an offence under sec. 26 of the old Railways Act which has been dismissed by the Magistrate. 6 M.H.C. App. 41. See now 110 I.C. 589=29 Cr.L.J. 733=1928 B. 909; 43 B. 888.

FINE, HOW TO BE RECOVERED.—Sec. 34 of Act XVIII of 1854 prescribed the mode in which fines are to be recovered by distress and sale. It was only on the return of the warrant of distress unsatisfied, or on the Magistrate being otherwise satisfied that no sufficient distress existed that imprisonment could be imposed. 6 M.H.C. App. 37.

91. If a railway company refuses or neglects to comply with any decision of the ¹[safety controlling authority] under section 48, it shall forfeit to the ²[safety controlling authority] the sum of two hundred rupees for every day during which the refusal or neglect continues.
- Penalty for failure to comply with decision under section 48.
92. If a railway company fails to comply with the provisions of section 52 or section 85 with respect to the submission of any return, it shall forfeit to the ²[authority to which the return should have been submitted] the sum of fifty rupees for every day during which the default continues after the fourteenth day from the date prescribed for the submission of the return.
- mitting returns under section 52 or 85.
- Penalty for delay in submission 52 or 85.
93. If a railway company contravenes the provisions of section 53 or section 63, with respect to the maximum load to be carried in any wagon or truck, or the maximum number of passengers to be carried in any compartment, or the exhibition of such load on the wagon or truck or of such number in or on the compartment, or knowingly suffers any person owning a wagon or truck passing over its railway to contravene the provisions of the former of those sections, it shall forfeit to the ²[appropriate authority] the sum of twenty rupees for every day during which either section is contravened.
- Penalty for neglect of provisions of section 53 or 63 with respect to carrying capacity of rolling-stock.
- ³[In this section 'the appropriate authority' means in relation to a contravention with respect to the maximum load to be carried in any wagon or truck, the safety controlling authority, and, in relation to any other contravention, the general controlling authority.]
94. If a railway company fails to comply with any requisition of the ¹[safety controlling authority] under section 62 for the provision and maintenance in proper order, in any train worked by it, which carries passengers, of such efficient means of communication as the ¹[safety controlling authority] has approved, it shall forfeit to the ²[safety controlling authority] the sum of twenty rupees for each train run in disregard of the requisition.
- Penalty for failure to comply with requisition under section 62 for maintenance of means of communication between passengers and railway servants.
95. If a railway company fails to comply with the requirements of section 64 with respect to the reservation of compartments for females or the provision of closets therein, it shall forfeit to the ²[general controlling authority] the sum of twenty rupees for every train in respect of which the default occurs.
- Penalty for failure to reserve compartments for females under section 64.
96. If a railway company omits to give such notice of an accident as is required by section 83 and the rules for the time being in force under section 84, it shall forfeit to the ²[safety controlling authority] the sum of one hundred rupees for every day during which the omission continues.
- Penalty for omitting to give the notices of accidents required by section 83 and under section 84.
97. (1) When a railway company has through any act or omission forfeited any sum ⁴[* *] under the foregoing provisions of this Chapter, the sum shall be recoverable by suit
- Recovery of penalties.

LEG. REF.

¹ Substituted for "Governor-General in Council" by A.O., 1937.

² Substituted for "Government" by *ibid.*

³ Inserted by A.O., 1937.

⁴ The words "to the Government" omitted by A.O., 1937.

SEC. 91.—*Cf.* the Railway Regulation Act, 1842 (5 & 6 Vict., c. 55), sec. 11.

SEC. 94.—*Cf.* the Regulation of Railways Act, 1868 (31 & 32 Vict., c. 119), sec. 22.

SEC. 97.—As to recovery of fine, *see* 6 M. H.C. App. 97.

in the District Court having jurisdiction in the place where the act or omission or any part thereof occurred.

¹[(2) Nothing in this Chapter shall be construed as requiring any authority to recover any penalty in any case in which it thinks it proper to refrain from so doing.]

98. Nothing in those provisions shall be construed to preclude the ²[appropriate authority] from resorting to any other mode of proceedings instead of, or in addition to, such a suit as is mentioned in the last foregoing section, for the purpose of compelling a railway company to discharge any obligation imposed upon it by this Act.

Alternative or supplementary character of remedies afforded by the foregoing provisions of this Chapter.

Offences by Railway Servants.

99. If a railway servant whose duty it is to comply with the provisions of section 60 negligently or wilfully omits to comply therewith, he shall be punished with fine which may extend to twenty rupees.

Breach of duty imposed by section 60.

100. If a railway servant is in a state of intoxication while on duty, he shall be punished with fine which may extend to fifty rupees, or, where the improper performance of the duty would be likely to endanger the safety of any person travelling or being upon a railway, with imprisonment for a term which may extend to one year, or with fine, or with both.

Drunkenness.

Endangering the safety of persons.

101. If a railway servant, when on duty, endangers the safety of any person—

LEG. REF.

¹ Present sub-sec. (2) has been substituted for old sub-secs. (2) and (3) by A.O., 1937.

² Substituted by A.O., 1937 for 'Government'.

SEC. 99.—*Cf.* the Railway Regulation Act 1842 (5 & 6 Vict., c. 55), sec. 17.

LIABILITY OF COMPANY FOR TORT FOR ITS SERVANTS.—*See* 13 M. 34. There would ordinarily be no difficulty in prosecuting a railway company in a suitable case in respect of a breach of a statutory provision for which a penalty had been provided and a State Railway does not occupy a more favourable position with reference to such matters. The general manager of a state railway is a legal entity in the same degree as a railway company is such an entity and it would be legal to prosecute him in his representative capacity in suitable cases. To such a prosecution no sanction under sec. 191. Cr. P. Code, and sec. 270 of the Government of India Act is necessary, as it is not sought to enforce against him personally any criminal liability which he has incurred in his personal capacity but merely to prosecute the railway administration for breach of statutory provision. 45 C.W.N. 347.

SEC. 100: DRUNKENNESS OF RAILWAY SERVANT.—While on duty, is an offence. 1 M.H. O. 193. Practice and Procedure as to trial and conviction. *See* 5 M.L.T. 204.

SEC. 101.—*Cf.* the Railway Regulation Act, 1840 (3 & 4 Vict., c. 97), secs. 13 and 14 and the Railway Regulation Act, 1842 (5 & 6 Vict., c. 55), sec. 17.

For rules made by the Government of

Bengal under sec. 46 (2) of the Police Act, 1861 (V of 1861) for the guidance of the Railway Police as to arrest and prosecution for offences under this section, *see* Calcutta Gazette, 1904, Pt. I, p. 884.

SCOPE OF OFFENCE.—*See* 5 Cr.L.J. 16=11 C.W.N. 173; 6 I.C. 483; 9 Cr.L.J. 352; 22 I.C. 161; 13 N.L.R. 90.

OBJECT OF SECTION.—The object of sec. 101 and r. 100 is to lessen the risk of accidents through shunting on a through line, after the line clear has been given, and a breach of the rule will render the rule-breaker liable to punishment even though no accident might have occurred. 37 B. 685=14 Cr.L.J. 460=20 I.C. 620=15 Bom. L.R. 702.

ESSENTIALS FOR CONVICTION.—Breach of a rule of the railway company without evidence that it endangered the safety of passengers is not sufficient for conviction. 81 I.C. 917=26 O.C. 363=25 Cr.L.J. 1093=1924 O. 250. *See also* 37 B. 685.

DISOBEDIENCE OF A RULE.—Sec. 101 does not provide for cases in which the disobedience of a rule is merely 'likely, or calculated' to endanger the safety of any person. To render a person liable to conviction under sec. 101, it must be proved that the safety of a person was actually endangered in point of fact. 7 L.B.R. 72=15 Cr.L.J. 17=22 I.C. 161 (2). *See also* 14 Cr.L.J. 676=21 I.C. 996; 37 B. 685=20 I.C. 620. As to validity of rules under the Act, *see* 8 I.C. 134=12 Bom.L.R. 930. Breach of Rule by Railway Servant—Proof of offence, *see* 26 O.C. 363=81 I.C. 917=25 Cr.L.J. 1093=

(a) by disobeying any general rule made, sanctioned, published and notified under this Act, or

(b) by disobeying any rule or order which is not inconsistent with any such general rule, and which such servant was bound by the terms of his employment to obey, and of which he had notice, or

(c) by any rash or negligent act or omission,

1924 O. 250. Where a train is stopped outside a distant signal, the omission of the guard to place detonators to protect the train, is a disobedience under R. 9 of G.I.P. Ry. Working Instructions and punishable under sec. 101 (a). Where a guard is charged under sec. 101 (b) the onus of proving that he did not comply with General Rule 86 is on the prosecution, which burden can be discharged by the Railway authorities inspecting the line to see if any metallic remnants are formed there. The standing of a train outside the distant signal is "authorized" detention and not due to "accident, failure or obstruction". The wording of G.I.P. Ry., r. 9 is somewhat inappropriate and allowance should be made, considering that even a District Traffic Superintendent misreads the rule. 21 I.C. 996=14 Cr.L.J. 676 (Nag.).

DISOBEDIENCE OF R. 187 (8) (3)—WHAT AMOUNTS TO.—The words "when it is required to change the position of a permanently locked point" in r. 187, cl. (8), sub-cl. (3) would indicate that the rule assumes that the man on duty is aware that a permanently locked point has been unlocked. It is only in that case that he is bound to relock it before any train is allowed to enter the station yard. Where, therefore a Station Master who unlocks a permanent point fails to re-set it before he is relieved by the Assistant Station Master and omits to inform the latter or to note that he has allowed the point to remain unlocked in the Journal or Diary kept in the Station in which these matters are noted, the Assistant Station Master cannot be said to have had notice that any permanent point has remained unlocked even though he would have discovered it if he had gone on a visit of inspection before taking over the charge and it is very doubtful whether according to the rule as it stands, he can be said to be guilty of having disobeyed it. 154 I.C. 1059=36 Cr.L.J. 630=1935 A. 121.

"ENDANGERING"—MEANING OF—SHUNTING TRAIN TO A WRONG LINE.—In every case where a travelling train is unexpectedly shunted on to a wrong line by an erroneous laying of the points in a station yard, the safety of the persons in the train or about the yard is endangered, within the meaning of that term in sec. 121; and if the error in the points is due to such disobedience as is referred to in the Act, an offence punishable under the Act is committed. 18 Cr.L.J. 822=41 I.C. 646=13 N.L.R. 90. From the facts of one case, no safe analogy can be drawn as to whether danger has arisen in the other case. 18 Cr.L.J. 822=41 I.C. 646=13 N.L.R. 90.

ACT LIKELY TO ENDANGER SAFETY OF PAS-

SENGERS.—Where there is no evidence that a Station Master, in sending a train without previously obtaining a line clear message, knew that his act was likely to endanger the safety of the passengers travelling therein, a conviction under sec. 45 of the Act is illegal. 1882 A.W.N. 172. On this point, see also 5 Cr.L.J. 81=59 P.L.R. 1902=13 P.R. 1907 (Cr.). The prisoner was convicted under sec. 29 of Act XXV of 1871 of endangering the safety of persons in a certain goods train by negligence. Although he was shown to have neglected his duty, there was no evidence whatever of the safety of any person in any train having been endangered by his neglect of duty, *held*, that he could not be convicted under sec. 29 of Act XXV of 1871, as it was plainly apparent that, by reason of the precautions taken by other persons any possible danger which might have resulted from his neglect was avoided. 5 N.W.P. 240. As to other cases of endangering public safety, see 1 Weir 869 (*driver running train at full speed with danger signals against him*); Rat. 721 (*starting train without whistling*); 9 P.R. 1892 (Cr.) (*Gateman being asleep, at time when train is due*); 8 I.C. 134 (*Guard not liable for not doing a thing for which he is not responsible*); 11 C.W.N. 173=5 Cr. L.J. 16 (*case of station master's negligence*). For a case where Station Master was held not liable, see 32 C. 73=8 C.W.N. 645.

OMISSION TO SET POINTS.—Under R. 12 of the rules framed under the Railways Act, it was the duty of the accused, who was a station master when he knew that a train was approaching the station to send the passed porter to the facing points with instruction for him to set and lock the points for the line on which the train was to come. The station master neglected to send the porter to the points. The signals were down to allow the train to pass into the station. But under the rules the engine driver should have stopped the train when he found that there was no porter at the points signalling him to pass on. The points were not properly locked and the consequence was that some of the carriages of the train were derailed. No person was hurt but the derailment of part of the train caused danger to persons travelling therein. *Held*, that it was not quite clear whether the engine driver could have avoided the derailment by stopping the train in time because the signals were in his favour. But if the station master had complied with the rules and had sent the passed porter out to the points to properly set and lock them, no accident would have occurred. Hence, the

he shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to five hundred rupees, or with both.

102. If a railway servant compels or attempts to compel, or causes, any

disregard by the accused of R. 12 enhanced the danger to the persons travelling in the train and therefore the accused was liable. 86 I.C. 61=6 Lah. 324=26 Cr.L.J. 685=1925 Lah. 423. The duty of a person in control of a railway station is *first* to give the fundamental orders regulating the arrival of a train and *secondly* to see that they are accurately carried out. Where such an order was given to set the points to the loop but the slides showed main the failure to act upon a defect in the working of the machinery is an act of grave negligence. Omitting to set the points, which would prevent a train after a clear line signal is given, from running into another train is an act endangering the safety of the persons in either of the two trains. 22 A.L.J. 20=25 Cr.L.J. 993=1924 All. 438. Station master allowing train contrary to rules to run over loop line instead of main line—Station master acting on signal of pointsman—One of points not properly set—Collision and injuries to persons. *Held*, that the station master was not guilty under this section as the breach of the rules was not the proximate cause of the accident, but only the improper setting of one of points and with reference to this the station master was entitled to rely on the pointsman on actual duty. 1936 A.L.J. 951=A.I.R. 1936 All. 745.

PLACING OBSTRUCTION ON THE RAILS.—Where the accused was charged with pulling up all iron mail post and placing it across the rails on a dark-night, *held*, that the act being wrongful in itself, rashness cannot be usually predicated, and that the offence, falling within sec. 45 of the Railways Act, should be committed to the Sessions Court and not tried by a Magistrate as falling within sec. 46. Rat. 458.

FAILURE TO REMOVE STONE FROM RAIL.—A person who fails to remove a stone from a rail is not guilty of negligently doing an Act which is likely to endanger the safety of persons travelling upon the railway, unless it be proved that he was legally bound to remove it. Rat. 394.

NEGLECT OF RAILWAY SERVANT—LIVES LOST—PUNISHMENT.—Where a Railway servant was convicted under sec. 29 of Act IV of 1879 for his gross negligence by which an accident happened in which several lives were lost, *held*, that three months' simple imprisonment was too light a sentence. 1890 A.W.N. 171.

RAILWAY ACCIDENTS—DUTY OF GUARD.—Where some coolies were employed in assisting a ballast train into motion at a Railway station, and one of them, after pushing the train or in attempting to do so, fell and was so injured that he afterwards lost his life, *held*, that the evidence did not show that it was the duty of the guard to see that no one got up on the train when in motion. 8 W.

R. (Cr.) 43.

ACCIDENT—MESSAGE BY GUARD.—If under Rr. 87 and 87 (a) of the rules framed under Railways Act, the guard of a train sends a message asking for assistance, it is the duty of the driver to ascertain the terms of the message. His omission to do so would make him liable under sec. 101 (c), if it results in endangering the safety of any person. 54 I.C. 988=21 Cr.L.J. 204 (Nag.).

DUTY OF DRIVER—MINOR BRIDGES.—The drivers have regarded R. 131 as applying to what are known as important bridges; it is not fair when an accident does happen, to charge a driver with breach of the rules because in the accounts and engineering departments comparatively small bridges are called major bridges. 143 I.C. 220=34 Cr. L.J. 576=1933 Pat. 94. It is not duty of the driver to stop the train merely because way-farers shout to him. 34 Cr.L.J. 576=143 I.C. 220=1933 Pat. 94. Where an engine driver is being prosecuted for breach of sec. 101 for disobeying the guard, the evidence of the fire-man cannot be summarily neglected on the mere ground that he is subordinate to the driver. On the other hand he is the most important witness. 143 I.C. 220=34 Cr.L.J. 576=1933 Pat. 94.

RAILWAY POLICE—NEGLECT OF DUTY.—The Railway Police, who are in the pay of a Railway Company, are amenable for neglect of duty to the provisions of the above section, notwithstanding that they hold commissions from the Commissioner of Police under sec. 9, Bom. Act VII of 1867. Rat. Un. Cr. C. 51.

OFFENCE FAILING UNDER TWO ENACTMENTS—PUNISHMENT UNDER BOTH, WHETHER LEGAL.—When an accused by one act endangered the lives of the public and committed an offence under sec. 101 of the Act and sec. 353 of Penal Code he can be punished under one Act only and not under both. 1 Pat. L.J. 373=18 Cr.L.J. 321=38 I.C. 433.

PUNISHMENT.—In determining the punishment, the gravity of the offence should be estimated not by the ultimate consequences but by the risk involved. 37 Bom. 685=14 Cr.L.J. 460=20 I.C. 620=15 Bom.L.R. 702 (6 M. 201 Ref.). In order to support a conviction under this section, there must be actual danger to a person's safety. 6 I.C. 483=11 Cr.L.J. 362=8 P.L.R. 1910; mere likelihood of danger not sufficient. 7 L.B.R. 72; 4 L.B.R. 353.

PROCEDURE.—See 1 Pat. L. J. 313.

CHARGE OF ONE OFFENCE—CONVICTION FOR ANOTHER—LEGALITY.—A person charged under sec. 101, for disobeying railway rules requiring him to stop engine near signal, cannot be convicted for disobeying rules regarding maintaining vacuum. 1933 Sind 225.

Sec. 102.—As to who is a "passenger" under this section, see 7 I.C. 354=11 Cr.L.

Compelling passengers to enter carriages already full. passenger to enter a compartment which already contains the maximum number of passengers exhibited therein or thereon under section 63, he shall be punished with fine which may extend to twenty rupees.

103. If a station-master or a railway servant in charge of a section of a railway omits to give such notice of an accident as is required by section 83 and the rules for the time being in force under section 84, he shall be punished with fine which may extend to fifty rupees.

Omission to give notice of accident. Obstructing level-crossings. 104. If a railway servant unnecessarily--

(a) allows any rolling-stock to stand across a place where the railway crosses a public road on the level, or

(b) keeps a level-crossing closed against the public, he shall be punished with fine which may extend to twenty rupees.

105. If any return which is required by this Act is false in any particular False returns. to the knowledge of any person who signs it, that person shall be punished with fine which may extend to five hundred rupees, or with imprisonment which may extend to one year, or with both.

Other Offences.

106. If a person requested under section 58 to give an account with respect to any goods gives an account which is materially Giving false account of goods. false, he and, if he is not the owner of the goods, the owner also shall be punished with fine which may extend to ten rupees for every maund or part of a maund of the goods, and the fine shall be in addition to any rate or other charge to which the goods may be liable.

107. If in contravention of section 59 a person takes with him any dangerous or offensive goods upon a railway, or tenders or delivers any such goods for carriage upon a railway, Unlawfully bringing dangerous or offensive goods upon a railway. he shall be punished with fine which may extend to five hundred rupees, and shall also be responsible for any loss, injury or damage which may be caused by reason of such goods having been so brought upon the railway.

108. If a passenger, without reasonable and sufficient cause, makes use of

J. 451=26 P.R. 1910=31 P.W.R. 1910; 200 P.L.R. 1910 (Ticket holder).

SEC. 103.—See 54 I.C. 980 (Nag.) and 8 W. R. (Cr.) 43 noted under sec. 101, *supra*.

SEC. 104.—Cf. the Railway Clauses Act, 1863 (26 & 27 Vict., c. 92), sec. 5.

SEC. 105.—Cf. the Regulation of Railways Act, 1871, (34 & 35 Vict., c. 78), sec. 10.

FALSE ACCOUNTS OF GOODS DESPATCHED.—The duty imposed of giving an account of the quantity or description of property sought to be despatched by rail being limited to the case of a demand being made, *held* that a person giving false account of goods despatched without being so demanded by railway authorities could not be convicted under sec. 29 of the old Act. 36 P.R. 1885 (Cr.).

SEC. 106.—Cf. The Railway Clauses Act, 1845 (8 and 9 Vict., c. 20), secs. 39 and 152 respectively. See 36 P.R. 1885 (Cr.); 24 P.L.R. 1905.

SEC. 107.—Cf. 'The Railway Clauses Act,

1845 (8 and 9 Vict., c. 20), secs. 99 and 152 respectively. To constitute an offence under S. 107 question for consideration is whether the goods consigned were dangerous goods and had been consigned without notice having been given of their nature and without distinctly marking their nature on the outside of the package as required by S. 59 of the Act. The presence or absence of guilty knowledge is irrelevant. 1944 M.W. N. 554. *Company not bound to search passengers' luggage* to see if there are *offensive or dangerous goods*, see 28 I.A. 144=28 C. 401 (P.C.). On this section, see also 7 P.R. 1900 (Cr.); 22 P.R. 1905 (Cr.).

SEC. 108.—Cf. The Regulation of Railways Act, 1868 (31 and 32 Vict., c. 119), sec. 22.

TEST.—The risk of danger, of loss and of discomfort to the other passengers on a train by stopping the train by pulling the communication cord is one element that has to be considered for the purpose of deciding whether there was reasonable and sufficient cause to stop the train by pulling the

Needlessly interfering with means of communication in a train.

rupees.

109. (1) If a passenger, having entered a compartment which is reserved by a railway administration for the use of another passenger, or which already contains the maximum number of passengers exhibited therein or thereon

Entering compartment reserved or already full or resisting entry into a compartment not full.

or interferes with any means provided by a railway administration for communication between passengers and the railway servants in charge of a train, he shall be punished with fine which may extend to fifty

do so by any railway servant, he shall be punished with fine which may extend to twenty-rupees.

communication cord. But this must be considered in relation to the risk arising from the circumstances to the person pulling the cord. In other words if the risk to the passenger pulling the cord is incommensurate with the risk and discomfort, etc., to the other passengers, he cannot be said to have had just and reasonable cause. But where the risk to the passenger is very great as compared to the risk to the other passengers, he must be said to have just cause for pulling the cord. Another element of great importance is whether the necessity or occasion for pulling the cord has arisen from the fault of the railway administration. The third element to be considered is the importance of the line and train. 105 I.C. 679=25 A.L.J. 975=28 Cr.L.J. 967=1927 All. 647.

PULLING THE CHAIN—OVERCROWDING.—Where a person without sufficient and reasonable cause, pulls the emergency chain, he renders himself liable for prosecution under sec. 108 only, and not under sec. 121 for preventing the running of the train and thus obstructing or impeding a railway servant in the discharge of his duty. (43 Bom. 103, Foll.) 32 Bom.L.R. 111=1930 Bom. 160. Pulling the communication chain of a railway compartment to remove the overcrowding, which it was the duty of the railway administration to prevent under sec. 93 is a reasonable and sufficient cause under sec. 108 of the Act. 1922 Pat. 8, Rel. on 32 Bom. L. R. 111=1930 Bom. 160. *A* who had instituted a civil suit against *B* was travelling with the latter in the same compartment with his account books. While the train was in motion *B* seized the account books and threw them through the window. *A* pulled the alarm chain and stopped the train. *Held*, that *A* had sufficient and reasonable cause for getting alarm signal, and could not be convicted under sec. 108. 8 Lah. 196=28 Cr.L.J. 603=28 P.L.R. 485=1927 Lah. 476. *See also* 1936 P. W. N. 679=A.I.R. 1936 Pat. 499. Primarily, sec. 108 is intended for the protection of the personal safety of passengers who are travelling by train. The mere fact that the accused left his coat even though it contains valuables is not a reasonable and sufficient cause within the meaning of sec. 108. Accordingly if he pulls the communication cord for that purpose he can be convicted under

the section. 95 I.C. 58=28 Bom.L.R. 486=27 Cr.L.J. 730=1926 Bom. 288. But *see* 17 Pat.L.T. 569=A.I.R. 1936 Pat. 499 where it was held that the pulling of chain by a passenger who had dropped certain valuable articles did not constitute an offence under this section. It was also held that what constitutes 'reasonable and sufficient cause' is a question of fact depending upon the circumstances of each case. (*Ibid.*) The accused is not deprived of the defence under sec. 108 of sufficient and reasonable cause merely because there was an additional reason for pulling the chain which in the opinion of the Magistrate was not sufficient and reasonable. 32 Bom.L.R. 111=1930 Bom. 160. Where a passenger in the inter-class pulled the chain, because it was overcrowded and because third class passengers had entered in, *held*, he was justified in pulling the chain and in stopping the train for enforcing his right to have the compartment vacated so as to bring down the number of passengers therein within the maximum limit prescribed by sec. 66. 1 P. 260=3 P.L.T. 195=1922 P. 8. 63=23 Cr.L.J. 257=66 I.C. 221=1922 P. 8. *Ticket holder* is a passenger, *see* 7 I.C. 354.

SECS. 108 AND 121: PULLING OF COMMUNICATION CHAIN—OVERCROWDING OF COMPARTMENT.—Where a railway compartment became overcrowded and the train was allowed to proceed in spite of a complaint and thereupon the accused who was a passenger in the overcrowded compartment pulled the alarm chain and brought the running train to a standstill and in a prosecution under the Railways Act the accused gave it as one of the reasons for repeatedly pulling the chain that he wanted to take down the names of certain fellow passengers who had abused him for his conduct. *Held*, that the accused was not liable to be convicted under sec. 108 or 121. 32 Bom.L.R. 111=1930 B. 160.

SEC. 109: OBJECT OF SECTION is to prevent annoyance to other passengers. 24 B. 293; 1 Bom.L.R. 688.

PROVIDING SPECIAL ACCOMMODATION FOR SPECIAL INDIVIDUALS OR CLASSES OF INDIVIDUALS.—A bye-law or rule providing for special accommodation or for the special convenience of a particular individual or of a particular class of individuals and for the general convenience of the travelling public

(2) If a passenger resists the lawful entry of another passenger into a compartment not reserved by the railway administration for the use of the passenger resisting or not already containing the maximum number of passengers exhibited therein or thereon under section 63, he shall be punished with fine which may extend to twenty-rupees.

110. (1) If a person, without the consent of his fellow-passengers, if any, in the same compartment, smokes in any compartment except a compartment specially provided for the purpose, he shall be punished with fine which may extend to twenty rupees.

(2) If any person persists in so smoking after being warned by any railway servant to desist, he may, in addition to incurring the liability mentioned in sub-section (1), be removed by any railway servant from the carriage in which he is travelling.

111. If a person, without authority in this behalf, pulls down or wilfully

is legal under sec. 47. The "preference" forbidden by secs. 42 and 43 refers to goods traffic and rates charged upon traders and does not apply to passengers. A person who enters a compartment of a Railway carriage reserved by a Railway Company, for the use of passengers of a particular class to which he does not belong, and refuses to leave when required to do so by a Railway servant, is liable to penalty under sec. 109 of the Act. 42 A. 327=21 Cr.L.J. 294=55 I.C. 342=18 A.L.J. 254.

RESERVING COMPARTMENT FOR EUROPEANS AND ANGLO-INDIANS.—"Traffic" in sec. 42 includes passenger traffic. In reserving a compartment for Europeans and Anglo-Indians, the company gives undue preference to one class of passengers and contravenes sec. 42 (2). But the Civil Court cannot try the question of legality of the reservation, the proper remedy in the case being to prefer a complaint to the Governor-General in Council under sec. 28. 45 B. 1324=62 I.C. 1004=23 Bom.L.R. 809. A Railway Company can legally reserve a compartment for the use of Europeans and Anglo-Indians only. 45 M. 215=42 M.L.J. 21=66 I.C. 520; 23 Cr.L.J. 296=30 M.L.T. 134=15 L.W. 207=1922 M. 35. Per *Ayling, Officiating Chief Justice and Oldfield, J. (Krishnan, J., dissenting)*. A person who is not a European or Anglo-Indian commits an offence under sec. 109 (1) by entering and persisting in remaining in a 3rd class compartment to which a card has been attached purporting over the signature of a senior ticket examiner, to reserve it for Europeans and Anglo-Indians. (*Ibid.*) Per *Officiating, C.J.*—There is nothing in any of the rules of the Traffic Working Orders indicating that a compartment can only be legally reserved by a label or notice signed or initialled, since the direction in the rule 172-A to the effect that a station master should label a carriage or compartment does not necessarily imply that he must do so with his own hands or himself sign label. (*Ibid.*) Per *Krishnan, J.*—The expression "traffic" in sec. 42 (2) is not confined to conveyance of animals and goods and fixing the charges thereof. Where the label was in the carriage door

and was not the usually printed label signed or initialled, by the station master, the compartment is not reserved. (*Ibid.*) Per *Officiating, C.J. and Oldfield, J.*—The term "passenger" in sec. 109 (1) is not restricted to a person who actually enters a railway carriage for the purpose of travelling but also includes possible passengers who may join at any later station. (*Ibid.*) The object and the result of making rules under sec. 47, cl. (1) with the sanction of the Governor-General in Council are only to make their breach an offence punishable by the Courts. The Traffic Working Orders are not such rules. (*Ibid.*) The reservation of a compartment for Europeans and Anglo-Indians or for any class of passengers is not an undue or unreasonable preference in favour of a particular description of traffic within sec. 42, cl. (4). (*Ibid.*) The expression "Passenger" in sec. 109 includes class of passengers. 51 C. 168=28 C.W.N. 388=25 Cr.L.J. 1012=1924 C. 687. On this point, see also 5 S.L.R. 140 (Refusal to leave compartment reserved for Europeans not an offence). See also 7 I.C. 365 (preventing passengers from entering and standing against door).

SECS. 109 (1) AND 120 (c): APPLICABILITY.—RESERVATION OF BERTH IN COMPARTMENT.—S. 109 of the Act in terms deals with entering a compartment, and does not refer to occupying a seat reserved for another. Where a passenger, who has reserved a seat for himself enters a compartment which is not itself reserved and occupies a seat which is reserved for another passenger, ignoring such reservation is not guilty of an offence under S. 109 or S. 120 of the Railways Act and cannot be penalised for occupying a seat in the unreserved compartment, though the company may have purported to reserve such seat for some other passenger. If a railway company cannot enforce reservation of a seat (as they can enforce reservation of a compartment), a passenger who takes advantage of his legal rights by ignoring such reservation cannot be said thereby to have wilfully interfered with the comfort of another passenger, within the meaning of S. 120 (c). 44 Cr.L.J. 236=44 Bom. L. R. 916=A.I.R. 1943 Bom. 52.

Defacing public notices. injures any board or document set up or posted by order of a railway administration on a railway or any rolling-stock, or obliterates or alters any of the letters or figures upon any such board or document, he shall be punished with fine which may extend to fifty rupees.

Fraudulently travelling or attempting to travel without proper pass or ticket. 112. ¹[(1)] If a person, with intent to defraud a railway administration,—

(a) enters ²[or remains in any carriage on a railway in contravention of section 68], or

(b) uses or attempts to use a single pass or single ticket which has already been used on a previous journey or, in the case of a return ticket a half thereof which has already been so used,

he shall be punished ³[with imprisonment for a term which may extend to three months or] with fine which may extend to one hundred rupees in addition to the amount of the single fare for any distance which he may have travelled.

⁴[(2) Notwithstanding anything contained in section 65 of the Indian Penal Code, the Court convicting an offender under this section may direct that the offender in default of payment of any fine inflicted by the Court, shall suffer imprisonment for a term which may extend to three months.]

113. (1) If a passenger travels in a train without having a proper pass or

LEG. REF.

¹ Sec. 112 has been renumbered as sub-section (1) by Act VI of 1941.

² Substituted by Act VI of 1941.

³ Inserted by Act VI of 1941.

⁴ Sub-sec. (2) of sec. 112 added by Act VI of 1941.

SEC. 110: "COMPARTMENT".—Meaning of. —24 B. 293=1 Bom.L.R. 688.

SEC. 111.—*Cf.* the Companies Clauses Act, 1845 (8 & 9 Vict., c. 16), sec. 146.

SEC. 112.—As to *scope and construction of section*, see 11 C.W.N. 100. A person charged under sec. 112 for entering a railway carriage without a ticket pleaded guilty as to entering the carriage but said that he did not purchase the ticket because the train was about to start. *Held*, that this conviction is bad as his statement amounted to a positive denial of an intention to defraud. 57 I.C. 825=21 Cr.L.J. 665 (All.).

ESSENTIALS OF OFFENCE.—To constitute an offence under sec. 112 (b) it is not necessary that the used ticket should be relevant to the journey which the passenger wished to undertake. (11 C.W.N. 100, Diss.) 112 I.C. 771=23 S.L.R. 39=30 Cr. L. J. 3=1928 Sind 191.

WRONG TICKET.—Where a passenger travelling by a Railway train on being called upon, produces a ticket bearing date of a previous day, throwing away another in his possession, he cannot be held to have dishonest intention so as to justify a conviction under sec. 112 as the essence of the offence under that section is an intent to defraud the Railway Company. Unless there is clear evidence to show that a passenger knows that the ticket he is holding has been used before, an intention on his part to cheat the Railway Company cannot be infer-

red from the mere fact that the passenger knows that he is committing a breach of the Railways Act or rules framed under the Act. 35 I.C. 665 (Cal.)=17 Cr. L. J. 361. If the ticket does not show to its holder that, under the Railway rules, it is only available for a particular train or on a particular day, his knowledge of the Railway rules posted on the stations will not be assumed unless it is proved that the attention of the traveller was drawn to them. 35 I.C. 665 (Cal.)=17 Cr.L.J. 361. As to other cases under this section, see 21 M.L.J. 748 (*Travelling with a forged Railway pass*); 7 P.R. 1868 (*Travelling with old expired pass*); 1 Bom. H.C.R. 140 (*Travelling in higher class is no offence under the section*; 9 C.P.L.R. 1 (*Travelling beyond place to which ticket is issued is no offence under the section*); Rat. 123 (*Purchasing unused half of a ticket, is not offence.*) (*See also* 1 Weir 871; 27 P.R. 1905 (Cr.) (*Fraudulent entry without ticket not offence*); 11 C.W.N. 100 (*Travelling with false ticket is an offence*). *See also* 1 Weir 870.

SECS. 112 AND 114: SEASON TICKET.—USE BY ANOTHER.—OFFENCE.—A season ticket issued in the name of one person was found to be used by his brother. It was not contended by the former that the latter had taken the ticket without his consent or knowledge. *Held*, that it must be presumed that the former had given the ticket to the latter for use and that his conduct amounted to an offence under sec. 112 committed by the latter. 146 I.C. 162=35 Bom.L.R. 875=1933 Bom. 412. A conviction of a father accused of evading the payment of fare due for his child aged 6 sustained as a conviction of abetting the offence charged. 1 Weir 869 (F.B.). *See also* 17 C.P.L.R. 32.

SEC. 113.—*Cf.* the French and German Railway law.

Travelling without pass or ticket or with insufficient pass or ticket or beyond authorized distance.

a proper ticket with him, or, being in or having alighted from a train, fails or refuses to present for examination or to deliver up his pass or ticket immediately on requisition being made therefor under section 69, he shall be liable to pay, on the demand of any railway servant appointed by the railway administration in this behalf, the excess charge hereinafter in this section mentioned, in addition to the ordinary single fare for the distance which he has travelled or, where there is any doubt as to the station from which he started, the ordinary single fare from the station from which the train originally started, or if the tickets of passengers travelling in the train have been examined since the original starting of the train, the ordinary single fare from the place where the tickets were examined or, in case of their having been examined more than once, were last examined.

ESSENTIALS FOR ARREST.—To justify an arrest without a warrant much more than trespass or travelling without ticket would be necessary. In the case of trespass it must be shown that there was reason to believe that the person to be arrested would abscond or that his name and address were unknown and he refused to give his name and address or that there was reason to believe that the name or address given to him was incorrect. In the case of travelling without ticket it must further be shown that there was refusal to pay the sum charged. 33 C.W.N. 751=1929 Cal. 730.

NATURE OF PROCEEDINGS.—An application under sec. 113 (4) is not a prosecution for criminal offence and on such application the Magistrate has no power to fine the defaulters or to order a sentence of imprisonment in default of such fine. The Magistrate can only direct him to pay the fare and the excess charge under sub-sec. (3) and then proceed to recover it as if it were a fine. 6 Rang. 619=30 Cr.L.J. 57=1929 Rang. 11. There is no room in the phraseology of sec. 113 of the Railways Act for a loose interpretation of its terms, and it has obviously been framed with a view to preventing the enormous inconvenience and trouble which would otherwise arise in the matter of checking and collecting tickets from passengers. Under the section, passengers must have in their possession immediately available throughout the journey the tickets which entitle them to travel. If excess is realized for failure to produce the tickets, the mere fact that the tickets are produced later on does not entitle the passengers to a refund. 23 N.L.R. 120. See also 101 I.C. 158.

OBJECT OF SECTION.—INTENTION TO DEFRAUD, NOT NECESSARY.—The intention to defraud is not necessary for the offence under sec. 113. The section only provides a summary remedy to recover the charge incurred by a passenger together with a penalty provided in the section. Sec. 113, cl. (2) is clear and explicit and admits of no implications or exceptions. A passenger travelling in a lower class has no right to travel in a higher class without the previous permission of a Railway servant and without a proper ticket for that class and the

fact that he was obliged so to do as there was no accommodation in the class for which he had purchased a ticket is no justification and does not afford a defence in proceedings against him under sec. 113. 34 Bom.L.R. 1666.

PROCEEDINGS UNDER—NATURE OF—REVISION.—The act referred to in sec. 113 is not an offence; the proceeding under that section is not a prosecution for an offence but nevertheless it is a judicial proceeding and an order passed by a Magistrate under sec. 113 (4) is subject to revision by High Court. 34 Bom.L.R. 1666. A person travelled without a ticket but with guard's permission. He was asked to pay extra charge which he refused. Application to a Magistrate under sec. 113 (4) was rejected. Held, that High Court could not go into the merits of the order when it had no jurisdiction to revise that order. (5 S.L.R. 54, Dist.). 1930 Cr. C. 646=1930 Sind 162. Order of a Magistrate under sec. 113 (4) is merely an administrative or a ministerial order and the proceedings before him are not criminal proceedings in a Criminal Court within the scope of the Criminal Procedure Code and is not subject to revision under sec. 439. (1926 Sind 57; 1927 Sind 23, Foll. Other case-law referred). 1930 Sind 162.

PERSON TRAVELLING WITHOUT TICKET.—It is not a criminal offence to travel in a train without a pass or ticket, when there is no intent to defraud the company, but a person so travelling is liable under sec. 113 to pay on demand an excess charge in the nature of a penalty. 44 Cal. 279=18 Cr.L.J. 647=40 I.C. 295=25 C.L.J. 610. See also 1926 Bom. 266; 50 Bom. 355; 20 M. 385. (See now amendment by Act VI of 1941). Excess charge is not fine. 18 B. 440. (See now amended section). See also 20 M. 385. How recoverable, see *ibid.*; 4 I.C. 236=1 Bom.L.R. 166. Imprisonment not to be imposed in default of payment of fine. 20 A. 95; 11 C.W.N. 100. On this section, see also Rat. 871; L.B.R. (1872-1892) 606; 1 Weir 872; U.B.R. (1892-1896) Vol. 1, Cr. p. 300 (Court-Fees).

CONVICTION—LIABILITY TO PAY HIGHER FARE—DISTRESS WARRANT.—The petitioner was prosecuted for an offence under sec. 113 (*i.e.*) travelling without a ticket and he

(2) If a passenger travels or attempts to travel in or on a carriage, or by a train, of a higher class than that for which he has obtained a pass or purchased a ticket, or travels in or on a carriage beyond the place authorized by his pass or ticket, he shall be liable to pay, on the demand of any railway servant appointed by the railway administration in this behalf, the excess charge hereinafter in this section mentioned, in addition to any difference between any fare paid by him and the fare payable in respect of such journey as he has made.

¹[(3) The excess charge referred to in sub-section (1) and sub-section (2) shall be a sum equivalent to the amount otherwise payable under those sub-sections, or eight annas, whichever is greater:

Provided that where the passenger has immediately after incurring the charge and before being detected by a railway servant notified to the railway servant on duty with the train the fact of the charge having been incurred, the excess charge shall be one-sixth of the excess charge otherwise payable calculated to the nearest anna, or two annas, whichever is greater:

Provided further that if the passenger has with him a certificate granted under sub-section (2) of section 68, no excess charge shall be payable].

(4) If a passenger liable to pay the excess charge and fare mentioned in sub-section (1), or the excess charge and any difference of fare mentioned in sub-section (2), fails or refuses to pay the same on demand being made therefor under one or other of those sub-sections, as the case may be, ²[any railway servant appointed by the railway administration in this behalf may apply to any Magistrate of the first or second class for the recovery of the sum payable as if it were a ³fine, and the Magistrate if satisfied that the sum is payable shall order it to be so recovered, and may order that the person liable for the payment shall in default of payment suffer imprisonment of either description for a term which may extend to one month. Any sum recovered under this sub-section shall, as it is recovered, be paid to the railway administration.]

⁴[113-A. Any person who, without having obtained the permission of a

Power to remove person from railway carriage.

railway servant, travels or attempts to travel in a carriage without having a proper pass or ticket with him, or in a carriage of a higher class than that for which he has obtained a pass or purchased a ticket, or in a carriage beyond the place authorized by his pass or ticket, or who being in a carriage fails or refuses to present for examination or to deliver up his pass or ticket immediately on requisition being made therefor under section 69, may be removed from the carriage by any railway servant authorized by the railway administration in this behalf or by any other person whom such railway servant may call to his aid, unless he then and there pays the fare and the excess charge which he is liable to pay under section 113:

Provided that nothing in this section shall be deemed to preclude a person removed from a carriage of a higher class from continuing his journey in a carriage of a class for which he holds a pass or ticket:

Provided further that women and children, if unaccompanied by male passengers shall not be so removed except either at the station at which they first enter the train or at a junction or terminal station or station at the headquarters of a civil district and only between the hours of 6 a.m. and 6 p.m.]

LEG. REF.

¹ Sub-sec. (3) of sec. 113 substituted by Act VI of 1941.

² Substituted by Act VI of 1941.

³ As to procedure for recovery of fines, see secs. 386 to 389 of the Code of Criminal Procedure, 1898 (Act V of 1898).

⁴ Sec. 113-A added by Act VI of 1941.

pleaded in defence that he had not travelled by the train. The Magistrate without any

enquiry issued a distress warrant for the amount of penalty imposed. *Held*, the Magistrate could pass orders only after taking evidence on the question whether the accused was liable to pay and how much was payable by him. 21 Cr.L.J. 320=55 I. C. 593=24 C.W.N. 195. *Revision of Magistrate's order*, see 13 P.R. 1891 (Cr.). *Attempt to evade payment of railway fare*, when amounts to an attempt to cheat. See 6 P.R. 1868 (Cr.).

114. If a person sells or attempts to sell, or parts or attempts to part with the possession of ¹[any half] of a return ticket in order to enable any other person to travel therewith, or purchase such half of a return ticket, he shall be punished with fine which may extend to fifty rupees, and, if the purchaser of such half of a return ticket travels or attempts to travel therewith, he shall be punished with an additional fine which may extend to the amount of the single fare for ¹[the journey] authorized by the ticket.

115. That portion of any fine imposed under section 112 or the last foregoing section which represents the single fare therein mentioned shall, as the fine is recovered, be paid to the railway administration before any portion of the fine is credited to the Government.

116. If a passenger wilfully alters or defaces his pass or ticket so as to render the date, number or any material portion thereof illegible, he shall be punished with fine which may extend to fifty rupees.

117. (1) If a person suffering from an infectious or contagious disorder enters or travels upon a railway in contravention of section 71, sub-section (2), he, and any person having charge of him upon the railway when he so entered or travelled thereon, shall be punished with fine which may extend to twenty rupees, in addition to the forfeiture of any fare which either of them may have paid, and of any pass or ticket which either of them may have obtained or purchased, and may be removed from the railway by any railway servant.

(2) If any such railway servant as is referred to in section 71, sub-section (2) knowing that a person is suffering from any infectious or contagious disorder, wilfully permits the person to travel upon a railway without arranging for his separation from other passengers, he shall be punished with fine which may extend to one hundred rupees.

118. (1) If a passenger enters or leaves, or attempts to enter or leave, any carriage while the train is in motion, or elsewhere than at the side of the carriage adjoining the platform or other place appointed by the railway administration for passengers to enter or leave the carriage, or opens the side door of any carriage while the train is in motion, he shall be punished with fine which may extend to twenty rupees.

LEG. REF.

¹ Substituted by Act IX of 1896, sec. 6.

SEC. 114: APPLICABILITY OF.—Sec. 114 applies to purchasers and transferees of tickets and not to transferors alone. (23 S.L.R. 39 =112 I.C. 771=1928 S. 191, Overr.) 155 I.C. 697=1935 S. 90 (F.B.).

OFFENCE UNDER SEC. 114—IF CAN BE DEALT WITH UNDER SEC. 562, CR. P. CODE.—Per *Full Bench* and *Dadiba C. Mehta, A.J.C., dissenting*.—Offences punishable under sec. 114 are easy to commit but not easy to detect. When detection has been successfully effected, an offender should not go scot-free even if he has not been convicted before. 155 I.C. 697=1935 S. 90 (F.B.). Per *Dadiba C. Mehta, A.J.C.*—When a particular penal section of a statute is interpreted in a particular way in favour of a subject by a Divisional Bench, the subject has a right to say

that he has not committed any offence, that he had no guilty intention whatsoever in doing an act in the belief that the interpretation was correct. If subsequently that interpretation is found fault with by a Full Bench, so that the very act which at one time was not looked upon as an offence, is now regarded as an offence, the altered interpretation should not have a retrospective effect as if the subject should have anticipated the second decision of the High Court. Even if a technical conviction is recorded, the accused should have the benefit of sec. 562. 155 I.C. 697=1935 S. 90 (F.B.).

SEC. 118: PASSENGER—MEANING OF.—The word "passenger" in sec. 118 is used in a restricted sense and denotes a person who without permission of a Railway servant enters any Railway carriage for the purpose of travelling as a passenger. 14 Cr.L.J. 654 =21 I.C. 894=15 Bom.L.R. 996. On this

(2) If a passenger, after being warned by a railway servant to desist, persists in travelling on the roof, steps or footboard of any carriage or on an engine or in any other part of a train not intended for the use of passengers, he shall be punished with fine which may extend to fifty rupees and may be removed from the railway by any railway servant.

119. If a male person, knowing a carriage, compartment, room or other place to be reserved by a railway administration for the exclusive use of females, enters the place without lawful excuse, or, having entered it, remains therein after having been desired by any railway servant to leave it, he shall be punished with fine which may extend to one hundred rupees, in addition to the forfeiture of any fare which he may have paid and of any pass or ticket which he may have obtained or purchased, and may be removed from the railway by any railway servant.

Drunkenness or nuisance 120. If a person in any railway carriage or upon on a railway, any part of a railway,

(a) is in a state of intoxication, or

(b) commits any nuisance or act of indecency, or uses obscene or abusive language, or

(c) wilfully and without lawful excuse interferes with the comfort of any passenger or extinguishes any lamp,

he shall be punished with fine which may extend to fifty rupees, in addition to the forfeiture of any fare which he may have paid and of any pass or ticket which he may have obtained or purchased, and may be removed from the railway by any railway servant.

section, *see also* 1 Weir 873 (*Platform fruit seller* is not punishable under this section); 5 N.L.R. 151 (*Riding on footboard after warning*); *see also* 25 P.R. 1903 (Cr.); 31 P.R. 1905 (Cr.). Refusing to leave ice-vendor's compartment after warning that it has been reserved for the ice-vendor commits an offence under the section, sub-sec. (2). 1936 A.L.J. 117=161 I.C. 17=A.I.R. 1936 A. 439.

SEC. 119.—*See* 76 P.L.R. 1903.

SEC. 120: APPLICABILITY TO RAILWAY SERVANTS.—The latter portion of sec. 120 has a reference to the forfeiture of fares and of passes or tickets and to the removal of the offender from the railway by any railway servant, and thus shows its inapplicability to railway servants. 118 I.C. 197=23 S.L.R. 409=30 Cr.L.J. 879=1929 S. 249. Sec. 120 applies to Railway servants and the word 'person' in the section includes an employee of the Railway. 14 Pat.L.T. 652=146 I.C. 937. *See also* I.L.R. (1937) Bom. 666=39 Bom.L.R. 610=A.I.R. 1937 Bom. 357.

REMOVAL OF PASSENGERS BY RAILWAY OFFICIALS.—The word "person" in sec. 120 includes railway official and a railway guard who removes a passenger from a compartment which they are entitled to occupy, is guilty of an offence under sec. 120. 19 Cr.L.J. 313=44 I.C. 329 (Mad.). But *see* I.L.R. (1937) Bom. 666=39 Bom. L.R. 610=170 I.C. 575=A.I.R. 1937 Bom. 357. (Railway servant may well be dealt with by departmental action). There is no provision in the Railways Act for ejecting passengers except in certain circumstances

specified in sec. 120 and the expression 'railway' in sec. 122 does not include a railway carriage. 44 Cal. 279=18 Cr.L.J. 647=40 I.C. 295=25 C.L.J. 610. Travelling without a ticket is not one of the circumstances mentioned in sec. 120 as justifying removal from a Railway carriage by a railway servant where there is no evidence that the persons were travelling without tickets with fraudulent intent. 68 I.C. 846=23 Cr.L.J. 622=1923 Lah. 71 (1).

USING THE DELIVERY SHED AS A MARKET PLACE FOR SELLING FISH.—A person who persists in selling fish in the delivery shed of Railway, which is not meant to be a market, and obstructs the business for which the shed is prepared is guilty of nuisance within sec. 120 (b). 25 C.W.N. 603=22 Cr.L.J. 604=62 I.C. 876=33 C.L.J. 293. A conviction under sec. 120 (b) is not sustainable when the particular words used are not in evidence. The mere statement of witnesses that words of abuse were used is not sufficient to support a conviction. 6 Lah. L.J. 469=1925 Lah. 151. But *see contra* 1936 A.L.J. 82=160 I.C. 1088=A.I.R. 1936 A. 140 (Conviction can be sustained although the exact words used are not proved). On this section *see also* 1 C.W.N. 74; Rat. 675; 1 N.L.R. 139; 7 I.C. 355; 30 B. 348; 8 Bom.L.R. 22. As to allowing cattle to stray on railway line, *see* 8 M.H.C. App. 1=1 Weir 874.

SEC. 120 (c): APPLICABILITY—UNRESERVED COMPARTMENT—SEATS RESERVED—PASSENGER OCCUPYING SEAT RESERVED FOR ANOTHER—NO OFFENCE. *See* 44 Bom.L.R. 916=1943 Bom. 52.

Obstructing railway servant in his duty. 121. If a person wilfully obstructs or impedes any railway servant in the discharge of his duty, he shall be punished with fine which may extend to one hundred rupees.

Trespass and refusal to desist from trespass. 122. (1) If a person unlawfully enters upon a railway, he shall be punished with fine which may extend to twenty rupees.

(2) If a person so entering refuses to leave the railway on being requested to do so by any railway servant; or by any other person on behalf of the railway administration, he shall be punished with fine which may extend to fifty rupees, and may be removed from the railway by such servant or other person.

SEC. 121: ESSENTIALS FOR CONVICTION.—Before a person can be convicted of wilfully obstructing or impeding a railway servant in the discharge of his duties, it must be shown that the obstruction or resistance was offered to such railway servant in the discharge of his duties as authorised by law. (1 C.W.N. 74. Ref.) 91 I.C. 33=6 Lah. 467=27 Cr.L.J. 1=1925 L. 650. Where a person without sufficient and reasonable cause *pulls the emergency chain*, he renders himself liable for prosecution under sec. 108 only, and not under sec. 121 for preventing the running of the train and thus obstructing or impeding a railway servant in the discharge of his duty. (43 Bom. 103, Foll.) 32 Bom.L.R. 111=1930 Bom. 160. *Abuse or insult does not necessarily constitute obstruction or impediment to a railway servant in the discharge of his duty.* 68 I.C. 846=23 Cr.L.J. 622=1923 L. 71 (1). Rules 244, 229 and 23 of the General Rules empower a Station Master to appoint a Signaller temporarily to do the duties of a Ticket Collector. When a Signaller so appointed undertake such duties and acts in the discharge thereof, he is a "Railway servant" within sec. 121. *Obstruction to him is punishable under sec. 121.* 37 M.L.J. 656=10 L.W. 669=21 Cr.L.J. 62. See also A.W.N. (1902) 24.

REFUSAL TO PAY EXCESS FARE.—Refusal to pay excess fare cannot possibly amount to obstructing or impeding a railway servant in the discharge of his duty within the meaning of sec. 121. 1933 M.W.N. 874; Rat. 675.

SEC. 122: SCOPE AND OBJECT OF SECTION.—ESSENTIALS OF LIABILITY UNDER THE SECTION.—Two things are necessary to bring a man under that section: (1) that the place of entry must be "railway" as defined in sec. 3 (4) of the Act, and (2) the entry should have been unlawful in the inception. 25 A.L.J. 710=28 Cr.L.J. 648=1927 A. 646. The most important words in sec. 122 are the words "unlawfully enters", for unless and until a person has made an unlawful entry upon the railway premises he cannot be brought within this penal provision. The word "unlawful" means "contrary to the law laid down in the statute." 88 I.C. 522=1925 P. 535. If the railway made a general rule under the Act that nobody

should enter upon railway platforms except passengers with tickets, any other persons entering upon the platform might be guilty of unlawful entry. But where no such rule exists, and where the station master leaves the platform gate open, those who enter upon the platform can hardly be considered to be other than licensees. A person who enters in this manner may be quite lawfully ordered to leave the railway premises, but as he has not entered unlawfully he can never be brought within the mischief of sec. 122. 88 I.C. 522=6 P.L.T. 437=26 Cr.L.J. 1162=1925 P. 535. The word "unlawful" has practically the same meaning as "illegal" which can be interpreted as including actionable. Hence an entry upon railway premises may be held to be unlawful, if it constitutes an actionable trespass. 146 I.C. 684=1933 A.L.J. 1432=1933 A. 891. *Crossing Railway line* even if it be to enter the platform is offence under sec. 122. 142 I.C. 202=33 Cr.L.J. 291=1933 M. 372; 44 C. 279. *Object of section.* (1914) M. W.N. 124; 22 I.C. 177. *Unlawful entry is the essence of the offence under both the clauses of sec. 122.* If the entry was lawful, refusal to leave on being desired to do so would not make the original entry unlawful. Nor would it make a person guilty under Cl. (2) which is but an aggravated form of the offence under Cl. (1). 19 Cr. L.J. 878=47 I.C. 74=22 C.W.N. 575.

The word "unlawful" in sec. 122 means without the leave of the Railway Administration and a person entering the railway line without such leave is guilty under sec. 122. Sec. 47 or the bye-laws made under cl. (g) thereof have no reference to this offence of trespass. 4 P.R. 1914=24 I.C. 348=15 Cr.L.J. 468 (11 C.W.N. 583, Rel.). A railway platform, to which the general public have free access, without having to show tickets, or without having to obtain special permission of any sort, is a part of the railway premises which may be entered by the members of the general public under the implied permission of the railway authority. Hence a person who enters such premises cannot be treated to be trespasser merely because he enters the platform without express permission and his entry is not unlawful within the meaning of sec. 122. 146 I.C. 684=1933 A.L.J. 1432=1933 A. 891. Even a passenger with a ticket cannot trespass on Railway lines. 152 I.C. 615=

123. If a driver or conductor of a tramcar, omnibus, carriage or other vehicle while upon the premises of a railway disobeys the reasonable directions of any railway servant or police-officer, he shall be punished with fine which may extend to twenty rupees.

Disobedience of omnibus drivers to directions of railway servants.

Opening or not properly shutting gates.

124. In either of the following cases, namely:—

(a) if a person knowing or having reason to believe that an engine or train is approaching along a railway, opens any gate set up on either side of the railway across a road, or passes or attempts to pass, or drives or takes, or attempts to drive or take, any animal, vehicle or other thing across the railway,

(b) if, in the absence of a gate-keeper, a person omits to shut and fasten such a gate as aforesaid as soon as he and any animal, vehicle or other thing under his charge have passed through the gate,

the person shall be punished with fine which may extend to fifty rupees.

125. (1) The owner or person in charge of any cattle straying on a railway provided with fences suitable for the exclusion of cattle shall be punished with fine which may extend to five rupees for each head of cattle, in addition to any amount which may have been recovered or may be recoverable under the Cattle Trespass Act, 1871.

Cattle-trespass.

(2) If any cattle are wilfully driven, or knowingly permitted to be, on any railway otherwise than for the purpose of lawfully crossing the railway or for any other lawful purpose, the person in charge of the cattle or, at the option of the railway administration, the owner of the cattle shall be punished with fine which may extend to ten rupees for each head of cattle, in addition to any amount which may have been recovered or may be recoverable under the Cattle Trespass Act, 1871.

(3) Any fine imposed under this section may, if the Court so directs, be recovered in manner provided by section 25 of the Cattle Trespass Act, 1871.

(4) The expression "public road" in sections 11 and 26 of the Cattle Trespass Act, 1871, shall be deemed to include a railway, and any railway servant may exercise the powers conferred on officers of police by the former of those sections.

(5) The word "cattle" has the same meaning in this section as in the Cattle Trespass Act, 1871.

LEG. REF.

¹Cf. the Railway Clauses Act, 1845 (8 & 9 Vict., c. 20), sec. 75.

40 L.W. 664. *Subsequent unlawful act, i.e., breaking lock of a wagon does not make the original entry itself unlawful under sec. 122, when it was found that the Dalals like the accused were freely allowed to enter the station premises.* 20 Cr.L.J. 96=48 I.C. 896=15 N.L.R. 34. *See also* 22 B. 525. There is nothing in the Act to forbid the reservation of compartment for different communities and any member of any other community entering such compartment becomes a trespasser and could therefore be removed under sec. 122. 21 I.C. 499=7 S.L.R. 42. Sec. 122 (2) cannot be applied to eject a Railway employee, from the staff quarters occupied by him while under service as they are not part of a Railway within the meaning of sec. 3 (4). 15 Cr.L.J. 225=23 I.C. 177=1914 M.W.N. 124. *Procedure under the section.* 1902 A.W.N. 24; 4 P.R. 1914 (Cr.) (Summary trial). It is within

the competence of the police to put up a charge sheet in respect of an offence under sec. 122 of the Act, without a written complaint from the Railway authorities. A complaint filed by the police without such written complaint of the railway authorities is a proper complaint. 1939 M.W.N. 876=A.I.R. 1940 Mad. 268.

Sec. 125.—The owners of cattle straying on a railway line cannot be convicted of an offence under section 125 for the negligence of their keeper. 34 All. 91=12 Cr.L.J. 614=12 I.C. 990=8 A.L.J. 1249. *See also* 18 M. 228=1 Weir 874; 8 M.H.C. App. 1. Sec. 125 (2) of the Act applies only if cattle were wilfully driven on any railway otherwise than for crossing the railway. There is no provision in the Railways Act by which the public is forbidden to cross railway lines or drive animals across them at places other than level crossings and if the railway erects no fence the public will continue to cross the line and drive their animals across it until they are stopped, 7 O.W.N. 461=1930 Oudh 250.

Maliciously wrecking or attempting to wreck a train.

¹126. If a person unlawfully—

(a) puts or throws upon or across any railway any wood, stone or other matter or thing, or

(b) takes up, removes, loosens or displaces any rail, sleeper or other matter or thing belonging to any railway, or

(c) turns, moves, unlocks or diverts any points or other machinery belonging to any railway, or

(d) makes or shows, or hides or removes, any signal or light upon or near to any railway, or

(e) does or causes to be done or attempts to do any other act or thing in relation to any railway,

with intent, or with knowledge that he is likely, to endanger the safety of any person travelling or being upon the railway, he shall be punished with transportation for life or with imprisonment for a term which may extend to ten years.

²127. If a person unlawfully throws or causes to fall or strike at, against,

Maliciously hurting or attempting to hurt persons travelling by railway.

into or upon any rolling-stock forming part of a train any wood, stone or other matter or thing with intent, or with knowledge that he is likely, to endanger the safety of any person being in or upon such rolling-

stock or in or upon any other rolling-stock forming part of the same train, he shall be punished with transportation for life or with imprisonment for a term which may extend to ten years.

³128. If a person, by any unlawful act or by any wilful omission or neglect,

LEG. REF.

¹ Cf. the Malicious Damage Act, 1861 (24 & 25 Vict., c. 97), sec. 35 and the Offences against the Person Act, 1861 (24 & 25 Vict., c. 100), sec. 32.

² Cf. The Offences against the Person Act, 1861 (24 & 25 Vict., c. 100), sec. 33.

³ Cf. The Offences against the Persons Act, 1861 (24 & 25 Vict., c. 100), sec. 34 and the Malicious Damage Act, 1861 (24 & 25 Vict., c. 100), sec. 36.

SEC. 126.—Person charged with having placed stones on the rails under sec. 126 cannot be allowed to plead that no train was due at that time. Rat. 829. Unlocking and turning a turn-table is an offence under sec. 126 though not likely to cause injury to any person. 1 Weir 875. Knowledge of attempt to wreck train by another and keeping watch, while the Act is being done is abetment and hence punishable under sec. 126. 1 Bom. L.R. 682. See 43 Bom. 888, noted under sec. 130, *infra*.

SECS. 126 AND 128: LYING ON RAILS.—The offence of lying on the rails cannot be said to endanger the safety of persons travelling on the railway and comes under sec. 128 and not under sec. 126. Where several persons are charged with having conspired for the purpose, the proper conviction will be under sec. 129 (b) of the Penal Code, for conspiring to commit an offence under sec. 128 of the Railways Act. 1930 M.W.N. 1264.

SEC. 127: OBSTRUCTION BY ASSEMBLY—CONVICTION OF A MEMBER OF THE ASSEMBLY—LEGALITY.—The term "offence" in sec. 149, Penal Code, is confined to offence under the Penal Code and so a conviction under sec. 128, with reference to sec. 149 is illegal and cannot be sustained. (1923 Mad. 187 and 1925 Mad. 239, Foll.). 57 M. L. J. 114. Where a large body of men set out to obstruct a railway line and throw stones at trains they form an unlawful assembly and if in carrying out their common object they commit offences under secs. 127 and 128, only those of them who are proved themselves to have committed these offences under secs. 127 and 128 can be convicted under those sections. The rest are not constructively guilty as sec. 149 cannot be invoked against them although the offences committed by them are the very offences they set out to commit and committed in prosecution of their common object. 52 Mad. 882=30 Cr. L.J. 869=1929 Mad. 880=57 M.L.J. 114.

SECS. 127 AND 130.—Where two boys of tender years threw stones at a Railway train, it was held that the offence, if any, would fall under sec. 130 and not under sec. 127, and that the action would also ordinarily be protected under secs. 82 and 83, Indian Penal Code. 30 S.L.R. 9=165 I.C. 642=A.I.R. 1936 Sind 185.

SEC. 128: OFFENCE UNDER—PULLING COMMUNICATION CORD AND SITTING IN FRONT OF ENGINE.—A passenger pulled the communi-

Endangering safety of persons travelling by railway by wilful act or omission.

extend to two years.

129. If a person rashly or negligently does any act, or omits to do what he is legally bound to do, and the act or omission is likely to endanger the safety of any person travelling or being upon a railway, he shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

Endangering safety of persons travelling by railway by rash or negligent act or omission.

130. (1) If a minor under the age of twelve years is with respect to any railway guilty of any of the acts or omissions mentioned or referred to in any of the four last foregoing sections, he shall be deemed, notwithstanding anything in section 82 or section 83 of the Indian Penal Code, to have committed an offence, and the Court convicting him may, if it thinks fit, direct that the minor, if a male, shall be punished with whipping, or may require the father or guardian of the minor to execute, within such time as the Court may fix, a bond binding himself, in such penalty as the Court directs, to prevent the minor from being again guilty of any of those acts or omissions.

Special provision with respect to the commission by children of acts endangering safety of persons travelling by railway.

- (2) The amount of the bond, if forfeited, shall be recoverable by the Court as if it were a fine imposed by itself.

- (3) If a father or guardian fails to execute a bond under sub-section (1) within the time fixed by the Court, he shall be punished with fine which may extend to fifty rupees.

Procedure.

131. (1) If a person commits any offence mentioned in section 100, 101, 119, 120, 121, 126, 127, 128 or 129 or in section 130, sub-section (1), he may be arrested without warrant or other written authority by any railway servant or police-officer, or by any other person whom such servant or officer may call to his aid.

- (2) A person so arrested shall, with the least possible delay, be taken before a Magistrate having authority to try him or commit him for trial.

132. (1) If a person commits any offence under this Act, other than an

LEG. REF.

¹See secs. 386 to 389 of the Code of Criminal Procedure, 1898 (Act V of 1898), Genl. Acts, Vol. V.

²Cf. the Companies Clauses Act, 1845 (8 & 9 Vict., c. 16), sec. 156.

cation cord of a railway train and stopped the train several times on the ground that his compartment was overcrowded. On the vacuum break being disconnected he sat down after warning the authorities, in front of the engine and commenced playing a musical instrument, thus delaying the train for about eighty minutes. *Held*, that an offence under sec. 128 had been committed. *Held*, however, that in passing sentence the fact that the accused had in the interests of the public protested against the maladministration of

the Railway Company should be taken into consideration. Sentence of one day imprisonment passed. 130 I.C. 384=32 Cr. L. J. 547=1931 Oudh 85.

Sec. 130.—An offence punishable under sec. 130 read with sec. 126 (a) of the Railways Act, 1890, is not exclusively triable by a Court of Session, but can be tried by a competent Magistrate. 43 Bom. 888=20 Cr. L.J. 699=52 I.C. 667=21 Bom.L.R. 768. In view of provisions of sec. 29-B of Cr. P. Code, a Magistrate other than a District Magistrate has no jurisdiction to try an offence under sec. 130 of Railways Act. (43 Bom. 888, Diss. from.) 110 I.C. 589=29 P.L.R. 536=29 Cr. L. J. 733=1928 Lah. 909. See also 11 C.P.L.R. 8; 14 C.P.L.R. 176; U.B.R. (1892-1896), Vol. I (Cr.) 302.

SEC. 132: CONSTRUCTION—WHAT SHOULD BE PROVED.—S. 132 does not

Arrest of persons likely to abscond or unknown.

offence mentioned in the last foregoing section, or fails or refuses to pay an excess charge or other sum demanded under section 113, and there is reason to

believe that he will abscond or his name and address are unknown, and he refuses on demand to give his name and address, or there is reason to believe that the name or address given by him is incorrect, any railway servant or police-officer, or any other person whom such railway servant or police-officer may call to his aid, may, without warrant or other written authority, arrest him.

(2) The person arrested shall be released on his giving bail or, if his true name and address are ascertained, on his executing a bond without sureties for his appearance before a Magistrate when required.

(3) If the person cannot give bail and his true name and address are not ascertained, he shall with the least possible delay be taken before the nearest Magistrate having jurisdiction.

(4) The provisions of Chapters XXXIX and XLII of the Code of Criminal Procedure, 1882, shall so far as may be, apply to bail given and bonds executed under this section.

133. No Magistrate other than a Presidency Magistrate or than a Magistrate whose powers are not less than those of a Magistrate of the second class shall try any offence under this Act.

134. (1) Any person committing any offence against this Act or any rule thereunder shall be triable for such offence in any place in which he may be or which the Provincial Government may notify in this behalf, as well as in any other place in which he might be tried under any law for the time being in force.

(2) Every notification under sub-section (1) shall be published in the Official Gazette, and a copy thereof shall be exhibited for the information of the public in some conspicuous place at each of such railway station as the Provincial Government may direct.

* * * * *

THE REFORMATORY SCHOOLS ACT (VIII OF 1897).

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LEG. REF.

¹ See now the Code of Criminal Procedure 1898 (Act V of 1898), Genl. Acts, Vol. V.

² For instances of notifications issued under this power, see Suppl. to Assam R.M., *Assam Gazette*, 1898, Pt. II, p. 134 and *ibid.*, 1901, Pt. II, p. 482; *Gazette of India*, 1899, Pt. I, p. 255; Ben. Stat. R. and O. Vol. I, and *Calcutta Gazette*, 1907, p. 202; and U.P. List of Local R. and O., Vol. I and U. P. *Gazette*, 1906, Pt. I, p. 983.

the name and address should be believed to be incorrect but either the name or address. Nor does the section require that either the name or the address should be in fact incorrect. 195 I.C. 883=42 Cr.L.J. 786=A.I. R. 1941 Sind 117.

Sec. 133.—Third class Magistrates are not competent to try offences under this section. U.B.R. (1897-01) I, 374. See also 30 S.L.R. 9=165 I.C. 642=A. I. R. 1936 Sind 185.

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THE REFORMATORY SCHOOLS ACT (VIII OF 1897).¹

Year.	No.	Short title.	Amendments.
1897	VIII	The Reformatory Schools Act, 1897.	Repealed in part III of 1900; X of 1914; I of 1938. Amended, IV of 1913.

[11th March, 1897.]

An Act to amend the law relating to Reformatory Schools and to make further provision for dealing with youthful offenders.

WHEREAS it is expedient to amend the law relating to Reformatory Schools and to make further provision for dealing with youthful offenders; It is hereby enacted as follows:—

I.—Preliminary.

Title and extent.

1. (1) This Act may be called THE REFORMATORY SCHOOLS ACT, 1897. ¹[*]²

²[* * * * *]

(3) This section and section 2 shall extend to the whole of British India. The other sections shall extend in the first instance to the whole of British India except the territories ³[administered on the 11th day of March, 1897] by the Lieutenant-Governor of the Punjab and the Chief Commissioner of Coorg, but ³[the Provincial Government of any of the said territories] may at any time by notification in the Official Gazette, extend these sections to their territories from such day as may be fixed in any notification.

2 and 3. [*Repeals.*] *Repealed by the Repealing Act, I of 1938, S. 2 and Sch.*

LEG. REF.

¹ This Act has been declared in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (Reg. VIII of 1872), sec. 3, as amended by Sonthal Parganas Justice and Laws Regulation (Reg. III of 1899), sec. 3; in Upper Burma (except the Shan States) by the Burma Laws Act (Act XIII of 1898), sec. 4.

² The word "and" at the end of sub-sec. (1), and sub-sec. (2) omitted by Act X of

1914.

³ Substituted by A.O., 1937.

SEC. 1.—See Rat. 180, 929, 936=Cr. Rg. 45 of 1897; Rat. 864; Cr. Rg. 28 of 1896; 6 P.R. 1882 (Cr.); L.B.R. (1893—1900) 491; 4 Bur.L.R. 69=12 Cr.L.J. 244; 10 I.C. 733; 5 C.W.N. 210.

SEC. 2: CONSTRUCTION OF ACT.—See 21 M. 430. "As far as may be" meaning of. 21 M. 430. Rules under the old not inconsis-

Definitions.

4. In this Act, unless there is anything repugnant in the subject or context,—

(a) "youthful offender" means any boy who has been convicted of any offence punishable with transportation or imprisonment and who, at the time of such conviction, was under the age of fifteen years:

(b) "Inspector-General" includes any officer appointed by the Provincial Government to perform all or any of the duties imposed by this Act on the Inspector-General; and

(c) "District Magistrate" shall include a Chief Presidency Magistrate.

II.—Reformatory Schools.

Power to establish and
discontinue Reformatory
Schools.

5. ¹[* * * *] The Provincial Government may—

(a) establish and maintain Reformatory Schools at such places as it may think fit;

(b) use as Reformatory Schools, schools kept by persons willing to act in conformity with such rules, consistent with this Act, as the Provincial Government may prescribe in this behalf;

(c) direct that any school so established or used shall cease to exist as a Reformatory School or to be used as such.

Requisites of schools.

6. Every school so established or used must provide—

(a) sufficient means of separating the inmates at night;

(b) proper sanitary arrangements, water-supply, food, clothing and bedding for the youthful offenders detained therein;

(c) the means of giving such youthful offenders industrial training;

(d) an infirmary or proper place for the reception of such youthful offenders when sick.

7. (1) Every school intended to be established or used as a Reformatory

Inspection of Reforma-
tory Schools.

School shall, before being used as such, be inspected by the Inspector-General, and if he finds that the requirements of section 6 have been complied with,

and that, in his opinion, such school is fitted for the reception of such youthful offenders as may be sent there under this Act, he shall certify to that effect, and such certificate shall be published in the Official Gazette, together with an order of the Provincial Government establishing the school as a Reformatory School or directing that it shall be used as such, and the school shall thereupon be deemed to be a Reformatory School.

(2) Every such school shall, from time to time, and at least once in every year, be visited by the said Inspector-General, who shall send to the Provincial

LEG. REF.

¹Omitted by Act IV of 1914, Sch., Pt. I.

tent with the new Act are to be deemed to be in force under the new Act. (*Ibid.*) Effect of Cr. P. Code on this Act, *see* 12 M. 94. Effect of repeal of old Act V of 1876. *See also* on this section 25 C. 333=2 C.W.N. 11; 12 M. 94=1 Weir 875; 1889 A.W.N. 131; L.B.R. (1893—1900), 129.

INTENTION OF ACT.—The sending of first youthful offenders, whose antecedents are not shown to be bad, to ordinary jails has effect of making them hardened criminals after they are discharged from such jails. Their association with all classes of offenders has a very unhealthy influence on them. It is the duty of the Magistrate to take into consideration all such matters, when deciding the question of sentence. There are

other suitable forms of punishment provided by the law. The provisions of Reformatory Schools Act are intended for cases of youthful offenders. 96 I.C. 390=27 Cr.L.J. 934=1926 L. 611.

SEC. 4: APPLICABILITY OF SECTION.—*See* 1924 Rang. 46. The order for detention in a Reformatory School can only be made in the case of a youthful offender; and under sec. 4 a boy ceases to be technically a youthful offender at the age of 15, therefore, it is illegal to order detention of a boy of 16. 2 Bur.L.J. 96=24 Cr.L.J. 918=75 I.C. 294=1924 R. 16. *See also* Rat. 905; 1 Weir 879; 27 C. 133.

SEC. 7.—25 C. 333=2 C.W.N. 11; 12 M. 94=1 Weir 875; L.B.R. (1893)—1900) 129; Rat. 518=Cr. Rg. 41 of 1890; 1896 A.W.N. 27; *ibid.* 43; Rat. 536=Cr.Rg. 6 of 1891; Rat. 726=Cr. Rg. 54 of 1894.

Government a report on the condition of the school in such form as the Provincial Government may prescribe.

8. (1) Whenever any youthful offender is sentenced to transportation or imprisonment, and, is in the judgment of the Court by which he is sentenced, a proper person to be an inmate of a Reformatory School, the Court may, subject to any rules made by the Provincial Government, direct that, instead of undergoing his sentence, he shall be sent to such a school, and be there detained for a period which shall be not less than three or more than seven years.

(2) The powers so conferred on the Court by this section shall be exercised only by (a) the High Court, (b) a Court of Session, (c) a District Magistrate, and (d) any Magistrate specially empowered by the Provincial Government in this behalf, and may be exercised by such Courts whether the case comes before them originally or on appeal.

(3) The Provincial Government may make rules for—

(a) defining what youthful offenders should be sent to Reformatory Schools, having regard to the nature of their offences or other considerations, and

SEC. 8.—Rules framed under the old Act, whether in force, after the passing of the new Act, see 21 M. 430=1 Weir 880. *Nature of proceedings* under this section, see 14 B. 381=Rat. 586. *Procedure* to be adopted. 1 Weir 878, *Procedure* by Magistrate not empowered under the section, see 26 I.C. 336=16 Cr.L.J. 32. Where a boy under 12 years was convicted of stabbing a companion with a knife and sentenced to pay a fine of Rs. 100 or in default of payment to go to the Reformatory School for three years. *Held*, the order was illegal. Under sec. 8 before such an order is passed, the offender must have been sentenced to transportation or imprisonment and not to mere fine. 12 Cr.L.J. 244=10 I.C. 773. See also L.B.R. (1893—1900) 491; 5 C.W. N. 310.

ILLUSTRATIVE CASES.—A youthful offender was sentenced to 3 years' detention in a Reformatory School in lieu of 3 months' rigorous imprisonment. The boy was over 13 years of age. *Held*, sec. 8 combined with the Judicial Department Notification No. 237, dated 12th June, 1897, and Rule 1, cl. (iii), provides that, if a youthful offender is over 13 years of age, he should be sent to a Reformatory School for such period as will bring him to the age of eighteen. Notice was issued to the accused to show cause why he should not be detained in the Reformatory School till he attains eighteen. 3 L.B. R. 46. As to who should be sent to Reformatory School, See Rat. 726; 9 Cr.L.J. 99=4 N.L.R. 180. Where an accused, who was convicted of offences under secs. 454 and 380, I.P. Code, was sentenced to one year's rigorous imprisonment but being fourteen years old was directed to be detained in the Reformatory for the period, the High Court reversed this latter direction on the ground that the Magistrate had not been specially authorised and that the order was opposed to the provisions of sec. 8. Rat. 947. A Magistrate should first pass a sentence of imprisonment and then direct that,

instead of undergoing the sentence the offender should be sent to a Reformatory School for such period as the Act and the rules framed thereunder direct. 1 Weir 879. See also 2 L.B.R. 216. Under sec. 8 of the Act it is irregular for a Magistrate to sentence an accused between 15 and 16 years of age to be detained in a Reformatory for 4 years without first sentencing him to imprisonment. L.B.R. (1893)—1900, 648. (L.B.R. 1893-1900, 242, R.) Where a Magistrate who sentenced a youthful offender for six months, and directed that in lieu of the imprisonment, he should be detained in a Reformatory School unless he shall attain the age of 18 years at an earlier date, *held*, that the order directing the detention of the boy in a Reformatory School was not properly made, inasmuch as it had not fixed the exact period, in some cases under the Act, it may not be necessary for the Magistrate, to ascertain the exact age of the boy. So long as he is not over 15, the Magistrate may rightly fix a period of 3 years, or if the boy is not over 11, he may fix a period of 7 years without further inquiry. But if inquiry is necessary in order to fix the period, as it would be when the boy is over 11 and the Magistrate wishes to make the period as long as possible, then the Magistrate must find, as well as he can, the exact age of the boy and he is not at liberty to leave the decision of the question to Reformatory officials. 24 M. 13=1 Weir 882. [F., 15 Bom.L.R. 306; 14 Cr.L.J. 256=19 I.C. 512]. See also 15 Bom.L.R. 306=14 Cr.L.J. 256=19 I.C. 512. See also 15 A. 208. An *appellate Court* is competent to pass an order for detention in a reformatory in supersession of the order for imprisonment. If he has sufficient materials before him on which such an order can be founded. If there is no evidence as to the age of the accused or to show that he is a youthful offender within the terms of the Act, or to indicate the period of detention in the Reformatory which

(b) regulating the periods for which youthful offenders may be sent to such schools according to their ages or other considerations.

9. (1) When any Magistrate not empowered to pass an order under the last foregoing section is of opinion that a youthful offender convicted by him is a proper person to be an inmate of a Reformatory School, he may, without passing sentence, record such opinion and submit his proceedings and forward the youthful offender to the District Magistrate to whom he is subordinate.

(2) The Magistrate to whom the proceedings are so submitted may make such further enquiry (if any) as he may think fit and pass such sentence and order for the detention in a Reformatory School of the youthful offender, or otherwise, as he might have passed if such youthful offender had been originally tried by him.

10. The officer in charge of a prison in which a youthful offender is confined, in execution of a sentence of imprisonment, may bring him, if he has not then attained the age of fifteen years, before the District Magistrate within whose jurisdiction such prison is situate; and such Magistrate may, if such youthful offender appears to be a proper person to be an inmate of a Reformatory School, direct that, instead of undergoing the residue of his sentence, he shall be sent to a Reformatory School, and there detained for a period which shall be subject to the same limitations as are prescribed by or under section 8, with reference to the period of detention thereby authorised.

he might be ordered to undergo, he must take evidence within the terms of sec. 11 regarding these points before passing the order. 4 C.W.N. 225; Rat. 586. The language of secs. 8 and 9 shows that a sentence must be passed and then a direction given that instead of undergoing the sentence the youthful offenders shall be sent to a Reformatory School. 1 Bom.L.R. 162. [R. 21 A. 391, (F.B.). In this case the Sub-Divisional Magistrate ordered the accused to furnish *security for good behaviour* under sec. 110, Cr.P. Code, and in default to be rigorously imprisoned for one year. The accused appealed to the District Magistrate who dismissed the appeal, but in his order stated that the Superintendent of the jail had pointed out that the accused prisoner should be confined in a Reformatory, and the District Magistrate added that "a revised warrant should be sent." Accordingly the Sub-Divisional Magistrate issued another warrant directing that, instead of undergoing his sentence the accused should be detained for a period of one year in a Reformatory School, *held*, that the order was illegal for the following reasons:—(1) The prisoner was 16 years' old and was therefore not a youthful offender as defined in the Act, not being under the age of 15. (2) That the period of detention shall not be less than three years and the Magistrate ordered detention for one year. (3) The Magistrate had not been specially empowered to exercise the powers under the Act. (4) The accused had not been sentenced to imprisonment within the meaning of sec. 8 of

the Act. An order for imprisonment in default of furnishing security is not a sentence of imprisonment. U.B.R. (1897-1901), Vol. I, p. 375. *See also* Rat. 518 (Necessity to pass some sentence on conviction). On this section, *see also* 1 Weir 879; Rat. 726 and 5 C.W.N. 210. (In absence of sentence mere detention is illegal). Sec. 439, sub-sec. (1) gives the High Court the necessary power to pass an order under sub-sec. (2), sec. 8, of, detaining a boy accused in Reformatory, not only on appeal but also in revision. (*Criminal Reference No. 41 of 1924 held wrongly decided.*) 112 I.C. 344=30 Bom.L.R. 952=29 Cr.L.J. 1016=1928 B. 348. On this section, *see also* Rat. 915; 2 L.B.R. 216; L.B.R. (1893-1900) 491; 5 C.W.N. 210; 15 Bom.L.R. 306=14 Cr.L.J. 256=19 I.C. 512; 34 P.R. 1910 (Cr.); 12 Cr.L.J. 56=8 I.C. 1196; Rat. 536; Rat. 726; Rat. 404; 1889 A.W. N. 131; 12 Cr.L.J. 244=10 I.C. 773.

SEC. 9.—A second class Magistrate not empowered to act under sec. 8, should after convicting the accused, submit the case to the District Magistrate for passing sentence under sec. 9 (2), and not to the Joint Magistrate to whom the second class Magistrate may be immediately subordinate. 16 Cr.L.J. 32=26 I.C. 336. *See also* 5 C.W.N. 210; 34 P.R. 1910 (Cr.)=12 Cr.L.J. 56=8 I.C. 1166. Section allows only commutation of sentence, *see* 1 Bom.L.R. 162. As to transfer of cases *see* 2 L.B.R. (1903-1904) 121.

SEC. 10.—Period of detention should be exactly fixed in the order. 15 Bom.L.R.

11. (1) Before directing any youthful offender to be sent to a Reformatory School under section 8, section 9, or section 10, the Court or Magistrate shall inquire into the question of his age and, after taking such evidence (if any) as may be deemed necessary shall record a finding thereon, stating his age as nearly as may be.

(2) A similar inquiry shall be made and finding recorded by every Magistrate not empowered to pass an order under section 8 before submitting his proceedings and forwarding the youthful offender to the District Magistrate as required by section 9, sub-section (1).

12. Every youthful offender directed by a Court or Magistrate to be sent to a Reformatory School shall be sent to such Reformatory School as the Provincial Government may, by general or special order, appoint for the reception of youthful offenders so dealt with by such Court or Magistrate:

Government to determine Reformatory School to which such offenders shall be sent.

Provided that, if accommodation in a Reformatory School is not immediately available for such youthful offender he may be detained in the juvenile ward or such other suitable part of a prison as the Provincial Government may direct—

(a) until he can be sent to a Reformatory School, or

(b) until the term of his original sentence expires, whichever event may first happen. Should the term of his original sentence first expire, he shall thereupon be released, but should he be sent to a Reformatory School, then the period of detention previously undergone shall be treated as detention in a Reformatory School,

13. (1) If at any time after a youthful offender has been sent to a Reformatory School it appears to the Committee of Visitors or Board of Management, as the case may be, that the age of such youthful offender has been understated in the order for detention, and that he will attain the age of eighteen years before the expiration of the period for which he has been ordered to be detained, they shall report the case for the orders of the Provincial Government.

(2) No person shall be detained in a Reformatory School after he has been found by the Provincial Government to have attained the age of eighteen years.

306=14 Cr.L.J. 256=19 I.C. 512; 34 P. R. 1910 (Cr.)=12 Cr.L.J. 56=8 I.C. 1166; 15 C.P.L.R. 151; Rat. 726; 16 Cr. L.J. 134; 24 M. 13; 14 B. 381; 27 C. 133.

SEC. 11.—It is necessary that a Magistrate passing an order under sec. 8, should determine the age of the convict, and it is not enough to state that he is under 16 years of age. Rat. 494. Under sec. 8 of the Reformatory Schools Act, 1876, evidence should be taken by the Magistrate as to the age of the offender. This would seem therefore a judicial proceeding. The proceeding, moreover, involves the alteration of the sentence of a competent Court. The alteration can only be made after he is satisfied on two points which are submitted for his decision, and in arriving at a decision, he must exercise a judicial discretion. Therefore, such proceeding is a *judicial proceeding* within the meaning of secs. 4 and 435, Cr. P. Code. The High Court is, therefore, competent to revise the proceedings. 14 B. 381 [F. 25

C. 333; Rat. 726; 13 P.R. 1891 (Cr.)] Though it is doubtful whether the order of a Magistrate under sec. 8 is a "case" within the meaning of sec. 28 of the Amended Letters Patent, it is clear that it is "*judicial proceeding*" within the meaning of sec. 435 of the Cr.P. Code, and the High Court has jurisdiction to revise such an order. Rat. 494. See also Rat. 726. Sec. 11 requires that an enquiry as to age should be held before sending a youthful offender to a Reformatory School. There must be a clear finding as to age. The period of detention in the Reformatory School must also be fixed. The Court must find that the youthful offender to be sent to the Reformatory School is a fit and proper person to be an inmate of such a School. 86 I.C. 708=26 Cr.L.J. 852=3 Rang. 218=1925 Rang. 302. On this section, see also 1 L.B.R. 126; 1 Weir 879; 3 C.W.N. 576; 24 M. 13; 27 C. 133.

Discharge or removal by
order of Government.

14. The Provincial Government may at any time
order any youthful offender—

(a) to be discharged from a Reformatory School;

(b) to be removed from one Reformatory School to another such school situate within the territories subject to such Government: Provided that the whole period of his detention in a Reformatory School shall not be increased by such removal.

¹[15. The Provincial Governments of any two Provinces may after mutual agreement, generally or specially, notify in their respective Official Gazettes that any Reformatory School situated in one of the Provinces shall be available for the reception of youthful offenders directed to be sent to a Reformatory School by any Court or magistrate in the other Province and may thereupon make provision for the removal of youthful offenders accordingly.]

16. Nothing contained in the Code of Criminal Procedure, 1882, shall be construed to authorize any Court or Magistrate to alter or reverse in appeal or revision any order passed with respect to the age of a youthful offender or the substitution of an order for detention in a Reformatory School for transportation or imprisonment.

LEG. REF.

¹ Substituted by A.O., 1937.

SEC. 15.—As to scope and application of the section, see 27 C. 133; 5 C.W.N. 210; 25 C. 333; 5 M.L.T. 296; 1 L.B.R. 68; 34 P.R. 1910 (Cr.).

SEC. 16.—Sec. 16 does not prevent the Sessions Judge from interfering with an order of detention in a Reformatory School passed under sec. 10 by the District Magistrate in substitution of a sentence of imprisonment. (28 Cal. 423 and 13 I.C. 284, Rel.) 27 N.L.R. 242=134 I.C. 864=32 Cr.L.J. 1268=1931 Nag. 179. No order sending a youthful offender to the Reformatory School can be passed under this Act, unless a definite sentence of imprisonment has been passed on him. There is nothing in this Act which deprives a convict of his right of appeal against his conviction. All that is provided by sec. 16, is that, where proceedings on trial are complete up to and including the stage of a sentence of imprisonment, there can be no interference with a subsequent order directing him to be sent to a reformatory. 34 P.R. 1910 (Cr.)=8 I.C. 1166. [18 P.R. 1907, 1 (Cr.), R.] *The High Court is not debarred from altering or revising an order for detention in a Reformatory School in substitution for transportation or imprisonment, if such order is not properly passed, i.e., if it does not conform to the rules made by the Local Government, under sec. 8. Where a youthful offender was convicted for stealing a lota from the side of a sleeping man, and where it was admitted that it was a first offence, held, that the accused did not come within the definition of "youthful offenders"*

and that the case should have been dealt with under sec. 31. 27 C. 133. (F. 1 L.B.R. 68; 5 M.L.T. 296=9 Cr.L.J. 392=1 I.C. 807.) Sec. 8 of the Act permits an order for detention in a Reformatory instead of the offender undergoing a sentence of transportation or imprisonment. Where there is no such sentence except one of whipping, no order for detention in a reformatory could legally be passed, in lieu of the whipping. Where the Magistrate has no authority to order detention in a reformatory, the provisions of sec. 16 do not bar the jurisdiction of the Court of the Judicial Commissioner acting as a High Court, to alter, on revision, the order of detention. L. B. R. (1893-1900) 493; [L.B.R. (1893-1900), 441, F.] See also 24 M. 13; 21 A. 391; 6 Bom.L.R. 550; 1 Sind 93. Under sec. 9, the District Magistrate alone has power to pass orders. The Sub-divisional Magistrate has no jurisdiction to make any such order. He is empowered under sec. 8, not under sec. 9. Sec. 16 does not prevent the exercise by the High Court of its revisional powers in cases where orders have been passed without jurisdiction. The proper procedure is that the District Magistrate should proceed to dispose of the case under sec. 9, sub-sec. (2). 2 L.B.R. 121. The High Court will not interfere with an order directing detention in a Reformatory School rather than imprisonment but it is not precluded from altering the sentence of imprisonment into a sentence of whipping and in the latter case the order of detention falls to the ground. 5 S.L.R. 173=13 Cr.L.J. 44=13 I.C. 284 (21 All. 391, Rel. on.) See also cases noted under sec. 15, *supra*.

III.—*Management of Reformatory Schools.*

Appointment of Superintendent and Committee of Visitors or Board of Management.

17. (1) For the control and management of every Reformatory School, the Provincial Government shall appoint either (a) a Superintendent and a Committee of Visitors, or (b) a Board of Management.

(2) Every Committee and every Board so appointed must consist of not less than five persons, of whom two at least shall be Natives of India.

(3) The Provincial Government may suspend or remove any Superintendent or any Member of a Committee or Board so appointed.

18. (1) Every Superintendent so appointed may, with the sanction of the Committee, by license under his hand, permit any youthful offender sent to a Reformatory School, who has attained the age of fourteen years, to live under the charge of any trustworthy and respectable person named in the licence, or any officer of Government or of a Municipality, being an employer of labour and willing to receive and take charge of him, on the condition that the employer shall keep such youthful offender employed at some trade, occupation or calling.

(2) The license shall be in force for three months and no longer, but may at any time and from time to time until the expiration of the period for which the youthful offender has been directed to be detained, be renewed for three months at a time.

19. The license shall be cancelled at the desire of the employer named in the license.

20. If during the term of the licensee the employer named therein dies, or ceases from business or to employ labour, or the period for which the youthful offender has been directed to be detained in the Reformatory School expires, the license shall thereupon cease and determine.

21. If it appears to the Superintendent that the employer has ill-treated the youthful offender, or has not adequately provided for his lodging and maintenance, the Superintendent may cancel the license.

22. (1) The Superintendent of a Reformatory School shall be deemed to be the guardian of every youthful offender detained in such school, within the meaning of Act No. XIX of 1850 (*concerning the binding of apprentices*).

(2) If it appears to the Superintendent that any youthful offender licensed under section 18 has behaved well during one or more periods of his license, the Superintendent may, with the sanction of the Committee, apprentice him under the provisions of the said Act, and on such apprenticeship the right to detain such youthful offender in a Reformatory School shall cease, and the unexpired term (if any) of his sentence shall be cancelled.

23. (1) Every Committee of Visitors appointed under section 17 for a Reformatory School shall, at least once in every month,—

(a) visit the school, to hear complaints and see that the requirements of section 6 have been complied with, and that the management of the school is proper in all respects;

(b) examine the punishment-book;

(c) bring any special cases to the notice of the Inspector-General; and
 (d) see that no person is illegally detained in the school.

(2) If any member of a Committee of Visitors so appointed fails or neglects, during a period of six consecutive months, to visit the school and assist in the discharge of the duties aforesaid, he shall cease to be a member of such Committee.

24. If, in exercise of the power conferred by section 17, the Provincial Government appoints a Board of Management for any Reformatory School, such Board shall have the powers and perform the functions of the Superintendent under sections 18 to 22, both inclusive; and the license mentioned in section 18 may be under the hand of their chairman; and they shall be deemed to be the guardians of the youthful offenders detained in such school.

25. The Provincial Government may declare any body of Trustees or Managers of a school, who are willing to act in conformity with the rules referred to in section 5, clause (b), to be a Board of Management under this Act, and thereupon such body or Managers shall have all the powers and perform all the functions of such Board of Management.

Power of Board to make rules.

26. (1) With the previous sanction of the Provincial Government, every Board of Management of a Reformatory School may from time to time make rules consistent with this Act—

(i) to prescribe the articles which are to be deemed to be "prohibited articles"; and

(ii) to regulate—

(a) the conduct of business of the Board;

(b) the management of the school;

(c) the education and industrial training of youthful offenders;

(d) visits to, and communication with, youthful offenders;

(e) the terms and conditions under which any articles declared by the Board to be "prohibited articles" may be introduced into or removed out of the school;

(f) the manner in which such articles are to be removed when introduced without due authority;

(g) the conditions and limitations under which such articles may be supplied outside the school to any youthful offender under order of detention therein;

(h) the conditions on which the possession by any such youthful offender of such articles may be sanctioned;

(i) the penalties to be imposed for the supply or possession of such articles when supplied or possessed without due authority;

(j) the punishment of offences committed by youthful offenders; and

(k) the granting of licenses for the employment of youthful offenders.

(2) In the absence of a Board of Management the Provincial Government may make rules consistent with this Act to regulate for any Reformatory School the matters mentioned in any clause of sub-section (1), other than clause (ii) (a), and also the mode in which the Committee of Visitors shall conduct their business.

SEC. 26.—Rules framed by the Governor-General in Council under sec. 22 of Act V of 1876 must be deemed to have been passed under the existing Act (Act VIII of 1897). A Magistrate acting under the new Act

must order the detention of a juvenile offender in a Reformatory School until he attains the age of 18. 21 M. 430=1 Weir 880. [R. 21 A. 391.] See also 15 A. 208; 1 Weir 878.

(a) a member of His Majesty's naval, military or air forces, or

(b) a person who is enrolled under the Auxiliary Force Act, 1920, or is a holy order, or is a regular minister of any religious denomination), who for the time being has attained the age of sixteen years but has not attained the age of fifty years, shall, within the prescribed period, correctly fill up, or cause so to be filled up, to the best of his knowledge and belief, sign and lodge with the appropriate registration authority specified in the First Schedule, or such other registration authority as may be prescribed, the form set out in the Second Schedule, and if any such European British subject claims not to be ordinarily resident in India, he shall lodge with the said form a statement of such claim.

(2) If any registration authority has reason to believe that any person is a European British subject to whom the provisions of sub-section (1) are applicable, he may, by order in writing, require such person to furnish such particulars as may be specified in the order within such time as may be so specified, and such person, whether or not he is a European British subject to whom the provisions of the said sub-section are applicable, shall within the specified time furnish correctly to the best of his knowledge and belief the said particulars to the said registration authority in such form or manner as such order may require, and shall sign the same; and if any such person claims that he is not a European British subject to whom the provisions of sub-section (1) are applicable, he shall furnish a statement of such claim with the particulars as aforesaid.

(3) If any person refuses or, without lawful excuse the (burden of proving which shall lie upon such person), neglects fully to comply with the requirements of sub-section (1) or of any order made under sub-section (2), he shall be punishable with fine which may extend to five hundred rupees.

(4) Every registration authority under this Act shall be deemed to be a public servant within the meaning of the Indian Penal Code.

4. If any question arises with reference to this Act or any rule made

Determination of disputes as to applicability of this Act.

thereunder whether a person is a European British subject to whom the provisions of sub-section (1) of section 3 are applicable, a person appointed in writing in this behalf by the prescribed authority may apply to the District Magistrate or to any officer specially empowered in this behalf by the Central Government in the area in which the person to whom the dispute relates is for the time being present, and such Magistrate or other officer, after hearing such person or giving him a reasonable opportunity for being heard, shall summarily determine the question, and the decision of such Magistrate or other officer shall be final.

Power of Central Government to make rules.

5. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) prescribe registration authorities, in addition to those specified in the First Schedule;

(b) prescribe the time within which the form set out in the Second Schedule shall be lodged with the registration authority;

(c) prescribe authorities who may make the appointment referred to in section 4;

(d) provide for the issue of certificates of registration;

(e) provide for the preparation, compilation and correction of a register, and require the attendance of persons for any of such purposes;

(f) require the notification of changes of address of registered persons.

(3) Rules made under this section may provide that any contravention

thereof or of any order or notice issued thereunder shall be punishable with fine which may extend to five hundred rupees.

Act not to apply to certain persons. 6. Nothing in this Act shall apply to any person confined for the time being in a prison or lunatic asylum.

7. The Registration Ordinance, 1939, is hereby repealed; but any rules made, anything done and any action taken under the said Ordinance shall be deemed to have been made, done or taken under the corresponding provisions of this Act, and any offence committed against or any proceedings commenced under the said Ordinance, may be punished, or may be continued and completed as if such offence were committed against or such proceedings were commenced under this Act.

THE FIRST SCHEDULE.

(See section 3.)

Registration authorities.

In the case of any servant of the Crown.	The Head of the Office or Department in which he serves.
In the case of any person in the employ of any public or local authority.	The Chief Executive Officer of such authority.
In the case of any person in the employ of any railway.	The Head of the Railway Administration.
In any other case.	The District Magistrate of the district in which the person is for the time being resident, or in the case of a person resident in a Presidency-town the Commissioner of Police.

THE SECOND SCHEDULE.

(See section 3.)

Form of particulars.

1. Name in full.
2. Address.
3. Date of birth.
4. Whether single, married or widower.
5. Number of dependents, specifying their relationship, if any, to him.
6. Profession or occupation.
7. Name and nature of business, or name, address and nature of employer's business, or if employed in or under any Department of Government, the name of the Department.
8. Whether he has served, or undergone training of any description in any naval, military or air force. If so, give particulars of such service or training including date and duration thereof.
9. Whether he possesses, or has possessed, a flying licence.

THE REGISTRATION OF FOREIGNERS ACT (XVI OF 1939).

[8th April, 1939.

An Act to provide for the registration of foreigners in British India.

WHEREAS it is expedient to provide for the registration of foreigners entering, being present in, and departing from, British India; It is hereby enacted as follows:—

Short title and extent. 1. (1) This may be called THE REGISTRATION OF FOREIGNERS ACT, 1939.

(2) It extends to the whole of British India.

Definitions. 2. In this Act—

- (a) the word "foreigner" shall denote a person who is not—
- (i) a British subject domiciled in the United Kingdom; or

(ii) a British Indian subject; or
 (iii) a ruler or subject of an Indian State; or
 (iv) a person duly appointed by a foreign Government to exercise diplomatic functions; or

(v) a consul or a vice-consul;

(b) "prescribed" means prescribed by rules made under this Act.

3. The Central Government may after previous publication, by notification in the Official Gazette make rules with respect to foreigners for any or all of the following purposes, that is to say—

(a) for requiring any foreigner entering, or being present in, British India to report his presence to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;

(b) for requiring any foreigner moving from one place to another place in British India to report, on arrival at such other place, his presence to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;

(c) for requiring any foreigner who is about to leave British India to report the date of his intended departure and such other particulars as may be prescribed to such authority and within such period before departure as may be prescribed;

(d) for requiring any foreigner entering, being present in, or departing from, British India to produce, on demand, by a prescribed authority such proof of his identity as may be prescribed;

(e) for requiring any person having the management of any hotel, boarding house, sarai or any other premises of like nature to report the name of any foreigner residing therein for whatever duration, to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;

(f) for requiring any person having the management or control of any vessel or aircraft to furnish to a prescribed authority such information as may be prescribed regarding any foreigner entering, or intending to depart from British India in such vessel or aircraft, and to furnish to such authority such assistance as may be necessary or prescribed for giving effect to his Act;

(g) for providing for such other incidental or supplementary matters as may appear to the Central Government necessary or expedient for giving effect to this Act.

4. If any question arises with reference to this Act or any rule made thereunder, whether any person is or is not a foreigner, or is or is not a foreigner of a particular class or description, the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872, lie upon such person.

5. Any person who contravenes, or attempts to contravene, or fails to comply with, any provision of any rule made under this Act shall be punished, if a foreigner, with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both, or if not a foreigner, with fine which may extend to five hundred rupees.

6. The Central Government may, by order, declare that any or all of the provisions of the rules made under this Act shall not apply, or shall apply only with such modifications or subject to such conditions as may be specified in the said order, to or in relation to any individual foreigner or any class or description of foreigner:

Power to exempt from application of Act. Provided that a copy of every such order shall be placed on the table of both Houses of Central Legislature as soon as may be after its promulgation.

Protection to persons acting under this Act. 7. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Application of other laws not barred. 8. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Foreigners Act, 1864. and any other law for the time being in force.

THE INDIAN RESERVE FORCES ACT (IV OF 1888)¹.

Year.	No.	Short title.	Amendment.
1888	IV	The Reserve Forces Act, 1888.	Amended by Act XII of 1931.

[2nd March, 1888.

An Act to regulate Her Majesty's Indian Reserve Forces.

WHEREAS it is expedient to provide for the government, discipline and regulation of Her Majesty's Indian Reserve Forces; It is hereby enacted as follows:—

Title and commencement. 1. (1) This Act may be called THE INDIAN RESERVE FORCES ACT, 1888; and

(2) It shall come into force on such day as the Central Government may, by notification in the *Official Gazette*² appoint in this behalf.

Division of Reserve Forces into Regular and Supplementary Reserves. ³[2. The Indian Reserve Forces shall consist of the Regular Reserve and the Supplementary Reserve].

Locality of service of Reserves. 3. ⁴[*] A person belonging to the ⁵[Indian Reserve Forces] shall be liable to serve beyond the limits of British India as well as within those limits.

⁶[* * * *].

Power to make rules for regulation of Reserve Forces. 4. The Central Government may make rules and orders for the government, discipline and regulation of the Indian Reserve Forces.

5. Subject to ⁷[* * *] such rules and orders as may be made

Liability of Reserve Forces to military law. under section 4, a person belonging to the Indian Reserve Forces shall, as an officer or soldier, as the case may be, be subject to military law in the same manner and to the same extent as a person belonging to Her Majesty's Indian Forces.

Punishment of certain offences by persons belonging to Reserve Forces. 6. (1) If a person belonging to the Indian Reserve Forces—

(a) when required by or in pursuance of any rule or order under this

LEG. REF.

¹ For Statement of Objects and Reasons, see Gazette of India, 1888, Pt. V, p. 22 and for Proceedings in Council, see *ibid.*, 1888, pp. 45-55.

This Act has been declared in force in British Baluchistan by the Baluchistan Laws Regulation, 1913 (II of 1914). Bal. Code.

² The Act came into force on the 26th May, 1888, see Gazette of India of same

date, Pt. I, p. 239.

³ Substituted by Act XII of 1931.

⁴ The figure and brackets "(1)" omitted by *ibid.*

⁵ Substituted for "Active Reserve" by *ibid.*

⁶ Sub-sec. (2) has been omitted by *ibid.*

⁷ Certain words after the words "Subject to" were omitted by *ibid.*

Act to attend at any place, fails without reasonable excuse to attend in accordance with such requirement, or

(b) fails without reasonable excuse to comply with any such rule or order, or

(c) fraudulently obtains any pay or other sum contrary to any such rule or order,
he shall be liable—

(i) on conviction by a Court-martial, to such punishment other than death, transportation or imprisonment for a term exceeding one year as such Court is by the ¹[Indian Army Act, 1911.] empowered to award, or

(ii) on conviction by ²[a Presidency Magistrate or] a Magistrate of the first class, to imprisonment for a term which may extend, in the case of a first offence under this section, to six months, and, in the case of any subsequent offence thereunder, to one year.

(2) Where a person belonging to the Indian Reserve Forces is required by or in pursuance of any rule or order under this Act to attend at any place, a certificate purporting to be signed by an officer appointed by such a rule or order in this behalf, and stating that the person so required to attend failed to do so in accordance with such requirement, shall, without proof of the signature or appointment of such officer, be evidence of the matters stated therein.

(3) Any person charged with an offence under this section may be taken into and kept in either military or civil custody, or partly into and in one description of custody and partly into and in the other, or be transferred from one description of custody to the other.

7. [Effect of Act on persons already in the Reserve.] Repealed by Act XII of 1931, section 6.

THE INDIAN RIFLES ACT (XXIII OF 1920).

[31st August, 1920.

An Act to provide for the better discipline of Police-officers enrolled in Military Police or Rifle Battalions.

WHEREAS it is expedient to provide for the better discipline of Police-officers enrolled under local Acts in Military Police or Rifle Battalions: It is hereby enacted as follows:—

Short title.

1. This Act may be called THE INDIAN RIFLES ACT, 1920.

Police-officers subject to discipline and penalties prescribed in local Acts wherever serving.

2. All Police-officers enrolled under the provisions of any local Military Police or Rifles Act shall be subject to the discipline and penalties prescribed by such Act, wherever serving in India.

THE ROYAL INDIAN NAVY (EXTENSION OF SERVICE) ACT (III OF 1940).

[23rd February, 1940.

An Act to provide for the retention in service of certain person enrolled for service in the Royal Indian Navy.

WHEREAS it is expedient to provide for the retention in service of certain persons enrolled for service in the Royal Indian Navy;

It is hereby enacted as follows:—

Short title.

1. This Act may be called THE ROYAL INDIAN NAVY (EXTENSION OF SERVICE) ACT, 1940.

2. (1) Until such date as may be notified by the Central Government as the date of termination of the present hostilities, any person enrolled for service in the Royal Indian Navy who, by reason of the expiry of the term for which he

I.E.G. REF

¹ Substituted for "Indian Articles of War" by Act XII of 1931.

² Inserted by *ibid.*

engaged to serve when so enrolled, is no longer liable for service, shall, notwithstanding such expiry, continue to be enrolled for service and to be liable for service in the Royal Indian Navy until he is discharged by order of the Officer Commanding the Royal Indian Navy:

Provided that the period for which the service of any such person is extended under this section shall not exceed five years from the day on which his service would otherwise have terminated.

(2) The provisions of this section shall apply also to any person enrolled for service in the Royal Indian Navy if the expiry of the term for which he engaged to serve occurred between the 2nd day of September, 1939, and the commencement of this Act.

THE INDIAN SALT ACT (XII OF 1882).

[Repealed by Act I of 1944.] See now *The Central Excises and Salt Act (I of 1944)*.

(SALT) THE CENTRAL EXCISES AND SALT ACT (I OF 1944).

(Extracts.)

[24th February, 1944.

An Act to consolidate and amend the law relating to central duties of excise and to salt.

WHEREAS it is expedient to consolidate and amend the law relating to central duties of excise on goods manufactured or produced in British India and to salt:

It is hereby enacted as follows:—

CHAPTER I.

Short title, extent and commencement.

1. (1) This Act may be called **THE CENTRAL EXCISES AND SALT ACT, 1944**;

(2) It extends to the whole of British India;

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint in this behalf.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “broker” or “commission agent” means a person who in the ordinary course of business makes contracts for the sale or purchase of excisable goods for others;

(b) “Central Excise Officer” means any officer of the Central Excise Department, or any person (including an officer of the Provincial Government) invested by the Central Board of Revenue with any of the powers of a Central Excise Officer under this Act;

(c) “curing” includes wilting, drying, fermenting and any process for rendering an unmanufactured product fit for marketing or manufacture;

(d) “excisable goods” means goods specified in the First Schedule as being subject to a duty of excise and includes salt;

(e) “factory” means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on;

(f) “manufacture” includes any process incidental or ancillary to the completion of a manufactured product; and

(i) in relation to tobacco includes the preparation of cigarettes, cigars, cheroots, biris, cigarette or pipe or hookah tobacco, chewing tobacco or snuff; and

(ii) in relation to salt, includes collection, removal, preparation, steeping, evaporation, boiling, or any one or more of these processes, the separation or purification of salt obtained in the manufacture of saltpetre, the separation

recoverable or due which may be in his hands or under his disposal or control, or may recover the amount by attachment and sale of excisable goods belonging to such person; and if the amount payable is not so recovered he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the district in which such person resides or conducts his business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount specified therein as if it were an arrear of land-revenue.

12. The Central Government may, by notification in the official Gazette, declare that any of the provisions of the Sea Customs Act, 1878, relating to the levy of and exemption from customs duties, drawback of duty, warehousing, offences and penalties, confiscation, and procedure relating to offences and appeals shall, with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duties imposed by section 3.

CHAPTER III.

POWERS AND DUTIES OF OFFICERS AND LANDHOLDERS.

13. (1) Any Central Excise officer duly empowered by the Central Government in this behalf may arrest any person whom he has reason to believe to be liable to punishment under this Act.

(2) Any person accused or reasonably suspected of committing an offence under this Act or any rules made thereunder, who on demand of any officer duly empowered by the Central Government in this behalf refuses to give his name and residence, or who gives a name or residence which such officer has reason to believe to be false, may be arrested by such officer in order that his name and residence may be ascertained.

14. (1) Any Central Excise officer duly empowered by the Central Government in this behalf shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of this Act. A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

(2) All persons so summoned shall be bound to attend, either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required:

Provided that the exemptions under sections 132 and 133 of the Code of Civil Procedure shall be applicable to requisitions for attendance under this section.

(3) Every such inquiry as aforesaid shall be deemed to be a "judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code.

15. All officers of Police and Customs and all officers of Government engaged in the collection of land-revenue, and all village officers are hereby empowered and required to assist the Central Excise officers in the execution of this Act.

16. Every owner or occupier of land, and the agent of any such owner or occupier, in charge of the management of that land, if contraband excisable goods are manufactured thereon, shall in the absence of reasonable excuse be bound to give notice of such manufacture to a Magistrate, or to an officer of the Central Excise, Customs, Police, or Land Revenue Department, immediately the fact comes to his knowledge.

17. Any owner or occupier of land, or any agent of such owner or occupier in charge of the management of that land, who wilfully connives at any offence against the provisions of this Act or of any rules made thereunder shall for every such offence be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

18. All searches made under this Act or any rules made thereunder and all arrests made under this Act shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898 (V of 1898), relating to searches and arrests how to be made, to the officer-in-charge of the nearest police-station.

19. Every person arrested under this Act shall be forwarded without delay to the nearest Central Excise officer empowered to send persons so arrested to a Magistrate, or, if there is no such Central Excise officer within a reasonable distance, to the officer-in-Charge of the nearest police-station.

20. The officer-in-charge of a police-station to whom any person is forwarded under section 19 shall either admit him to bail to appear before the Magistrate having jurisdiction, or in default of bail forward him in custody to such Magistrate.

21. (1) When any person is forwarded under section 19 to a Central Excise officer empowered to send persons so arrested to a Magistrate, the Central Excise officer shall proceed to enquire into the charge against him.

(2) For this purpose the Central Excise officer may exercise the same powers and shall be subject to the same provisions as the officer-in-charge of a police-station may exercise and is subject to under the Code of Criminal Procedure, 1898 (V of 1898), when investigating a cognizable case:

Provided that—

(a) if the Central Excise officer is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;

(b) if it appears to the Central Excise officer that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the Central Excise officer may direct, to appear, if and when so required before the Magistrate having jurisdiction, and shall make a full report of all the particulars of the case to his official superior.

22. Any Central Excise or other officer exercising powers under this Act or under the rules made thereunder who—

(a) without reasonable ground of suspicion searches or causes to be searched any house, boat or place;

(b) vexatiously and unnecessarily detains, searches or arrests any person;

(c) vexatiously and unnecessarily seizes the movable property of any person, on pretence of seizing or searching for any article liable to confiscation under this Act;

(d) commits, as such officer, any other act to the injury of any person, without having reason to believe that such act is required for the execution of his duty;

shall, for every such offence, be punishable with fine which may extend to two thousand rupees.

Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall be punishable with fine which may extend to two thousand rupees or with imprisonment for a term which may extend to two years or with both.

23. Any Central Excise officer who ceases or refuses to perform or withdraws himself from the duties of his office, unless he

Failure of Central Excise officer in duty.

has obtained the express written permission of the Collector of Central Excise, or has given to his superior officer two months' notice in writing of his intention or has other lawful excuse, shall on conviction before a Magistrate be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to three months' pay, or with both.

CHAPTER IV.

TRANSPORT BY SEA.

24. When any excisable goods are carried by sea in any vessel other than

Penalties for carrying excisable goods in certain vessels. a vessel of the burden of three hundred tons and upwards, the owner and master of such vessel shall each be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Exceptions.

25. Nothing in section 24 applies to—

(a) any excisable goods covered by a permit granted under rules made under this Act;

(b) any excisable goods covered by a pass granted by any officer whom the Central Board of Revenue may appoint in this behalf;

(c) such amount of excisable goods carried on board any vessel for consumption by her crew or by the passengers or animals (if any) on board as the Central Board of Revenue may from time to time exempt from the operation of section 24.

26. When any officer empowered by the Central Board of Revenue, to

Power of stoppage, search and arrest.

act under this section has reason to believe, from personal knowledge or from information taken down in writing, that any excisable goods are being carried, or have within the previous twenty-four hours been carried, in any vessel so as to render the owner or master of such vessel liable to the penalties imposed by section 24, he may require such vessel to be brought to and thereupon may—

(a) enter and search the vessel;

(b) require the master of the vessel to produce any documents in his possession relating to the vessel or the cargo thereof;

(c) seize the vessel if the officer has reason to believe it liable to confiscation under this Act, and cause it to be brought with its crew and cargo into any port in British India; and

(d) where any excisable goods are found on board the vessel, search and arrest without a warrant any person on board the vessel whom he has reason to believe to be punishable under section 24.

27. Any master of a vessel refusing or neglecting to bring to the vessel or to produce his papers when required to do so by an officer acting under section 26, and any person obstructing any such officer in the performance of his duty, may be arrested by such officer without a warrant, and shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

28. (1) Every vessel (including all appurtenances) in which any excisable goods are carried so as to render the owner or master of such vessel liable to penalties imposed by section 24, the cargo on board such vessel and the excisable goods in respect of which an offence under this Act has been committed shall be liable to confiscation on the orders of the officer empowered in this behalf by the Central Government.

(2) Whenever any Customs-officer is satisfied that any article is liable to confiscation under this section he may seize such article, and shall at once report the seizure to his superior officer for the information of the officer empowered to order confiscation under sub-section (1) and such officer may, if satisfied on such report or after making such inquiry as he thinks fit, that the article so seized is liable to confiscation, either declare it to be confiscated, or impose a fine in lieu thereof not exceeding the value of the article.

29. Any offence punishable under section 24 or section 27 may be deemed to have been committed within the limits of the jurisdiction of the Magistrate of any place where the offender is found, or to which, if arrested under section 26 or section 27, he may be brought.

30. The Central Government may, by notification in the official Gazette, exempt the carriage of excisable goods within any local limits or in any class of vessels from the operation of this Chapter, and, by like notification, again subject such carriage to the operation of this Chapter.

CHAPTER V.

SPECIAL PROVISIONS RELATING TO SALT.

31. The proprietor of a private salt factory who has by virtue of a sanad granted by the British or any former Government, a special and permanent right to manufacture salt, or to excavate or collect natural salt, shall on application made in accordance with the rules made under this Act be entitled to a licence for such purpose and to the annual renewal thereof, unless on a breach of the provisions of this Act, his licence has been cancelled by an officer duly empowered by the Central Government in this behalf.

32. Every proprietor of a private salt-work, other than a private salt factory, to which section 31 applies, of which, under the provisions of section 17 of the Bombay Salt Act, 1890. (Bom. II of 1890), the proprietor was entitled on application to a licence to manufacture or to excavate or collect natural salt at such factory, shall continue to be entitled, on application made in accordance with the rules made under this Act, to a licence for such purpose and to the annual renewal thereof, unless on a breach of the provisions of this Act his licence has been cancelled by an officer duly empowered by the Central Government in this behalf:

Provided that the Collector of Central Excise may at any time withdraw or withhold a licence from the proprietor of any such salt factory, if no salt has been manufactured, excavated or collected in such salt factory for the three years ending on the thirtieth day of June last preceding the date of his order,

or, with the previous sanction of the Central Board of Revenue, if such salt factory has not produced, on an average, during the said three years, at least five thousand maunds of salt per annum.

CHAPTER VI.

ADJUDICATION OF CONFISCATIONS AND PENALTIES.

33. Where by the rules made under this Act any thing is liable to con-

Power of adjudication.

fiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged—

(a) without limit, by a Collector of Central Excise;

(b) up to confiscation of goods not exceeding five hundred rupees in value and imposition of penalty not exceeding two hundred and fifty rupees, by an Assistant Collector of Central Excise:

Provided that the Central Board of Revenue may, in the case of any officer performing the duties of an Assistant Collector of Central Excise, reduce the limits indicated in clause (b) of this section, and may confer on any officer the powers indicated in clause (a) or (b) of this section.

34. Wherever confiscation is adjudged under this Act or the rules made

Option to pay fine in lieu of confiscation.

thereunder, the officer adjudging it shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit.

35. (1) Any person deeming himself aggrieved by any decision or order

Appeals.

passed by a Central Excise officer under this Act or the rules made thereunder may, within three months

from the date of such decision or order, appeal therefrom to the Central Board of Revenue, or, in such cases as the Central Government directs, to any Central Excise officer not inferior in rank to an Assistant Collector of Central Excise and empowered in that behalf by the Central Government. Such authority or officer may thereupon make such further inquiry and pass such order as he thinks fit, confirming, altering or annulling the decision or order appealed against:

Provided that no such order in appeal shall have the effect of subjecting any person to any greater confiscation or penalty than has been adjudged against him in the original decision or order.

(2) Every order passed in appeal under this section shall, subject to the power of revision conferred by section 36, be final.

36. The Central Government may on the application of any person ag-

Revision by Central Government.

grieved by any decision or order passed under this Act or the rules made thereunder by any Central

Excise officer or by the Central Board of Revenue, and from which no appeal lies, reverse or modify such decision or order.

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

Power of Central Government to make rules.

37. (1) The Central Government may make rules to carry into effect the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

(i) provide for the assessment and collection of duties of excise, the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which the duties shall be payable, and the recovery of duty not paid;

(ii) prohibit absolutely, or with such exceptions, or subject to such conditions as the Central Government thinks fit, the production or manufacture, or any process of the production or manufacture, of excisable goods, or of any component parts or ingredients or containers thereof, except on land or premises approved for the purpose;

(iii) prohibit absolutely, or with such exceptions, or subject to such conditions as the Central Government thinks fit, the bringing of excisable goods into British India from the territory of any specified Prince or Chief in India, or the transit of excisable goods from any part of British India to any other part thereof;

(iv) regulate the removal of excisable goods from the place where produced, stored or manufactured or subjected to any process of production or manufacture and their transport to or from the premises of a licensed person, or a bonded warehouse, or to a market;

(v) regulate the production or manufacture, or any process of the production or manufacture, the possession, storage and sale of salt, and so far as such regulation is essential for the proper levy and collection of the duties imposed by this Act, of any other excisable goods, or of any component parts or ingredients or containers thereof;

(vi) provide for the employment of officers of the Crown to supervise the carrying out of any rules made under this Act;

(vii) require a manufacturer or the licensee of a warehouse to provide accommodation within the precincts of his factory or warehouse for officers employed to supervise the carrying out of regulations made under this Act and prescribe the scale of such accommodation;

(viii) provide for the appointment, licensing, management and supervision of bonded warehouses and the procedure to be followed in entering goods into and clearing goods from such warehouses;

(ix) provide for the distinguishing of goods which have been manufactured under licence, of materials which have been imported under licence, and of goods on which duty has been paid, or which are exempt from duty under this Act;

(x) impose on persons engaged in the production or manufacture, storage or sale (whether on their own account or as brokers or commission agents) of salt, and, so far as such imposition is essential for the proper levy and collection of the duties imposed by this Act, of any other excisable goods, the duty of furnishing information, keeping records and making returns, and prescribe the nature of such information and the form of such records and returns, the particulars to be contained therein, and the manner in which they shall be verified;

(xi) require that excisable goods shall not be sold or offered or kept for sale in British India except in prescribed containers, bearing a banderol, stamp or label of such nature and affixed in such manner as may be prescribed;

(xii) provide for the issue of licences and transport permits and the fees, if any, to be charged therefor:

Provided that the fees for the licensing of the manufacture and refining of salt and saltpetre shall not exceed, in the case of each such licence, the following amounts, namely:—

	Rs.
Licence to manufacture and refine saltpetre and to separate and purify salt in the process of such manufacture and refining	50
Licence to manufacture saltpetre	2
Licence to manufacture sulphate of soda (<i>Kharinun</i>) by solar heat in evaporating pans	10
Licence to manufacture sulphate of soda (<i>Kharinun</i>) by artificial heat ..	2
Licence to manufacture other saline substances	2

(xiii) provide for the detention of goods, plant, machinery or material, for the purpose of exacting the duty, the procedure in connection with the

confiscation, otherwise than under section 10 or section 28, of goods in respect of which breaches of the Act or rules have been committed, and the disposal of goods so detained or confiscated;

(xiv) authorise and regulate the inspection of factories and provide for the taking of samples, and for the making of tests, of any substance produced therein, and for the inspection or search of any place or conveyance used for the production, storage, sale or transport of salt, and so far as such inspection or search is essential for the proper levy and collection of the duties imposed by this Act, of any other excisable goods;

(xv) authorise and regulate the composition of offences against, or liabilities incurred under, this Act or the rules made thereunder;

(xvi) provide for the grant of a rebate of the duty paid on goods which are exported out of India or shipped for consumption on a voyage to any port outside India:

Provided that rules made under this clause shall provide that when steel ingots on which the duty of excise imposed by this Act has been paid, or articles of iron or steel manufactured in British India from such ingots, are exported out of India, there shall be payable to the exporter of such ingots or articles, subject to such conditions as may be prescribed, a refund at the following rates, namely:—

on ingots, blooms and billets—

a refund at the rate of four rupees per ton,
on other manufactures of iron or steel—

(a) not fabricated—a refund at the rate of five and one-third rupees per ton;

(b) fabricated—a refund at the rate of six rupees per ton;

(xvii) exempt any goods from the whole or any part of the duty imposed by this Act;

(xviii) define an area no point in which shall be more than one hundred yards from the nearest point of any place in which salt is stored or sold by or on behalf of the Central Government, or of any factory in which saltpetre is manufactured or refined, and regulate the possession, storage and sale of salt within such area;

(xix) define an area round any other place in which salt is manufactured, and regulate the possession, storage and sale of salt within such area;

(xx) authorise the Central Board of Revenue or Collectors of Central Excise appointed for the purposes of this Act to provide, by written instructions, for supplemental matters arising out of any rule made by the Central Government under this section.

(3) In making rules under this section, the Central Government may provide that any person committing a breach of any rule shall, where no other penalty is provided by this Act, be liable to a penalty not exceeding two thousand rupees and that any article in respect of which any such breach is committed shall be confiscated.

38. All rules made and notifications issued under this Act shall be made and issued by publication in the official Gazette. All Publication of rules and notifications, such rules and notifications shall thereupon have effect as if enacted in this Act:

Provided that every such rule shall be laid as soon as may be after it is made before each of the Chambers of the Central Legislature, while it is in

session, for a total period of thirty days which may be comprised in one session or in two or more sessions, and if before the expiry of that period, or where the period for which the rule is so laid before one Chamber does not coincide with that for which it is so laid before the other, before the expiry of the later of these periods, both Chambers agree in making any modification in the rule or both Chambers agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be.

39. The enactments specified in the Second Schedule are hereby repealed to the extent mentioned in the fourth column thereof.
 Repeal of enactments. But all rules made, notifications published, licences, passes or permits granted, powers conferred and other things done under any such enactment and now in force shall, so far as they are not inconsistent with this Act, be deemed to have been respectively made, published, granted, conferred or done under this Act.

40. (1) No suit shall lie against the Central Government or against any officer of the Crown in respect of any order passed in good faith or any act in good faith done or ordered to be done under this Act.
 Bar of suits and limitation of suits and other legal proceedings.

(2) No suit, prosecution, or other legal proceeding shall be instituted for anything done or ordered to be done under this Act after the expiration of six months from the accrual of the cause of action or from the date of the act or order complained of.

(SCHEDULES I AND II OMITTED).

THIRD SCHEDULE.

(See section 39.)

Year.	No.	Short title.	Extent of repeal.
1879	XVI ..	The Transport of Salt Act, 1879.	The whole.
1882	XII ..	The Indian Salt Act, 1882.	The whole.
1889	IV ..	The Madras Salt Act, 1889.	The whole.
1890	II ..	The Bombay Salt Act, 1890.	The whole.
	(Bombay)		
1908	X ..	The Indian Salt-duties Act, 1908.	The whole.
1917	II ..	The Motor Spirit (Duties) Act, 1917.	The whole.
1922	XII ..	The Indian Finance Act, 1922.	The whole.
1930	XVIII ..	The Silver (Excise Duty) Act, 1930.	The whole.
1931	..	The Indian Finance (Supplementary and Extending) Act, 1931.	The whole.
1934	XIV ..	The Sugar (Excise Duty) Act, 1934.	The whole.
1934	XVI ..	The Matches (Excise Duty) Act, 1934.	The whole.
1934	XXIII ..	The Mechanical Lighters (Excise Duty) Act, 1934.	The whole.
1934	XXXI ..	The Iron and Steel Duties Act, 1934.	The whole.
1938	XIII ..	The Sind Salt Law Amendment Act, 1938.	The whole.
1941	X ..	The Tyres (Excise Duty) Act, 1941.	The whole.
1943	X ..	The Tobacco (Excise Duty) Act, 1943.	The whole.
1943	XI ..	The Vegetable Product (Excise Duty) Act, 1943.	The whole.

THE SARAI ACT (XXII OF 1867).¹

Year.	No.	Short title.	Amendments.
1867	XXII	The Sarais Act, 1867.	Repealed in part XII of 1891; X of 1914.

[15th March, 1867.]

An Act for the regulation of public Sarais and Puraos.

Preamble.

WHEREAS it is expedient to provide for the regulation of public Sarais and Puraos; It is hereby enacted as follows:

1. [Repeal of Bengal Regulation XIV of 1807, section 11, clause 5.] Rep. by the Amending Act, 1891 (XII of 1891).

2. In this Act, unless there be something repugnant in the subject or context,—

Interpretation-clause.

“Sarai.”

“sarai” means any building used for the shelter and accommodation of travellers, and includes,

in any case in which only part of a building is used as a sarai, the part so used of such building. It also includes a purao so far as the provisions of this Act are applicable thereto.

“Keeper of a sarai.”

“keeper of a sarai” includes the owner and any person having or acting in the care or management thereof:

“Magistrate of the District”.

“Magistrate of the District” means the chief officer charged with the executive administration of a district in criminal matters whatever may be his designation:

3 [* * * * *]

3. Within six months after this Act shall come into operation, the Magistrate of the District in which any sarai to which this

Notice of this Act to be given to keepers of sarais.

Act shall apply may be situate shall, and from time to time thereafter such Magistrate may, give to the

keeper of every such sarai notice in writing of this Act, by leaving such notice for the keeper at the sarai; and shall by such notice require the keeper to register the sarai as by this Act provided.

Such notice may be in the form in the Schedule to this Act annexed or to the like effect.

LEG. REF.

¹ For Statement of Objects and Reasons to the Bill which was passed into law as Act XXII of 1867, see Gazette of India, 1867, p. 194 and for Proceedings in Council relating to the Bill, see *ibid.*, Supplement, pp. 62, 72, 158, 225 and 232.

As to extent, see note to sec. 17, *infra*.

The Act has been declared, by notification under sec. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874) to be in force in the following Scheduled Districts, namely:—

The Districts of Hazaribagh, Lohardaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum. See Gazette of India, 1881, Pt. I, p. 504.

The Tarai of the Province of Agra. See Gazette of India, 1876, Pt. I, p. 505.

² This reference should now be read as “District Magistrate”; see para. 2 of sec. 3 of the Code of Criminal Procedure, 1898 (Act V of 1898).

³ The words “words in the singular include the plural, and *vice versa*” were repealed by the Repealing and Amending Act, 1914 (X of 1914) and the definition of ‘Local Government’ repealed by A.O., 1937.

SEC. 3.—An order of the District Magistrate calling upon the keeper of Sarai under sec. 3 of the Act is not a judicial order, and no revision lies from that order. I.L.B. (1940) Lah. 577=1941 Lah. 71.

4. The Magistrate of the District shall keep a register in which shall be entered by such Magistrate or such other person as he shall appoint in this behalf, the names and residences of the keepers of all sarais within his jurisdiction, and the situation of every such sarai.

No charge shall be made for making any such entry.

5. After one month after the giving of such notice to register as by this Act, provided, the keeper of any sarai or any other person shall not receive any lodger or allow any person, cattle, sheep, elephant, camel or other animal, or any vehicle, to halt or be placed in such sarai until the same and the name and residence of the keeper thereof shall have been registered as by this Act provided:

6. The Magistrate of the District may, if he shall think fit, refuse to register as the keeper of a sarai a person who does not produce a certificate of character in such form and signed by such person as the Provincial Government shall from time to time direct.

Duties of keepers of sarais.

7. The keeper of a sarai shall be bound—

(1) when any person in such sarai is ill of any infectious or contagious disease, or dies of such disease, to give immediate notice thereof to the nearest police-station;

(2) at all times when required by any Magistrate or any other person duly authorized by the Magistrate of the District in this behalf, to give him free access to the sarai and allow him to inspect the same or any part thereof;

(3) to thoroughly cleanse the rooms and verandas, and drains of the sarai, and the wells, tanks, or other sources from which water is obtained for the persons or animals using it, to the satisfaction of, and so often as shall be required by, the Magistrate of the District, or such person as he shall appoint in this behalf;

(4) to remove all noxious vegetation on or near the sarai, and all trees and branches of trees capable of affording to thieves means of entering or leaving the sarai;

(5) to keep the gates, walls, fences, roofs and drains of the sarai in repair;

(6) to provide such number of watchmen as may, in the opinion of the Magistrate of the District, subject to such rules as the Provincial Government may prescribe in this behalf, be necessary for the safety and protection of persons and animals or vehicles lodging in, halting at or placed in the sarai; and

(7) to exhibit a list of charges for the use of the sarai at such place and in such form and languages as the Magistrate of the District shall from time to time direct.

8. The keeper of a sarai shall from time to time, if required so to do by an order of the Magistrate of the District served upon him, report, either orally or in writing as may be directed by the Magistrate to such Magistrate or to such person as the Magistrate shall appoint, every person who resorted to such sarai during the preceding day or night.

If written reports are required for any space of time exceeding a single day or night, schedules shall be furnished by the Magistrate of the District to the keeper.

The keeper shall from time to time fill up the said schedules with the information so required, and transmit them to the said Magistrate, in such manner and at such intervals as may from time to time be ordered by him.

9. If any sarai by reason of abandonment, or of disputed ownership shall remain untenanted, and thereby become a resort of idle and disorderly persons, or become in a filthy or unwholesome state, or be complained of by any two or more of the neighbours as a nuisance, the Magistrate of the District, after due enquiry, may cause notice in writing to be given to the owner or to the person claiming to be the owner, if he be known and resident within the district, and may also cause such notice to be put on some conspicuous part of the sarai, requiring the persons concerned therein, whoever they may be, to secure, enclose, clean or clear the same;

Power to shut up, secure, clear and clean deserted sarais.

and if such requisition shall not be complied with within eight days, the Magistrate of the District may cause the necessary work to be executed, and all expenses thereby incurred shall be paid by the owner of the sarai, and shall be recoverable like penalties under this Act, or, in case of abandonment or disputed ownership of the sarai, by the sale of any material found therein.

10. If a sarai or any part thereof be deemed by the Magistrate of the District to be in a ruinous state, or likely to fall, or in any way dangerous to the persons or animals lodging in or halting at the sarai, he shall give notice in writing to the keeper of the sarai requiring him forthwith to take down, repair or secure (as the case may be) the sarai or such part thereof as the case may require.

Taking down or repairing ruinous sarais.

If the keeper do not begin to take down, repair or secure the sarai, or such part as aforesaid within three days after such notice, and complete such work with due diligence, the Magistrate shall cause all or so much of the sarai as he shall think necessary to be taken down, repaired or otherwise secured.

All the expenses so incurred by the Magistrate shall be paid by the keeper of the sarai, and shall be recoverable from him as hereinafter mentioned.

11. If any such sarai or any part thereof be taken down by virtue of the powers aforesaid, the Magistrate of the District may sell the materials thereof, or so much of the same as shall be taken down under the provisions of the last preceding section, and apply the proceeds of such sale in payment of the expenses incurred, and shall restore the over-plus (if any) arising from such sale to the owner of such sarai on demand, and may recover the deficiency (if any) as if the amount thereof were a penalty under this Act.

Sale of materials of ruinous sarais.

12. Whoever, being the keeper of any sarai, suffers the same to be in a filthy and unwholesome state, or overgrown with vegetation, or after the expiration of two days from the time of his receiving notice in writing from the Magistrate of the District to cleanse or clear the same or after he shall have been convicted of suffering the same to be in such a state or so overgrown as aforesaid, shall allow the same to continue in such state, or so overgrown, shall be liable to the penalties provided in section 14 of this Act:

Penalty for permitting sarais to be filthy or overgrown.

Provided that the Magistrate of the District may, in lieu of enforcing such daily penalty, enter on and cleanse or clear the said sarai, and the expense incurred by the Magistrate in respect thereof shall be paid to him by the keeper, and shall be recoverable as by this Act provided in the case of penalties.

Proviso.

13. The Provincial Government may from time to time make regulations for the better attainment of the objects of this Act, provided that such rules be not inconsistent with this Act or with any other law for the time being in force, and may from time to time repeal, alter and add to the same.

Power for Provincial Government to make regulations.

All regulations made under this Act and all repeals thereof, and alterations and additions thereto, shall be published in the Official Gazette.

14. If the keeper of a sarai offend against any of the provisions of this Act or any of the regulations made in pursuance of this Act, he shall for every such offence be liable on conviction before any Magistrate to a penalty not exceeding twenty rupees, and to a further penalty not exceeding one rupee a day for every day during which the offence continues:

Penalty for infringing Act or regulations.

Provided always that this Act shall not exempt any person from any penalty or other liability to which he may be subject, irrespective of this Act.

All penalties imposed under this Act may be recovered in the same manner as fines may be recovered under section 61 of the Code of Criminal Procedure.

15. Where a keeper of sarai is convicted of a third offence under this Act, he shall not afterwards act as keeper of a sarai without the licence in writing of the Magistrate of the District, who may either withhold such licence or grant the same on such terms and conditions as he may think fit.

16. No part of this Act, except section 8, shall apply to any sarai which may be under the direct management of the Provincial Government or of any Municipal Committee.

17. This Act shall in the first instance extend only to the territories under the Government of the Lieutenant-Governor of the North-Western Provinces of the Presidency of Fort William in Bengal.

But it shall be lawful for the Provincial Government, by notification in the Official Gazette, to extend this Act, *mutatis mutandis*, to any other part of [British India], except the towns of Calcutta, Madras and Bombay.

Power to Provincial Government to extend this Act.

5[* * *].

18. This Act may be called THE SARAI ACT, 1867.

Short title.

SCHEDULE.

FORM OF NOTICE.

Take notice that on the day of 1867, an Act called the Sarais Act, 1867, was passed, and that, before the day of 1867, you, being keeper of a sarai [or purao] within [here state the district over which the jurisdiction of the Magistrate giving the notice extends], must have your sarai [or purao] registered, and that the register is to be kept at [here state where the register is to be kept] and that if you do not have your

LEG. REF.

¹ See now secs. 386, 387 and 389 of the Code of Criminal Procedure, 1898 (Act V of 1898).

² Read now the Province of Agra. The Lieutenant-Governor of these territories is now Governor of the United Provinces of Agra and Oudh.

³ It has been extended to Oudh. See Notification No. 591, dated 25th July, 1883, in North-West Provinces and Oudh Gazette, 1883, Pt. p. 443.

It has also been extended to the Punjab,

see Notification no. 4499, dated 13th December, 1879, in Punjab Government Gazette, 1879, Pt. I, p. 727, but its application to that part of the Hazara District, known as Upper Tanawal, which then formed part of the Punjab, is barred by the Hazara (Upper Tanawal) Regulation, 1900 (II of 1900), Punjab & N.W. Code.

⁴ Substituted by the A.O., 1937.

⁵ The words "and the Settlement of Prince of Wales' Island, Singapore and Malacca" repealed by Amending Act, 1891 (XII of 1891).

sarai [or purao] so registered, you will be liable to a penalty not exceeding twenty rupees, and to a further penalty not exceeding one rupee a day for every day during which the offence continues, and that on your applying to [here give the name and address of the person to keep the register] he will register your sarai (or purao) free of all charge to you.

Dated the day of 18 ..

THE SEA CUSTOMS ACT (VIII OF 1878) (Extracts).

* * * * *

CHAPTER XVI.

OFFENCES AND PENALTIES.

167. The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the third column of the same with reference to such offences respectively:—

Offences.	Section of this Act to which offence has reference.	Penalties.
1.—Contravening any rule made under this Act.	General	Penalty not exceeding five hundred rupees.
2.—If any goods be landed or shipped, or if an attempt be made to land or ship any goods, or if any goods be brought into any bay, river, creek or arm of the sea, for the purpose of being landed or shipped, at any port or place which, at the date of such landing, shipment, attempt or bringing, is not a port for the landing and shipment of goods.	II	such goods shall be liable to confiscation.
3.—If any person ship or land goods, or aid in the shipment or landing of goods, or knowingly keep or conceal, or knowingly permit or procure to be kept or concealed, any goods shipped or landed or intended to be shipped or landed contrary to the provisions of this Act; or if any person be found to have been on board of any vessel liable to confiscation on account of the commission of an offence under ¹ [No. 4] of this section, while such vessel is within any bay, river, creek or arm of the sea which is not a port for the ¹ [shipment and landing] of goods.	General	such person shall be liable to a penalty not exceeding one thousand rupees.
4.—If any vessel which has been within the limits of any port in British India with cargo on board be afterwards found in any port, bay, river, creek or arm of the sea in British India light or in ballast, and if the master be unable to give a due account of the customs port where such vessel lawfully discharged her cargo.	II	such vessel shall be liable to confiscation.

LEG. REF.

¹ Substituted by Act XII of 1891.

Sec. 167.—Use of the expressions 'offence' and 'penalty' not sufficient to show that

such acts or omissions are declared as crimes—ordinary criminal law applies. 1926 S. 40; jurisdiction of High Court to interfere. 31 Bom. L.R. 1052.

Offences.	Section of this Act to which offence has reference.	Penalties.
5.—If any goods are put without the authority of the proper officer of Customs, on board of any tug steamer or pilot-vessel from any sea-going vessel inward-bound ; or	11	such goods shall be liable to confiscation, and the Master of every such tug-steamer or pilot-vessel shall be liable to a penalty not exceeding one thousand rupees.
if any goods are put, without such authority, out of any tug-steamer or pilot-vessel for the purpose of being put on board of any such vessel outward bound ; or		
if any goods on which drawback has been granted are put, without such authority, on board of any tug-steamer or pilot-vessel for the purpose of being reloaded.		
6.—If any vessel arriving at, or departing from, any customs-port fails when so required under section 17, to bring to at any such station as has been appointed by the ¹ [Chief Customs-officer] for the boarding or landing of an officer of Customs.	17	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
7.—If any vessel arriving at any Customs-port, after having come to its proper place of mooring or unloading, removes from such place, except with the authority of the Conservator, obtained in accordance with the provisions of the Indian Ports Act, 1875, ² or other lawful authority, to some other place of mooring or unloading, or		the master of such vessel shall be liable to a penalty not exceeding five hundred rupees, and the vessel, if not entered shall not be allowed to enter until the penalty is paid.
if any vessel not brought into port by a pilot be not anchored or moored in accordance with any direction of the ¹ [Chief Customs-officer] under section 17.	17	
8.—If any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of this Act, be imported into or exported from British India contrary to such prohibition or restriction, or any attempt be made so to import or export any such goods or	18 & 19	such goods shall be liable to confiscation ; any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees.
if any such goods be found in any package produced to any officer of Customs as containing no such goods, or		
if any such goods, or any dutiable goods be found either before or after landing or shipment to have been concealed in any manner on board of any vessel within the limits of any port in British India, or		
if any goods, the exportation of which is prohibited or restricted as aforesaid, be brought to any wharf in order to be put on board of any vessel for exportation contrary to such prohibition or restriction.		
9.—If, upon an application to pass any goods through the custom-house, any person not being the owner of such goods, and not having proper and sufficient authority from the owner, subscribes or attests any document relating to any goods on behalf of such owner	General	such person shall be liable to a penalty not exceeding one thousand rupees.

LEG. REF.

¹ Substituted by Act IV of 1914.² See now the Indian Ports Act, 1908 (XV of 1908).

Offences.	Section of this Act to which offence has reference.	Penalties.
10.—If any goods, on the entry of which for re-export drawback has been paid, are not duly exported, or are unshipped or re-landed at any customs-port (not having been duly re-landed or discharged under the provisions of this Act).	42 & 43	such goods, together with any vessel used in so unshipping or re-landing them, shall be liable to confiscation; and the master of the vessel from which such goods are so unshipped or re-landed, and any person by whom or by whose orders or means such goods are so unshipped or re-landed or who aids or is concerned in such unshipping or re-landing, shall be liable to a penalty not exceeding three times the value of such goods or not exceeding one thousand rupees.
11.—If any wine, spirit, provisions or stores be not laden on board of the vessel on board of which they should, under the provisions of section 45, 46, 47, or 48, be laden, or be unladen from such vessel without the permission of the proper officer of Customs,	44 to 48	such wine spirit, provisions or stores shall be liable to confiscation.
12.—If any goods be entered for drawback, which are of less value than the amount of the drawback claimed,	50	such goods shall be liable to confiscation.
13.—If, in any river or port wherein a place has been fixed under section 53, by the ¹ [Chief Customs-authority], any vessel arriving passes beyond such place, before delivery of a manifest to the pilot, officer of Customs, or other person duly authorised to receive the same,	53	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
14.—If the master of any vessel arriving, which remains outside or below any place so fixed, wilfully omits, for the space of twenty-four hours after anchoring, to deliver a manifest as required by this Act,	53	such master shall be liable to a penalty not exceeding one thousand rupees.
15.—If, after any vessel arriving has entered any Customs-port in which a place has not been fixed under section 53, the master of such vessel wilfully omits, for the space of twenty-four hours after anchoring to deliver a manifest as required by this Act,	54	such master shall be liable to a penalty not exceeding one thousand rupees.
16.—If any manifest delivered under section 53, 54, 60, 63 or 66 is not signed by the person delivering the same and is not in the form or does not contain the particulars required by section 55 or 63, as the case may be, in so far as such particulars are applicable to the ship, cargo and voyage; or if any manifest so delivered does not contain a specification true to the best of such person's knowledge of all goods imported or to be exported in such vessel,	55 & 63	the person delivering such manifest shall be liable to a penalty not exceeding one thousand rupees.
17.—If any goods entered in the import-manifest of a vessel are not found on board of the vessel; or	55 & 64	the master of such vessel shall be liable to a penalty not exceeding twice the

LEG. REF.

¹ Substituted by Act IV of 1914.board of the vessel"—"So found is short"—
Meaning of. See 191 I.C. 867=4 F.L.J.
(H.C.) 60.

ITEM (17).—Construction of—"Found on

Offences.	Section of this Act to which offence has reference.	Penalties.
if the quantity is so found short, and if such deficiency is not accounted for to the satisfaction of the officer in charge of the custom-house,	53, 54 & 56	amount of duty chargeable on the missing or deficient goods, if they be dutiable and the duty leviable thereon can be ascertained or, otherwise to a penalty not exceeding five hundred rupees for every missing or deficient package or separate article. such person shall be liable to a penalty not exceeding five hundred rupees.
18.—If any person required by this Act to receive a manifest from any master of a vessel, refuses so to do or, fails to countersign the same or to enter thereon the particulars referred to in section 56,	57 & 59	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
19.—If bulk be broken in any vessel previous to the grant by the Customs-collector of an order for entry inwards or a special pass permitting bulk to be broken,	58	the master of the vessel shall be liable to a penalty not exceeding one thousand rupees.
20.—If any bill-of-lading or copy required under section 58 is false and the master is unable to satisfy the Customs-collector that he was not aware of the fact; or if any such bill or copy, has been altered with fraudulent intent; or	62	such master shall be liable to a penalty not exceeding five hundred rupees.
if the goods mentioned in any such bill or copy have not been <i>bona fide</i> shipped as shown therein; or	62	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
if any such bill-of-lading or any bill-of-lading of which a copy is delivered, has not been made previously to the departure of the vessel from the place where the goods referred to in such bill-of-lading were shipped; or	62	such pilot, on conviction before a Magistrate shall be liable to fine not exceeding one thousand rupees.
if any part of the cargo has been staved, destroyed or thrown over-board, or if any package has been opened and such part of the cargo or such package be not accounted for to the satisfaction of the Customs-collector	68	such master shall be liable to a penalty not exceeding five hundred rupees for each day during which such officer is not received on board; and the vessel if not entered, shall not be allowed to enter until such penalty is paid.
21.—If any master of a vessel attempts to depart without a port-clearance,	68	such master shall, in each such case, be liable to a penalty not exceeding five hundred rupees.
22.—If any vessel actually departs without a port-clearance,		
23.—If any pilot takes charge of any vessel proceeding to sea, notwithstanding that the master of such vessel does not produce a port-clearance,		
24.—If any master of a vessel refuses to receive on board an officer of Customs deputed under section 67,		
25.—If any master of a vessel refuses to receive on board one servant of such officer, or to provide such officer and servant with suitable shelter and accommodation, and with a due allowance of fresh water, and with the means of cooking on board,		

Offences.	Section of this Act to which offence has reference.	Penalties.
<p>39.—If, without entry duly made, any goods are taken or passed out of any custom-house or wharf.</p> <p>40.—If any prohibited or dutiable goods are found, either before or after landing, concealed in passenger's baggage,</p> <p>41.—If any goods entered to be warehoused are carried into the warehouse, unless with the authority, or under the care, of the proper officers of Customs, and in such manner, by such persons, within such time, and by such roads or ways, as such officers direct,</p> <p>42.—If any goods entered to be warehoused are not duly warehoused in pursuance of such entry, or are withheld, or removed from any proper place of examination before they have been examined and certified by the proper officer,</p> <p>43.—If any warehoused goods be not warehoused in accordance with sections 94 and 95,</p> <p>44.—If the licensee of any private warehouse licensed under this Act does not open the same when required so to do by any officer entitled to have access thereto, or, upon demand made by any such officer, refuses access to any such officer,</p> <p>45.—If the keeper of any public warehouse, or the licensee of any private warehouse, neglects to stow the goods warehoused therein, so that easy access may be had to every package and parcel thereof,</p> <p>46.—If the owner of any warehoused goods, or any person in the employ of such owner, clandestinely opens any warehouse, or, except in presence of the proper officer of Customs, gains access to his goods,</p> <p>47.—If any warehoused goods are opened in contravention of the provisions of section 98; or if any alteration be made in such goods or in the packing thereof, except as provided in section 100,</p> <p>48.—If any goods lodged in a private warehouse are found at the time of delivery therefrom to be deficient, and such deficiency is not due solely to ullage or wastage, as allowed under section 116 and 117,</p>	<p>86</p> <p>General.</p> <p>93</p> <p>94</p> <p>94 & 95</p> <p>97</p> <p>Chap. XI.</p> <p>99</p> <p>98 & 100</p> <p>123</p>	<p>shall be liable to a penalty not exceeding ten times the amount of duty which might have been lost to Government by such omission or misdescription, unless it be proved to the satisfaction of the officer in charge of the custom-house that the variance was accidental.</p> <p>the person so taking or passing such goods shall, in every such case, be liable to a penalty not exceeding five hundred rupees, and such goods shall be liable to confiscation.</p> <p>such passenger shall be liable to a penalty not exceeding five hundred rupees, and such goods shall be liable to confiscation.</p> <p>such goods shall be liable to confiscation, and any person so carrying them shall be liable to a penalty not exceeding one thousand rupees.</p> <p>such goods shall be deemed not to have been duly warehoused, and shall be liable to confiscation.</p> <p>such goods shall be liable to confiscation.</p> <p>such licensee shall be liable to a penalty not exceeding one thousand rupees, and shall further be liable to have his licence forthwith cancelled.</p> <p>such keeper or licensee shall for every such neglect, be liable to a penalty not exceeding fifty rupees.</p> <p>such owner or person shall, in every such case, be liable to a penalty not exceeding one thousand rupees.</p> <p>such goods shall be liable to confiscation.</p> <p>the licensee of such warehouse shall, unless the deficiency be accounted for to the satisfaction of the Customs-collector, be liable to a penalty equal to five times the duty chargeable on the goods so deficient.</p>

Offences.	Section of this Act to which offence has reference.	Penalties.
49.—If the keeper of any public warehouse, or the licensee of any private warehouse, fails, on the requisition of any officer of Customs, to produce any goods which have been deposited in such warehouse, and which have not been duly cleared and delivered therefrom, and is unable to account for such failure to the satisfaction of the Customs-collector,	123	such keeper or licensee shall, for every such failure, be liable to pay the duties due on such goods, and also a penalty not exceeding fifty rupees in respect of every package or parcel so missing or deficient.
50.—If any goods, after being duly warehoused, are fraudulently concealed in, or removed from the warehouse, or abstracted from any package, or transferred from one package to another, or otherwise, for the purpose of illegal removal or concealment.	Chap. XI.	such goods shall be liable to confiscation, and any person concerned in any such offence shall be liable to a penalty not exceeding one thousand rupees.
51.—If any goods lodged in a private warehouse are found to exceed the registered quantity,	Ditto.	such excess, unless accounted for to the satisfaction of the officer in charge of the custom-house, shall be charged with five times the ordinary duty thereon.
52.—If any goods be removed from the warehouse in which they were originally deposited, except in the presence, or with the sanction, of the proper officer, or under the proper authority for their delivery,	Chap. XI.	such goods shall be liable to confiscation, and any person so removing them shall be liable to a penalty not exceeding one thousand rupees.
53.—If any person illegally takes any goods out of any warehouse without payment of duty, or aids, assists or is concerned therein,	Ditto.	such person shall be liable to a penalty not exceeding one thousand rupees.
54.—If any person contravenes any rule regarding the process of transshipment made by the ¹ [Chief Customs authority], or any prohibition or order relating to transshipment notified by the Central Government, or transships goods not allowed to be transhipped,	130	such person shall be liable to a penalty not exceeding one thousand rupees; and any goods in respect of which such offence has been committed shall be liable to confiscation.
55.—If any goods be taken on board of any vessel at any customs-port in contravention of section 136,	134	
56.—If any goods not specified in a duly passed shipping-bill are taken on board of any vessel, contrary to the provisions of section 137,	136	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
57.—If any goods specified in the manifest of any vessel, or in any shipping-bill, are not duly shipped before the departure of such vessel, or are re-landed; and notice of such short shipment or re-landing be not given as required by section 140,	137	the master of such vessel shall be liable to a penalty not exceeding fifty rupees for every package of such goods.
58.—If any goods duly shipped on board of any vessel be landed, except under section 141, 142 or 143 at any place other than that for which they have been cleared,	140	the owner of such goods shall be liable to a penalty not exceeding one hundred rupees; and such goods shall be liable to confiscation.
59.—If any goods on account of which drawback has been paid be not found on board of any vessel referred to in section 142,	141	the master of such vessel shall, unless the landing be accounted for to the satisfaction of the Customs-collector, be liable to a penalty not exceeding three times the value of such goods so landed.
	² [142]	the master of such vessel shall be liable to a penalty not exceeding the entire value

LEG. REF.

¹ Substituted by Act IV of 1914.² Substituted by Act XII of 1891.

Offences.	Section of this Act to which offence has reference.	Penalties.
<p>60.—If any person, without a special pass from an officer of Excise at the place of exportation, re-lands or attempts to re-land any spirit shipped for exportation,</p> <p>61.—If any person wilfully contravenes any rule relating to spirits made under section 155,</p> <p>62.—If, in contravention of any rules made under section 157, any goods are taken into, or put out of, or carried in, any coasting vessel; or if any such rules be otherwise infringed.</p> <p>63.—If, contrary to any such rules, any coasting vessel touches at any foreign port, or deviates from her voyage, unless forced by unavoidable circumstances; or if the master of any such vessel which has touched at a foreign port fails to declare the same in writing to the Customs-collector at the customs port at which such vessel afterwards first arrives,</p> <p>64.—If in the case of any coasting vessel any of the provisions of section 158, 159 or 160 are not complied with,</p> <p>65.—If the person executing any bond given under section 161 fail to produce the certificate mentioned in the same section, or to show sufficient reason for its non-production,</p> <p>66.—If the master of any coasting vessel violates any of the conditions under which a general pass for such vessel has been granted,</p> <p>67.—If any master of a coasting vessel contravenes any of the provisions of section 165,</p> <p>68.—If, upon examination, any package entered in the cargo-book required by section 165, as containing dutiable goods, is found not to contain such goods; or if any package is found to contain dutiable goods not entered, or not entered as such, in such book,</p>	<p>154</p> <p>155</p> <p>157</p> <p>159</p> <p>158, 159 & 160</p> <p>161</p> <p>164</p> <p>165</p> <p>165</p>	<p>of such goods, unless the fact be accounted for to the satisfaction of the Customs-collector.</p> <p>such person shall be liable to a penalty not exceeding five hundred rupees.</p> <p>such person shall be liable to a penalty not exceeding five hundred rupees; and all such spirit shall be liable to confiscation.</p> <p>the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.</p> <p>the master of such vessel shall be liable to a penalty not exceeding one thousand rupees, and if any goods liable to export duty have been landed from, or any goods liable to import duty have been shipped in, such vessel at such foreign port, such master shall further be liable to a penalty not exceeding three times the duty which would have been leviable on such goods if they had been exported from, or imported at, a customs-port to or from a foreign port, as the case may be.</p> <p>the master of such vessel shall in each such case be liable to a penalty not exceeding five hundred rupees.</p> <p>such person shall be bound to pay a penalty equal to double the amount of customs duties which would have been chargeable on the export cargo of the vessel had she been declared to be bound to a foreign port.</p> <p>such master shall be liable to a penalty not exceeding one thousand rupees.</p> <p>such master shall be liable to a penalty not exceeding five hundred rupees.</p> <p>such package, with its contents, shall be liable to confiscation.</p>

Offences.	Section of this Act to which offence has reference.	Penalties.
<p>69.—If the master of any coasting vessel required under section 165 to keep a cargo-book fails correctly to keep, or to cause to be kept, such book, or to produce the same on demand; or if at any time there be found on board of any such vessel any goods not entered in such book as laden, or any goods noted as delivered; or if any goods entered as laden, and not noted as delivered, be not on board,</p>	165	such master shall be liable to a penalty not exceeding five hundred rupees.
<p>70.—If, contrary to the provisions of this or any other law for the time being in force relating to the Customs, any goods are laden on board of any vessel in any customs-port and carried coast-wise; or if any goods which have been brought coastwise are so unladen in any such port; or if any goods are found on board of any coasting vessel without being entered in the manifest or cargo-book or both (as the case may be) of such vessel,</p>	Chap. XV.	such goods shall be liable to confiscation, and the master of such vessel shall be liable to a penalty not exceeding five hundred rupees.
<p>71.—If the master of any coasting vessel refuses to bring any document to the Customs-collector when so required under section 166,</p>	166	such master shall be liable to a penalty not exceeding two hundred rupees.
<p>72.—If any person makes or signs, or uses, any declaration or document used in the transaction of any business relating to the Customs, knowing such declaration or document to be false in any particular; or counterfeits falsifies or fraudulently alters or destroys any such document, or any seal, signature, initials or other mark made or impressed by any officer of Customs in the transaction of any business relating to the Customs; or, being required under this Act to produce any document, refuses or neglects to produce such document; or, being required under this Act to answer any question put to him by an officer of Customs, does not truly answer such question,</p>	General	such person shall, on conviction of any such offence before a Magistrate, be liable to a fine not exceeding one thousand rupees.
<p>73.—If any person on board of any vessel or goat in any customs-port, or who has landed from any such vessel or boat, upon being asked by any such officer whether he has dutiable or prohibited goods about his person or in his possession, declares that he has not, and if any such goods are, after such denial, found about his person or in his possession,</p>	Ditto	such goods shall be liable to confiscation, and such person shall be liable to a penalty not exceeding three times the value of such goods.
<p>74.—If any officer of Customs require any person to be searched for dutiable or prohibited goods, or to be detained, without having reasonable ground to believe that he has such goods about his person, or has been guilty of an offence relating to the Customs.</p>	169	such officer shall, on conviction before a Magistrate, be liable to a fine not exceeding five hundred rupees.
<p>75.—If any officer of Customs or other person duly employed for the prevention of smuggling, is guilty of a wilful breach of the provisions of this Act,</p>	General	such officer or person shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding two years, or to fine, or to both.
<p>76.—If any officer of Customs, or other person duly employed for the prevention of smuggling, practises, or attempts to practise, any fraud for the purpose of injuring the customs-revenue or abets or connives at any such</p>	Ditto.	Ditto.

Offences.	Section of this Act to which offence has reference.	Penalties.
<p>fraud, or any attempt to practise any such fraud,</p> <p>77.—If any Police officer, whose duty it is under section 180, to send a written notice or cause goods to be conveyed to a custom-house, neglects so to do.</p> <p>78.—If any person intentionally obstructs any officer of Customs or other person duly employed for the prevention of smuggling, in the exercise of any powers given under this Act to such officer or person,</p> <p>79.—If any officer of Customs, except in the discharge in good faith of his duty as such officer, discloses any particulars learned by him in his official capacity in respect of any goods or shows any samples delivered to him in such capacity, or if any officer of Customs, except as permitted by this Act, parts with the possession of any samples delivered to him in his official capacity,</p> <p>80.—If any person, without the approval of the Customs-collector under section 202, acts as an agent for the transaction of business as therein mentioned.</p>	<p>180</p> <p>General</p> <p>195</p> <p>202</p>	<p>such officer shall, on conviction before a Magistrate be liable to a penalty not exceeding one hundred rupees.</p> <p>such person shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding six months, or to a fine not exceeding one thousand rupees, or to both.</p> <p>he shall be liable to a penalty not exceeding one thousand rupees.</p> <p>such person shall be liable to a penalty not exceeding five hundred rupees.</p>

Nothing in the second column of the above Schedule shall be deemed to have the force of law.

Packages and contents included in confiscation of goods.

168. The confiscation of any goods under this Act includes any package in which they are found, and all the other contents thereof.

Every vessel, cart or other means of conveyance, and every horse or other animal, used in the removal of any goods liable to confiscation under this Act shall in like manner be liable to confiscation.

Tackle, etc., included in confiscation of vessels.

The confiscation of any vessel under this Act includes her tackle, apparel and furniture.

CHAPTER XVII.

PROCEDURE RELATING TO OFFENCES, APPEALS, ETC.

169. Any officer of Customs duly employed in the prevention of smuggling may search any person on board of any vessel in any port in British India, or any person who has landed from any vessel:

Power to search on reasonable suspicion.

Sec. 167 (Cl. 73).—'Obstruction' in this clause implies actual resistance, and not mere evasion or disobedience of any lawful order of an officer. 1936 M.W.N. 1389 (2)=44 L.W. 885=166 I.C. 655=A.I.R. 1937 M. 208=(1937) 1 M.L. 178 So, merely because a man riding a bicycle rides and runs away

without stopping when ordered to do so by a Customs peon kept to watch and arrest smugglers, he cannot be held guilty under this clause. (*Ibid.*)

Sec. 168.—Applicability. 31 Bom.L.R. 1052=1929 B. 462.

Provided that such officer has reason to believe that such person has dutiable or prohibited goods secreted about his person.

Persons may, before search, require to be taken before Magistrate or Customs-collector.

170. When any officer of Customs is about to search any person under the provisions of section 169, such person may require the said officer to take him, previous to search, before the nearest Magistrate or Customs-collector.

If such requisition be made, the officer of Customs may detain the person making it until he can bring him before the nearest Magistrate or Customs-collector.

The Magistrate or Customs-collector before whom any person is so brought shall, if he see no reasonable ground for search, forthwith discharge such person; but, if otherwise, shall direct that the search be made.

A female shall not be searched by any but a female.

Power to stop vessels, carts, etc., and search for goods on reasonable suspicion.

171. Any duly empowered officer of Customs or other person duly employed for the prevention of smuggling, may stop and search for smuggled goods any vessel, cart or other means of conveyance: provided that he has reason to believe that smuggled goods are contained therein.

Power to issue search warrants.

172. Any Magistrate may, on application by a Customs-collector, stating his belief that dutiable or prohibited goods are secreted in any place within the local limits of the jurisdiction of such Magistrate, issue a warrant to search for such goods.

Such warrant shall be executed in the same way, and shall have the same effect, as a search-warrant issued under the law relating to Criminal Procedure.

173. Any person against whom a reasonable suspicion exists that he has been guilty of an offence under this Act may be arrested in any place, either upon land or water, by any officer of Customs or other person duly employed for the prevention of smuggling.

Persons reasonably suspected may be arrested.

174. Every person arrested on the ground that he has been guilty of an offence under this Act shall forthwith be taken before the nearest Magistrate or Customs-collector.

175. When any such person is taken before a Magistrate, such Magistrate may, if he thinks fit, either commit him to goal or order him to be kept in the custody of the Police for such time as is necessary to enable such Magistrate to communicate with the proper officers of Customs:

Persons taken before Magistrate may be detained or admitted to bail.

Provided that any person so arrested, committed or kept shall be released on giving security to the satisfaction of the Magistrate to appear at such time and place as such Magistrate appoints in this behalf.

176. If any person liable to be arrested under this Act is not arrested at the time of committing the offence for which he is so liable, or after arrest make his escape, he may at any time afterwards be arrested and taken before a Magistrate, to be dealt with as if he had been arrested at the time of committing such offence.

Person escaping may be afterwards arrested.

177. When any person employed on the crew of any of the ships of Her Majesty's Navy, ¹[or His Majesty's Indian Navy] is

Persons in Her Majesty's Navy, or His Majesty's Indian Navy when arrested, to be secured on board until warrant procured.

arrested under this Act, the arresting officer shall forthwith give notice thereof to the commanding officer of the ship, who shall thereupon place such person in security on board of such ship, until the arresting officer has obtained a warrant from a

Magistrate for bringing up such person to be dealt with according to law.

The Magistrate shall grant such warrant upon complaint made to him by the arresting officer, stating the offence for which the person is detained.

178. Any things liable to confiscation under this Act may be seized in any place, either upon land or water, by any officer of

Seizure of things liable to confiscation.

Customs or other person duly employed for the prevention of smuggling.

179. All things seized on the ground that they are liable to confiscation

Things seized, how dealt with.

under this Act shall, as soon as conveniently may be, be delivered into the care of any Customs-officer authorized to receive the same.

If there be no such officer at hand, all such things shall be carried to and deposited at the Custom-house nearest to the place of seizure.

If there be no Custom-house within a convenient distance, such things shall be deposited at the nearest place appointed by the ²[Chief Customs-officer] for the deposit of things so seized.

180. When any things liable to confiscation under this Act are seized by

Procedure in respect of things seized on suspicion.

any Police-officer on suspicion that they have been stolen, he may carry them to any police-station or Court at which a complaint connected with the steal-

ing or receiving of such things has been made, or an enquiry connected with such stealing or receiving is in progress, and there detain such things until the dismissal of such complaint or the conclusion of such enquiry or of any trial thence resulting.

In every such case the Police-officer seizing the things shall send written notice of their seizure and detention to the nearest Custom-house; and immediately after the dismissal of the complaint or the conclusion of the enquiry or trial, he shall cause such things to be conveyed to, and deposited at, the nearest Custom-house, to be there proceeded against according to law.

181. When anything is seized, or any person is arrested under this Act,

When seizure or arrest is made, reason in writing to be given.

the officer or other person making such seizure or arrest shall, on demand of the person in charge of the thing so seized, or of the person so arrested, give him a statement in writing of the reason for such

seizure or arrest.

Power to detain packages containing certain publications imported into British India.

²[181-A. (1) The Chief Customs-officer or other officer authorised by the Provincial Government in this behalf may detain any package, brought whether by land or sea into British India which he suspects to contain—

(a) any newspaper or book as defined in the Press and Registration of Books Act, 1867, or

(b) any document, containing any seditious matter, that is to say, any matter the publication of which is punishable under section 124-A of the Indian Penal Code, and shall

forward such package to such officer as the Provincial Government may appoint in this behalf.

(2) Any officer detaining a package under the provisions of sub-section (1) shall, where practicable, forthwith send by post to the addressee or consignee of such package notice of the fact of such detention.

(3) The Provincial Government shall cause the contents of such package to be examined, and if it appears to the Provincial Government that the package contains any such newspaper, book or other document, containing any such seditious matter, may pass such orders as to the disposal of the package and its contents as it may deem proper, and, if it does not so appear, shall release the package and its contents unless the same be otherwise liable to seizure under any law for the time being in force:

Provided that any person interested in any package detained under the provisions of this section may, within two months from the date of such detention, apply to the Provincial Government for release of the same, and the Provincial Government shall consider such application and pass such orders thereon as it may deem to be proper:

Provided, further, that, if such application is rejected, the applicant may, within two months from the date of the order rejecting the application, apply to the High Court for release of the package or its contents on the ground that the package did not contain any such newspaper, book or other document containing any such seditious matter.

(4) In this section "document" includes also any painting, drawing or photograph, or other visible representation.]

¹[181-B. Every application under the second proviso to sub-section (3) of section 181-A shall be heard and determined in the manner provided by sections 99-D to 99-F of the Code of Criminal Procedure, 1898, by a Special Bench of the High Court constituted in the manner provided by section 99-C of that Code.]

Procedure for disposal by High Court of applications for release of packages so detained.

¹[181-C. No order passed or action taken under section 181-A shall be called in question in any Court otherwise than in accordance with the second proviso to sub-section (3) of that section.]

Jurisdiction barred.

182. In every case, except, the cases mentioned in section 167, Nos. 26, 72 and 74 to 76, both inclusive, in which, under this Act, anything is liable to confiscation or to increased rates of duty,

or any person is liable to a penalty,

such confiscation, increased rate of duty or penalty may be adjudged—

(a) without limit, by a Deputy Commissioner or Deputy Collector of Customs, or a Customs-collector;

(b) up to confiscation of goods not exceeding two hundred and fifty rupees in value, and imposition of penalty or increased duty, not exceeding one hundred rupees, by an Assistant Commissioner or Assistant Collector of Customs;

(c) up to confiscation of goods not exceeding fifty rupees in value, and imposition of penalty or increased duty not exceeding ten rupees, by such other subordinate officers of Customs as the ²[Chief Customs-authority] may, from time to time, empower in that behalf in virtue of their office:

Provided that the ²[Chief Customs-authority] may, in the case of any officer performing the duties of a Customs-collector, limit his powers to those

LEG. REF.

¹ Inserted by Act XIV of 1922.

² Substituted by Act IV of 1914.

SEC. 182.—See 43 B. 221=21 Bom.L.R. 27=49 I.C. 427. Act contains no provision with regard to adjudication of confiscations and penalties. 24 Bom.L.R. 245=46 B. 732.

indicated in clause (b) or in clause (c) of this section, and may confer on any officer, by name or in virtue of his office; the powers indicated in clauses (a), (b) or (c) of this section.

183. Whenever confiscation is authorised by this Act, the officer adjudging it shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit.

184. When anything is confiscated under section 182, such thing shall thereupon vest in Her Majesty.

The officer adjudging confiscation shall take and hold possession of the thing confiscated, and every officer of Police, on the requisition of such officer, shall assist him in taking and holding such possession.

185. If any vessel actually departs without a port-clearance, or after failing to bring-to when required at any station appointed under section 17, the penalty to which the master of such vessel is liable may be adjudged by the Chief Customs-officer of any Customs-port to which such vessel, proceeds or in which she is ¹[

A certificate of such departure or failure to bring-to when required, purporting to be signed by the Chief Customs-officer of the port from which the vessel is stated to have so departed, shall be *prima facie* proof of the fact so certified.

Penalty under Act not to interfere with punishment under other law.

186. The award of any confiscation, penalty or increased rate of duty under this Act by an officer of Customs shall not prevent the infliction of any punishment to which the person affected thereby is liable under any other law.

Offences not specially provided for how tried.

187. All offences against this Act, other than those cognizable under section 182 by officers of Customs, may be tried summarily by a Magistrate.

188. Any person deeming himself aggrieved by any decision or order passed by an officer of Customs under this Act may, within three months from the date of such decision or order, appeal therefrom to the Chief Customs-authority, or, in such cases as ²[the Central Government] directs, to any officer of Customs not inferior in rank to a Customs-collector and empowered in that behalf by name or in virtue of his office by ²[the Central Government].

LEG. REF.

¹ Substituted by Act IV of 1914.

¹ Omitted by A.O., 1937.

² The words "the Governor-General in Council" were substituted for "the Local Government" by Act IV of 1924 and the present words substituted by A.O., 1937.

SEC. 188.—If there be no legal adjudication of the matter in accordance with the Act, jurisdiction of the Civil Court is not ousted. 44 B. 221—21 Bom.L.R. 27—49 I. C. 427. Imposition of sea customs duties relates to 'a matter concerning revenue' within the meaning of the term in sec. 106 (2) of the Government of India Act, 1935, and as such, the suit in the High Court questioning such imposition is barred. Such suit is also barred under secs. 188 and 191, as the remedy given under these sections

amounts to an ouster of the jurisdiction of Courts. The Act itself provides the remedy and the tribunal to decide disputes under the Act. 45 L.W. 394—A.I.R. 1937 Mad. 536. The sole remedy open to those who are aggrieved by a decision or order for confiscation of goods passed by an Officer of Customs under the Sea Customs Act is the appeal to the Chief Customs authority provided by sec. 188. The order is not liable to be challenged or impugned by any suit. 43 C.W.N. 445—I.L.R. (1939) 1 Cal. 257—A.I.R. 1939 Cal. 763. See also 187 I.C. 542 = 3 Fed.L.J. (H.C.) 50. There is no reason for limiting the words "any decision or order passed . . . under this Act" in sec. 188 to decisions or orders passed under sec. 182 of the Act. They include decisions by an officer of customs as to the rate of duty applicable to particular goods, which necessarily involve the determination of the

Such authority or officer may thereupon make such further inquiry and pass such order as he thinks fit, confirming, altering or annulling the decision or order appealed against:

Provided that no such order in appeal shall have the effect of subjecting any person to any greater confiscation, penalty or rate of duty than has been adjudged against him in the original decision or order.

Every order passed in appeal under this section shall, subject to the power of revision conferred by section 191, be final.

189. Where the decision or order appealed against relates to any duty or penalty leviable in respect of any goods, the owner of such goods, if desirous of appealing against such decision or order, shall, pending the appeal, deposit in the hands of the Customs-collector at the port where the dispute arises the amount demanded by the officer passing such decision or order.

When delivery of such goods to the owner thereof is withheld merely by reason of such amount not being paid, the Customs-collector shall, upon such deposit being made, cause such goods to be delivered to such owner.

If upon any such appeal it is decided that the whole or any portion of such amount was not leviable in respect of such goods, the Customs-collector shall return such amount or portion (as the case may be) to the owner of such goods on demand by such owner.

190. If, upon consideration of the circumstances under which any penalty, increased rate of duty or confiscation has been adjudged under this Act by an officer of Customs, the Chief Customs-authority is of opinion that such penalty, increased rate or confiscation ought to be remitted in whole or in part, or commuted, such authority may remit the same or any portion thereof, or may, with the consent of the owner of any goods ordered to be confiscated, commute the order of confiscation to a penalty not exceeding the value of such goods.

191. ¹[The Central Government] may, on the application of any person

LEG. REF.

¹ The words "The Governor-General in Council" were substituted for "The Local Government" by Act IV of 1924, and the present words substituted by A.O., 1937.

particular category in the tariff classification into which the goods fall. An order of an Assistant Collector of Customs assessing a consignment of betel nuts as boiled nuts subject to duty on a tariff value and not as raw nuts subject to duty *ad valorem*, is not an adjudication as to increased rate of duty under sec. 183, but a decision as to the normal rate of duty. Such an order if upheld in appeal under sec. 188 and confirmed in revision under sec. 191, excludes the jurisdiction of the Civil Courts to entertain a challenge of the merits of that decision. The Civil Court has, therefore, no jurisdiction to entertain a suit by a person aggrieved by such assessment to recover moneys paid in compliance therewith, on the ground that such assessment is incorrect or illegal. 67 I.A. 222=I.L.R. (1940) Mad. 599=52 L.W. 1=44 C.W.N. 709=A.I.R. 1940 P.C. 105=(1940) 2 M.L.J. 140 (P.C.). On appeal from I.L.R. (1938) Mad. 1040=47 L.W. 505=A.I.R. 1938 Mad. 608.

SECS. 188 AND 191.—The High Court will

CR. C. M.-I-162

not interfere with the customs authorities by way of mandamus until the applicant before it exhausts his right of appeal under secs. 188 and 191 of the Sea Customs Act. I.L.R. (1939) 2 Cal. 541=189 I.C. 556=13 R.C. 77=A.I.R. 1940 Cal. 174. Where by an act of Legislature powers are given to a person for a public purpose from which an individual may receive an injury, if the method of redressing the injury is indicated by the statute, the ordinary jurisdiction of Civil Courts is ousted and a suit does not lie. Where an order of confiscation passed by the Collector under the Sea Customs Act is taken up to the Central Board of Revenue under sec. 188 of the Sea Customs Act and the Board confirms the order under sec. 191, after hearing the advocate for the party aggrieved and no attempt is made to show that the Board in passing the order has in any way infringed the principles of justice or the provisions of the Act, there is no right of suit in the Civil Court even if the procedure of the Collector of Customs was not in accordance with the Act or with the principles of justice. There being a definite remedy provided by the Act, *viz.*, an application under sec. 191 of the Sea Customs Act, no civil suit will lie. 55 L.W. 498=1942 Mad. 704=(1942) 2 M.L.J. 193.

SEC. 191.—See 45 L.W. 394=A.I.R. 1937

Revision by the Central Government.

modify such decision or order.

Goods on which penalty incurred not to be removed till payment.

is paid.

If any person has become liable to any such fine, penalty or rate in respect of any goods, the Customs-collector may detain

Other goods of person liable to fine or penalty may be detained.

any other goods belonging to such person passing through the Customs-house until such fine, penalty or rate is paid.

193. When a penalty or increased rate of duty is adjudged against any

Enforcement of payment of penalty.

person which may be in his charge or in the charge of any other officer of customs.

When an officer of Customs who has adjudged a penalty or increased rate of duty against any person under this Act is unable to realize the unpaid amount thereof from such goods, such officer may notify in writing to any Magistrate within the local limits of whose jurisdiction such person or any goods belonging to him may be, the name and residence of the said person and the amount of penalty or increased rate of duty unrecovered; and such Magistrate shall thereupon proceed to enforce payment of the said amount in like manner as if such penalty or increased rate had been a fine inflicted by himself.

CHAPTER XVIII.

MISCELLANEOUS.

Power to open packages and examine goods.

194. Any officer of Customs may open any package, and examine any goods brought by sea to, or shipped or brought for shipment at any Customs-port.

195. ¹(1) The Customs-collector may, on the entry or clearance of any

Power to take samples of goods.

goods or at any time while such goods are being passed through the Customs-house, take samples of such goods, for examination or for ascertaining the value thereof on which duties are payable, or for any other necessary purpose.

Every such sample shall, if practicable be at the option of the owner either restored to him, or sold and the proceeds accounted for to him.

¹[(2) In the case of goods which consist of drugs or articles intended for consumption as food, and in respect of which the taking of samples for the purposes of this sub-section may have been authorised by general or special order of the Provincial Government, the Customs-collector may also in like circumstances take samples thereof for submission to, and examination by, such officer of Government or of a local authority as may be specified in such order. The real value of all such samples shall be paid to the owner by the Customs-collector.]

LEG. REF.

¹ Renumbered as sub-sec. (1), and sub-sec. (2) added by Act XIII of 1919.

Mad. 536 noted under sec. 188 *supra*. Orders passed by the Governor-General in Council under sec. 191 can in no case be questioned

in the Civil Courts, except possibly orders which while purporting to be made under it are clearly outside it. 43 C.W.N. 445=A.I.B. 1939 Cal. 768=I.L.R. (1939) 1 Cal. 257. See also 187 I.C. 542=3 Fed.L.J. (H.C.) 50; I.L.R. (1939) 2 Cal. 541=A.I.B. 1940 Cal. 174; 1942 Mad. 704=(1942) 2 M.L.J. 193.

¹[195-A. (1) When by any law for the time being in force a duty of customs is imposed on mineral oil which is specified as being suitable or as not being suitable for use as an illuminant in wick-lamps, the Chief Customs-authority may make rules for determining in disputed cases whether any mineral oil is or is not suitable for such

use.

(2) In particular such rules may—

(a) specify the design, construction and materials of test lamps to be used for testing the burning properties of mineral oil in wick lamps and provide for the standardisation of such test lamps; and

(b) prescribe the manner in which and the persons by whom tests are to be carried out and the standards to be accepted for deciding whether any mineral oil is or is not suitable for use as an illuminant in wick lamps.]

Owner to pay expense incidental to compliance with Customs-law.

196. The unshipping, carrying, shipping and landing of all goods,

and the bringing of them to the proper place for examination or weighing and the putting of them into and out of the scales, and the opening, unpacking, bulking, sorting, lotting, marking and numbering of goods, where such operations are necessary or permitted,

and the removing of goods to, and the placing of them in the proper place of deposit,

shall be performed by or at the expense of the owner of such goods.

197. No owner of goods shall be entitled to claim from any officer of Customs compensation for any loss or damage occurring

No compensation for loss or injury except on proof of neglect or wilful act.

to such goods at any time while they remain or are lawfully detained in any Customs-house, or on any Custom-house wharf, or under charge of any officer

of Customs, unless it be proved that such loss or damage was occasioned by the neglect or wilful act of such officer of Customs.

198. No proceeding other than a suit shall be commenced against any person for anything purporting to be done in pursuance

Notice of proceedings.

of this Act without giving to such person a month's

previous notice in writing of the intended proceeding and of the cause thereof; or

Limitation.

after the expiration of three months from the accrual of such cause.

199. The [Chief Customs-officer] may from time to time fix the period

Wharfrage fees.

after the expiration of which goods left on any Custom-house wharf, or other authorized landing

place or part of the Customs-house premises, shall be subject to payment of fees and the amount of such fees.

200. A duplicate of any certificate, manifest, bill or other Custom-house

Duplicates of documents may be granted on payment of fee.

document may, on payment of a fee not exceeding ten rupees, be furnished, at the discretion of the Customs-collector to any person applying for the same if the Customs-collector is satisfied that no fraud has been

committed or is intended by the applicant.

201. Except in the cases provided for by sections 36, 55, 63 and 94 the

Amendment of documents.

Customs-collector may in his discretion, upon payment of one rupee, authorize any document after it has been entered and recorded in the Customs-house,

to be amended.

LEG. REF.

¹ Inserted by Act XXVIII of 1933.

Sec. 197.—Sec 7 M. 42.

² Substituted by Act IV of 1914.

202. No person authorized to act as an agent for the transaction of any business relating to the entrance or clearance of any vessel or the import or export of goods or baggage shall so act in any Custom-house unless such authorization is approved by the Customs-collector.

Such officer may require any person so authorized to give a bond with sufficient security in any sum not exceeding five thousand rupees for his faithful behaviour as regards the Customs-house regulations and officers.

Such officer may, in case of misbehaviour of the person so authorized suspend or withdraw such approval, but an appeal against every such suspension or withdrawal shall lie to the Chief Customs-authority, whose decision thereon shall be final.

Every appeal under this section shall be made within one month of the suspension or withdrawal.

203. When any person applies to any officer of Customs for permission to transact any specified business with him on behalf of any other person, such officer may require the applicant to produce a written authority from the person on whose behalf such business is to be transacted, and in default of the production of such authority may refuse such permission.

The clerk, servant or agent of any person or mercantile firm may transact business generally at the Custom-house on behalf of such person or firm: Provided that the Customs-collector may refuse to recognize such clerk, servant or agent unless such person or a member of such firm identifies such clerk, servant or agent to the Customs-collector as empowered to transact such business and deposits with the Customs-collector an authority in writing duly signed, authorizing such clerk, servant or agent to transact such business on behalf of such person or firm.

204. All rules made under this Act shall be notified in the Official Gazette and shall thereupon have the force of law.

All such rules for the time being in force shall be collected, arranged and published at intervals not exceeding two years, and shall be sold to the public at a reasonable price.

205. ¹[Any notification published in the Official Gazette by the Chief Customs-authority under section 53, section 74, section 76, section 79, section 85, section 96, section 116, section 128, section 133 or section 147 shall forthwith be republished ²[with the consent of the Provincial Government] in the Official Gazette of each province to which it relates.]

206. If in any case relating to the removal of goods from a warehouse without payment of duty, the person offending be an officer of Customs not acting in execution of his duty, and be prosecuted to conviction by the owner of such goods, no duty shall be payable in respect of such goods. For any damage so occasioned by such officer, the ³[Chief Customs-officer, or the Customs-collector, with the sanction of the Chief Customs-officer, shall] make due compensation to such owner:

⁴[Provided that Compensation exceeding Rs. 250 shall be paid with the sanction of the Chief Customs-authority.]

207. Nothing in this Act shall affect any law for the time being in force

LEG. REF.

¹ This sec. 205 was newly inserted by Act IV of 1924, the original sec. 205 having been repealed by Act X of 1914.

² Inserted by A.O., 1937.

³ Substituted by Act IV of 1914.

⁴ Added by Act IV of 1914.

Saving of Calcutta Port Commissioners' and Bombay Port Trust Acts.

relating to the Commissioners for making improvements in the Port of Calcutta or the Trustees of the Port of Bombay ¹[or any like body hereafter created for any other port].

THE INDIAN SLAVERY ACT (V OF 1843).²

Year.	No.	Short Title.	Amendments.
1843	V	The Slavery Act, 1843.	Repealed in part, Act XVI of 1874.

[7th April, 1843.

An Act for declaring and amending the Law regarding the condition of Slavery within the Territories of the East India Company.

1. ³[* * * * *] No public officer shall, in execution of any decree or order of Court, or for the enforcement of any demand of rent or revenue, sell or cause to be sold any person, or the right to the compulsory labour or services of any person, on the ground that such person is in a state of slavery.

Prohibition of sale of persons or right to his labour on ground of slavery.

Bar to enforcement of rights arising out of alleged property in person as a slave.

2. ³[* * * * *] No rights arising out of an alleged property in the person and services of another as a slave shall be enforced by any Civil or Criminal Court or Magistrate within the territories of the East India Company.

3. ³[* * *] No person who may have acquired property by his own industry, or by the exercise of any art, calling or profession, or by inheritance, assignment, gift or bequest, shall be dispossessed of such property or prevented from taking possession thereof on the

Bar to dispossession of property on ground of owner's slavery.

LEG. REF.

¹ Substituted by Act IX of 1885.

² Short title, "The Indian Slavery Act, 1843". See the Indian Short Titles Act, 1897 (-XIV of 1897).

³ Repealed by Act (XVI of 1874).

SEC. 1.—"Slavery" does not necessarily connote an absolute and unlimited power over the life of another but falls short of it. 41 M. 334=19 Cr.L.J. 17=42 I.C. 977=33 M.L.J. 430 (P.C.) (7 M. 277; 2 A. 723, Cons.) See also 12 B.H.C. 156. Construction of Act and its scope and operation, see 3 Bom. 422=6 I.A. 137 (P.C.). Effect of the Act on rules of Mahomedan Law as to slaves. (*Ibid.*) Spiritual slavery of a pupil to a Guru is not legal. 10 Mad. 375.

SECS. 1 TO 3.—Assuming that by the Willa rule of the Mahomedan Law, the heirs of the master who emancipates a slave are entitled to the property of which the emancipated slave dies possessed to the exclusion of his natural heirs; the effect of sec. 3, Act V of 1843, which enacts that no person who may have acquired property by inheritance shall be dispossessed or prevented from taking possession thereof on the ground, that the person from whom the property may have

been derived was a slave, is to abrogate the rule of the Mahomedan Law, and to secure the succession of the heirs of the emancipated slave, as if he had never been a slave. 3 B. 422 (P.C.); 6 I.A. 137; 5 C.L.E. 11; 4 Sar. P.C.J. 37; 3 Suth. P.C.J. 633. The provision of the Act apply not only where the person whose property is claimed has been emancipated after the passing of the Act, but also where he has been emancipated before its passing. (*Ibid.*) The exclusion of the natural heirs of an emancipated slave in favour of the heirs of his emancipator, is a disability arising out of the status of slavery similar in its nature to the exclusion, under the Mahomedan law, of the natural heirs of an unemancipated slave by a master or his heirs and since the general scope and object of Act V of 1843 is to remove all such disabilities, the Civil Courts are bound, in construing it, to give it the widest remedial application which its language permits, and cannot, consequently, limit it to those cases only in which the person from whom property is inherited was a slave at the time of his death, when the words of the statute allow of its being applied to the property of any one who had at any time been a slave. (*Ibid.*)

ground that such person or that the person from whom the property may have been derived was a slave.

4. 1[* * *] Any act which would be a penal offence if done to a free man shall be equally an offence if done to any person on the pretext of his being in a condition of slavery.

THE STAGE-CARRIAGES ACT (XVI OF 1861).²

Year.	No.	Short title.	Amendments.
1861	XVI	The Stage-Carriages Act, 1861.	Repealed in part, Act XIV of 1873; Act X of 1914. Repealed in part and amended Act I of 1898; Act XVI of 1876.

[7th July, 1861.]

An Act for licensing and regulating Stage-Carriages.

WHEREAS it is expedient to license and to regulate stage-carriages in British India; it is enacted as follows:—

1. Every carriage drawn by one or more ³horses which shall ordinarily be used for the purpose of conveying passengers for hire to or from any place in British India, shall, without regard to the form or construction of such carriage, be deemed to be a stage-carriage within the meaning of this Act; ⁴[* * *]

2. No carriage shall be used as a stage-carriage unless licensed by a ⁵Magistrate or by the ⁶[*] Commissioner of Police of a Presidency-town.

LEG. REF.

¹ Repealed by Act XVI of 1874.

² Short title, "The Stage-Carriage Act, 1861". See the Indian Short Titles Act, 1897, (XIV of 1897).

Cf. "The Stage-Carriages Act, 1832" (2 and 3 Wm. IV, c. 120); "The London Hackney Carriages Act, 1833" (3 and 4 Wm. IV, c. 48); "The Railway Passenger Duty Act, 1842" (5 and 6 Vict., c. 79); "The Railway Passenger Duty Act, 1847" (10 and 11 Vict., c. 42); "The Excise Act, 1848" (11 and 12 Vict., c. 118), sec. 2.

Act XVI of 1861, as amended by the Stage-Carriages Act (1861) Amendment Act, 1898 (I of 1898), has been declared to apply to the whole of British India, but not so as to supersede or contravene provisions of local laws dealing with the same subject,—see *infra*, sec. 22. For local laws, see Bombay Act VII of 1920, Bom. Code, Vol. V; the Madras Hackney Carriage Act, 1911 (Mad. Act V of 1911), Madras Code, Vol. 2, and the Calcutta Hackney Carriage Act, 1919 (Ben. Act I of 1919). *Cf.* also the Hackney Carriage Act, 1879 (XIV of 1879), U. P. Code, Vol. I.

It has been declared in force in British Baluchistan under sec. 3 of the British Baluchistan Laws Regulation, 1913 (II of 1913), Bal. Code.

It has been declared, by notification under sec. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts, namely:—

The Districts of Hazaribagh, Lohardaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44) and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum—See Gazette of India, 1881, Pt. I, p. 504.

The Tarai of the Province of Agra—See Gazette of India, 1876, Pt. I, p. 505.

It has been declared, by notification under sec. 3 (a) of the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899), to be in force in the Santhal Parganas, see Calcutta Gazette, 1901, Pt. I, p. 301.

³ All expressions and provisions in the Act applied to horses, also apply to all other animals employed in drawing stage-carriages, see sec. 21, *infra*.

⁴ The proviso to sec. 1 was repealed by Amending Act (I of 1898). That proviso ran as follows:—

"Provided that this Act shall not apply to carriages not ordinarily used for journeys of a greater distance than twenty miles".

⁵ For definition of "Magistrate" see sec. 21, *infra*.

⁶ The word "Chief" was repealed by the Repealing and Amending Act (X of 1914).

3. The Magistrate or ¹[*] Commissioner of Police to whom the application Power to refuse license. for a licence of stage carriage is made may refuse to license the same if he shall be of opinion that such stage-carriage is unserviceable or is unsafe or unfit for public accommodation or use.

If a Magistrate or ¹[*] Commissioner of Police as aforesaid shall grant Particulars of licence. a licence, the licence shall set forth the number thereof, the name and residence of the proprietor of the stage carriage, the place at which his head office is held, the largest number of passengers and the greatest weight of luggage to be carried in or on such carriage, the number of horses by which such carriage is to be drawn, and the name of the place at which such carriage is licensed.

²[4. For every such licence there shall be paid by the proprietor of the Charge for and duration stage-carriage the sum of five rupees or such less sum of licence. as the Provincial Government may fix, and such licence shall be in force for one year from the date thereof.]

When a licenced stage carriage is transferred to a new proprietor within the year, the name of such new proprietor shall, on application to that effect, be substituted in the licence for the name of the former proprietor without any further payment for that year; and every person who appears by the licence to be the proprietor shall be deemed to be such proprietor for all the purposes of this Act.

5. On any stage-carriage being licensed the proprietor thereof shall cause Particulars to be painted the number of the licence and all the other particulars of the licence to be distinctly painted in the English language and character upon a conspicuous on conspicuous part of carriage. part of such stage-carriage.

6. The proprietor of any licensed stage-carriage who shall let such stage-carriage for hire without the particulars specified in section 3 being painted on such carriage in the manner Penalty for letting carriage without having particulars painted. directed in the last preceding section shall be liable to a fine not exceeding one hundred rupees.

7. Whoever lets for hire any stage-carriage without the same being licensed as provided by this Act, shall be liable, on a Penalty for letting for hire unlicensed carriage. first conviction, to a fine not exceeding one hundred rupees, and on any subsequent conviction, to a fine which may extend to five hundred rupees.

8. Any proprietor, or agent of a proprietor, or any driver of a licensed

LEG. REF.

The word "Chief" was repealed by the Repealing and Amending Act (X of 1914).

² Paragraph substituted by Amending Act (I of 1898).

SEC. 7.—The Act does not apply to a carriage plying only within a town and its suburbs, to which the Bombay Public Conveyances Act would apply if extended thereto. Rat. Un. Cr. C. 327=Cr. Rg. XVII of 1887. Reading the first para. of sec. 29, Cr. P. Code, with sec. 21 of this Act it will be seen that all Magistrates have jurisdiction to try offences against secs. 7 and 9 of the Act. Rat. Un. Cr. C. 364=Cr. Rg. VII of 1888. See also 7 P.R. 1879; 65 L.C. 439; 23 Cr.L.J. 87.

SECS. 7, 8 AND 22.—A consideration of secs. 7, 8 and 22 of the Act lead to this, namely, that tonga drivers legitimately plying for hire in Municipal limits may take their tongas outside those limits, and will not be liable to obtain licence under the Stage Carriages Act. They may possibly be prosecuted for ill-treatment and so forth of their horses in any place where they may be found to have done so, but it is doubtful whether they can be apprehended and convicted outside Municipal limits for offences under sec. 8 of the Act. The legal position is anomalous and sec. 22 of the Act seems to require revision. 1943 A.M.L.J. 7.

SECS. 8 AND 9.—See also notes under sec. 7. Running a horse which had not been passed by the police in breach of a rule made

Penalty for allowing carriage to be drawn by fewer animals or more passengers, etc., to be carried than provided by licence.

stage-carriage, who knowingly permits such carriage to be drawn by a less number of horses, or who knowingly permits a larger number of passengers, or a greater weight of luggage, to be carried by such stage-carriage than shall be provided by the licence, shall be liable on a first conviction to a fine not

exceeding one hundred rupees, and on any subsequent conviction, to a fine which may extend to five hundred rupees.

In every case where such stage-carriage shall be proved to have been drawn by a less number of horses, or to have carried a larger number of passengers or a greater weight of luggage, than shall be provided by the licence, the proprietor of such carriage shall be held to have knowingly permitted such offence, unless he shall prove that the offence was not committed with his connivance, and that he had taken every reasonable precaution and had made reasonable provision to prevent the commission of the offence.

9. Any person who shall cruelly beat, ill-treat, over-drive, abuse, torture or cause or procure to be cruelly beaten, ill-treated,

Penalty for ill-treating animals.

over-driven, abused or tortured, any horse employed in drawing or harnessed to any stage-carriage, or who shall harness to or drive in any stage-carriage any horse which from sickness, age, wounds or other cause is unfit to be driven in such stage-carriage, shall for every such offence be liable to a fine not exceeding one hundred rupees.

10. Any Magistrate or ¹[*] Commissioner of Police within the local limits

Revocation of licence.

of whose jurisdiction any stage carriage shall ply, or who has granted the licence of any stage-carriage may cancel the licence of such stage-carriage if it shall appear to him that such stage-carriage or any horse or any harness used with such carriage is unserviceable or unsafe or otherwise unfit for public accommodation or use.

11. In any station or place in which a Magistrate shall reside and be, any police-officer may, in any place within two miles of

Penalty for not conforming to provisions of section 5.

the office of such Magistrate, seize any stage-carriage with the horse harnessed thereto, if the full particulars of the licence of such stage-carriage be not distinctly painted on such stage-carriage in the manner provided in section 5 of this Act.

Such carriage with the horse harnessed thereto shall be taken without delay by such police-officer before such Magistrate, who shall forthwith proceed to hear and determine the complaint of such police-officer; and, if thereupon any fine is imposed by such Magistrate and such fine is paid, such stage-carriage and horse shall be immediately released; and if such fine be not paid, such stage-carriage and horse may be detained for twenty days as security for the payment thereof; and if the fine be not sooner paid, they may be sold and the proceeds applied (so far as they extend) to the payment of the said fine, and all costs and charges incurred on account of the detention and sale; and the surplus

LEG. REF.

¹ Word "Chief" repealed by the Repealing and Amending Act (X of 1914).

by the District Magistrate or permitting a stage-carriage to be drawn by coolies was not an offence under sec. 8, 1883 A.W.N. 228. A Magistrate of the second class has no jurisdiction to try an offence under secs. 8 and 9. The offence is triable only by a Magistrate of the District or a Magistrate of the first class. 7 P.R. 1879 (Cr.). See also the same case followed in 65 I.O. 439=23 Cr.L.J. 57. Whether or not a horse used in

a licensed stage-carriage has been overdriven should be decided from the facts of each case, and it was *ultra vires* of the Local Government to prescribe by a rule made for enforcing the provisions of the Act, as amended by Act XVI of 1876 that a person who drives a horse more than two stages of a certain distance within 24 hours will be considered to have overdriven the horse so as to render himself liable to the penalty prescribed by the Act. A.W.N. 1897, 27. See also 1943 A.M.L.J. 7.

Sec. 10.—See 1897 A.W.N. 27.

(if any), when claimed, shall be paid to the proprietor of such carriage and horse; and if such surplus be not claimed within a further period of two months from such sale, the same shall be forfeited to the State.

If the proceeds of such sale do not fully pay the fine and costs and charges aforesaid, the balance may be recovered as hereinafter provided.

12. If any driver of any stage-carriage, or any other person having the care thereof, shall, through intoxication, neglect or by wanton or furious driving or by any other misconduct, endanger the safety of any passenger or other person, or shall injure or endanger the property of the proprietor of such stage-carriage or of any other person, every such person so offending shall be liable to a fine not exceeding one hundred rupees.

Penalty for misconduct on part of drivers.

13. Whenever the driver of any stage-carriage or the owner of any horse employed in drawing any stage-carriage shall have committed any offence against this Act for the commission whereof any penalty is by this Act imposed, other than an offence specified in section 8, and such driver or owner shall not be known, or being known cannot be found, or if the penalty cannot be recovered from such driver or owner, the proprietor of such carriage shall be liable to every such penalty as if he had been the driver of such carriage or owner of such horse at the time when such offence was committed:

Penalty when recoverable from proprietor.

Provided that if any such proprietor shall make out, to the satisfaction of the Magistrate before whom any complaint or information shall be heard, by sufficient evidence, that the offence was committed by such driver or owner without the privity or knowledge of such proprietor, and that no profit, advantage, or benefit, either directly or indirectly, has accrued or can accrue to such proprietor therefrom, and that he has used his endeavour to find out such driver or owner, and has done all that was in his power to recover the amount of the penalty from him, the Magistrate may discharge the proprietor from such penalty and shall levy the same upon such driver or owner when found.

Proviso.

14. Whenever any charge is made before any Magistrate of any offence under this Act on which it is necessary to issue a summons to the proprietor of a stage-carriage, the Magistrate shall issue such summons directed to such proprietor or his nearest agent, and may transmit such summons by letter-post which shall be deemed to be good service thereof.

Issue of summons.

The letter shall be registered at the post-office, and the cost of the registration shall be borne by the Government in the first instance, but may be charged as costs in the case.

The summons shall allow a reasonable time, in reference to the distance to which the summons is sent, for the appearance of such proprietor or his agent as aforesaid.

15. All penalties incurred under this Act shall be adjudged by a Magistrate or ¹[*] Commissioner of Police as aforesaid, and all orders made under this Act by such Magistrate or ¹[*] Commissioner of Police shall be final.

Adjudication of penalties.

16. All penalties imposed under this Act, or any balance of any fine, costs or charges as mentioned in section 11 of this Act may in case of non-payment or non-recovery thereof be levied by distress and sale of the movable property of the offender by warrant under the hand of the Magistrate who imposed the same.

Recovery of penalties, etc.

LEG. REF.
¹The word "Chief" was repealed by the Repealing and Amending Act (X of 1914).
 Ca. C. M.-I-163

17. In case any such penalties shall not be forthwith paid, such Magistrate may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such Magistrate for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

18. If upon the return of such warrant it shall appear that no sufficient distress can be had whereon to levy such penalty, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such Magistrate by the confession of the offender or otherwise that he has not sufficient goods and chattels whereupon such penalty could be levied if warrant of distress were issued, such Magistrate may, by warrant under his hand, commit the offender, provided he is not a European British subject, to prison, there to be imprisoned, according to the discretion of such officer, for any term not exceeding two calendar months when the amount of penalty shall not exceed fifty rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount.

19. If the offender shall be a European British subject, the Magistrate shall record the facts and transmit such record to the District Court of the district wherein the offender is convicted, and the amount of penalty and the costs (if any) shall be levied in the manner provided for the execution of decrees of the Civil Court.

20. On complaint made before any Magistrate of any offence committed under this Act, it shall not be necessary to prove that the offence was committed within the local limits of such Magistrate or other officer.

¹[20-A. (1) The Provincial Government may, by notification in the Official Gazette, make ²rules to carry out the purposes and objects of this Act in the territories under its administration or any part of the said territories.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) prescribe forms for licences under this Act, the sums payable for the same and the conditions on which they may be granted, and the cases in which they may be revoked;

(b) provide for the inspection of stage-carriages, and of the animals employed in drawing them; and

(c) regulate the number and length of the stages for which animals may be driven in stage-carriages and the manner in which they shall be harnessed and yoked.

(3) In making any rule under this section, the Provincial Government may direct that a breach thereof shall be punishable with fine which may extend to one hundred rupees.]

21. The term "Magistrate" in this Act shall include all Magistrates and other persons exercising the powers of a ³Magistrate:

Interpretation-clause,
"Magistrate."

LEG. REF.

¹ Sec. 20-A was inserted by Amending Act (I of 1898).

² For rules under sec. 20-A, see different Local Rules and Orders.

³ As to officers exercising the powers of a

Magistrate, see sec. 3 (2) of the Code of Criminal Procedure, 1898 (Act V of 1898).

Sec. 20.—See Rat. 364.

Sec. 21.—See Rat. 364; 65 I.C. 439.

1[* * * * *

2[All expressions and provisions which in this Act are applied to horses shall also apply to all other animals employed in drawing any ³carriage ordinarily used for the purpose of conveying passengers for hire to or from any place in British India.]

4[* * * * *]
4[* * * * *]

5[22. This Act, as amended by subsequent Acts, extends to the whole of British India; but it shall not apply to carriages ordinarily plying for hire within the limits of any municipality or cantonment or other place in which any law for the regulation of carriages is for the time being in force.]

6[23. The Provincial Government may, by notification in the Official Gazette, exempt any carriages or class of carriages from all or any of the provisions of this Act.]

THE STAMP ACT (II OF 1899) (Extracts).

[27th January, 1899.]

* * * * *

CHAPTER VII.

CRIMINAL OFFENCES AND PROCEDURE.

Penalty for executing etc., instrument not duly stamped.

62. (1) Any person—

(a) drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange ⁶[payable otherwise than on demand] ⁷[* * *] or promissory note without the same being duly stamped;

LEG. REF.

¹ Definition of 'British India' omitted by A.O., 1937.

² This paragraph was substituted by Amending Act (XVI of 1876).

³ That is, "a stage-carriage". See sec. 1, *supra*.

⁴ The clauses relating to "number" and "gender" repealed by the Repealing and Amending Act (X of 1914).

⁵ Secs. 22 and 23 added by Amending Act (I of 1898). The original sec. 22 regarding the commencement of this Act as originally passed was repealed by the Repealing Act (XIV of 1870).

⁶ The words "payable otherwise than on demand" added by Act V of 1927.

⁷ The word "cheque" has been omitted by Act V of 1927.

SEC. 22.—See 1943 A.M.L.J. 7.

SEC. 62: CONSTRUCTION OF SECTION.—The Stamp Act is a fiscal enactment, and must be strictly construed; and before any person can be punished the procedure prescribed by the Act must be strictly followed. On the discovery of a not duly stamped instrument, the procedure laid down in sec. 37

(old Act) should be followed. For criminal prosecution there must be an intention to evade the stamp law. 8 C. 259; 10 C.L.J. 365. Dishonest intention being the gist of the offence under sec. 62 it is not open to a Magistrate to find that there was absence of dishonest intention and at the same time warn the accused not to do the act in future. 25 A.L.J. 401=1927 A. 238. No fraudulent intent need be proved for a conviction under sec. 62. But the section must be read with sec. 43, and no prosecution should be started when the duty and penalty have been paid, except in case of fraud. But though the duty and penalty have not been paid, if the document cannot be impounded, a prosecution under sec. 62 should be compounded for payment of duty *plus* a sum which may reasonably be imposed as penalty when there is no reason to believe a fraudulent mind. 13 L.L.T. 18. A penal Act must be read as favourably as possible to the subject. 7 A.L.J. 180. See 140 I.C. 192=9 O.W.N. 852. As to essentials of offence under this section and sec. 68, see 18 Cr.L.J. 725=40 I.C. 725=21 C.W.N. 758. Under the Stamp Act, the imposition of the maximum penalty is discretionary. The fact that the person

(b) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped; or

(c) voting or attempting to vote under any proxy not duly stamped; shall for every such offence be punishable with fine which may extend to five hundred rupees:

liable to pay the penalty is well off, is no reason for imposing the maximum penalty, if the case is not one of flagrant desert. 1945 N.L.J. 320. Where a penalty has been paid before a Civil Court for the validation of a document which should have been stamped but was not, deduction ought to be made of the amount so paid from out of the fine levied on the party in subsequent criminal prosecution under sec. 62 (1), Stamp Act, 1942 N.L.J. 514.

PROOF OF INTENTION TO EVADE PAYMENT OF STAMP DUTY.—See 54 I.C. 406=21 Cr.L.J. 54; 2 P.L.T. 623=64 I.C. 286. But see 24 A.L.J. 358=93 I.C. 694, where it has been held that the mere signing, otherwise as a witness of an instrument chargeable with duty without the same being duly stamped is an offence. No question of intention arises. 24 A.L.J. 358. See also 93 I.C. 694=1926 A. 389. Intention to avoid payment of stamp is not an essential ingredient of the offence described in sec. 60 of Act I of 1879. But such intention is the essential ingredient of the offence made punishable by sec. 63 of that Act. 12 M. 231; 1 Weir 903. Provided that the prosecution be duly instituted, the intention of the party prosecuted to evade the stamp duty or otherwise is immaterial for the purpose of securing his conviction. L.B.R. (1872-1892) 623. Sec. 62 (b) does not require any criminal intention or intention of defrauding Government and the ignorance of law on the part of the accused does not render him immune from conviction under sec. 62 (b) although it can be taken into account in passing sentence. 1934 A.L.J. 582=150 I.C. 672=35 Cr.L.J. 1132=1934 A. 201. Accused was convicted under sec. 62 (1) (b) for not paying proper stamp duty and was fined Rs. 40. The proper duty payable in respect of the document was a matter about which genuine doubts could be entertained, *held*, that the fine should be reduced to Rs. 10. 146 I.C. 559=10 O.W.N. 997=1933 Oudh 461. See also 13 L.L.T. 18.

JURISDICTION.—As to Stamp Acts of 1869 and 1879 recognise the Collector as primarily responsible for the institution of prosecutions for offences against them, he should not himself try, in his capacity as a Magistrate, a person charged with an offence under that Act. 2 A. 806. See also 2 Cr.L.J. 468.

COMPETENCY OF PROSECUTING MAGISTRATE TO TRY OFFENDERS—PROCEDURE.—A Magistrate, authorised by the Collector of a district to prosecute offenders against the stamp law, is not competent to try them for the same offence. 3 C. 622; 1884 A.W.N. 82.

PENALTY.—For the purpose of ascertaining whether any and what penalty should be imposed, a Magistrate is bound to consider the question whether a person, prosecuted under this section, had any intention to defraud the Government by evading payment of stamp duty. 2 C. 399 (F.B.). See also 2 Cr.L.J. 468. Where a person is convicted of the abetment of an offence under sec. 61 for not fixing a stamp to an acknowledgment signed by a debtor in his account books, the amount of fine inflicted should not be excessive but proportionate to the fraudulent intent of offender. 1885 A.W.N. 30.

ACCEPTOR OF UNSTAMPED RECEIPT—LIABILITY.—7 M. 71; 7 B. 82. The mere fact of the acceptance of an insufficiently stamped instrument cannot amount to an abetment of the offence under sec. 61. 1883 A.W.N. 145. [R. 20 A. 440.] See also 1884 A.W.N. 37. The mere receipt of an unstamped "khata" does not constitute an offence under sec. 61. Rat. Un. Cr.C. 882; Cr. R. 47 of 93. (7 M. 171, Foll.) As to granting of unstamped receipt without criminal intention, see 2 P.L.T. 623=64 I.C. 286. Voucher by one servant to another with respect to money belonging to the master is not receipt that requires stamp. 18 Cr.L.J. 968=42 I.C. 328; 4 O.L.J. 490. Not only persons who execute an instrument of partition but also those who sign it otherwise than as witnesses are liable to prosecution if they append their signatures to the instrument which is not duly stamped. Where certain arbitrators signed unstamped instrument of partition, *held*, that they were liable to prosecution under sec. 6 (b). 73 I.C. 336=24 Cr.L.J. 592=1924 Oudh 240. See also 46 A. 54.

INSTRUMENT NOT DULY STAMPED—LIABILITY OF CREDITOR.—A creditor has been making a regular practice of securing his loans by ruju cum chitti system, i.e., by making his debtor sign a balance in his account books and chittis attested on the same day. The creditor supplied the printed form of chittis to his debtors suffering himself to pay duty and penalty for them on prior occasions. *Held*, that the creditor was well aware that execution of the documents involved loss of revenue to Government and hence it could be presumed that it was the creditor and not the debtors who prescribed this system to evade the law by taking separate 'chittis' to supplement the 'rujus' of the debtors in his account books, though generally the obligation was on the debtor to supply stamp. 1934 Cr. C. 1298=1934 N. 261.

MEANING OF TERMS.—'Accepting' is a technical term and does not apply to the mere taking of a promissory note in one's favour from the debtor. 'Presenting' like

Provided that, when any penalty has been paid in respect of any instrument under section 35, section 40 or section 61, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

(2) If a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be punishable with fine which may extend to five hundred rupees.

"accepting" is a technical term and is so used in sec. 62. U.B.R. (1892-1896), Vol. I, p. 312. "Accepting" does not mean "receiving" but "executing as acceptor." U.B.R. (1892-1896), Vol. I, p. 311. The term "accepting" in sec. 61 does not mean "receiving" but "executing as an acceptor." The mere receiver of a promote not duly stamped does not render himself liable to the penalties under the section. 20 A. 440=24 W.R. (Cr.) 1. The mere receiving of a pro-note not duly stamped and suing upon it is not "accepting" within the meaning of sec. 61, and is, therefore, not an offence under the section. 12 P.R. 1887 (Cr.); 7 M. 71=1 Weir 902; 18 P.R. 1895 (Cr.). See also cases under "Abetment of offence". The words "signing otherwise than as a witness" in sec. 61 includes the writing of a person's name by himself, or by his authority, with the intention of authenticating a document as being that of the person whose name is so written. 27 C. 324=4 C.W.N. 440. The term "person" used in secs. 61 and 64 includes the members of a trading partnership. 1903 A.W.N. 173. The execution of a document, which on its face requires to be, and is not stamped, cannot be said to be an "act, contrivance, or device not specially provided for" within the meaning of sec. 67, because where the document is what on its face purports to be the act of the executant, if punishable at all, is provided for under sec. 61 of the Act and cannot, therefore, fall under sec. 67. 23 M. 155=1 Weir 907. Unstamped receipt issued by an unauthorised gumashta. 8 C.W.N. 378. Where a clerk signs a firm's name under the authority of the firm, it makes little difference that he wrote the letters to the dictation of the manager and he may be properly convicted under sec. 61 of the Act. 27 C. 324=4 C.W.N. 440. No prosecution lies under sec. 61 against the holder of an insufficiently stamped promote. But the Collector, on the bond being impounded and sent to him can levy the penalty under sec. 37. 40 P.R. 1886 (Cr.).

ACKNOWLEDGMENT OF RECEIPT OF DEBT DUE BY LETTER—FAILURE TO PROPERLY STAMP IT.—Where a person acknowledges by letter the receipt of money in satisfaction of a debt for more than Rs. 20, the letter is a receipt and is as such chargeable with duty and the person signing it otherwise than as a witness without its being properly stamped is liable to be convicted under sec. 61 of the Act. 8 M. 11=1 Weir 902 (F.B.); 1 Weir 903=11 M. 329; 1885 A.W.N. 266.

TERM "RECEIPT" EXPLAINED.—1 Weir 901; 1903 A.W.N. 174; *Ibid.*, 178.

OTHER ILLUSTRATIVE CASES.—An agreement to lease by which no rent is reserved and no premium paid or money advanced is not included in the Schedule to the Stamp Act and so does not require a stamp. The executant of such a document cannot be convicted under sec. 62 (b). 1 Pat.L.J. 366=20 C.W.N. 923. There is nothing in the law which renders it obligatory to execute a charterparty in duplicate; but when the parties think proper to execute it in duplicate, they commit an offence punishable under sec. 61 if they fail to stamp the counterpart as prescribed in the schedule. (1872-92) L.B.R. 623. The mere fact that they have intended it to be used merely as a private copy cannot alter its nature or make it any less a duplicate or counterpart if it is duly signed. (1872-92) L.B.R. 623. Award in partition—Liability to stamp—Signature of arbitrator—Offence. See 46 A. 54. Sale of Court-fee stamps without licence, if offensive. See 4 A. 216 (F.B.). Compromised petition to Court—Necessity for Court-fee stamp and not general stamp. 19 Cr.L.J. 48=43 I.C. 1008=40 A. 19.

ABETMENT OF OFFENCE.—The conviction of a person, who merely received a promissory note executed on plain paper, in his favour, of abetment of the offence under sec. 61 is bad in law. 1 N.L.R. 163. The mere receipt of an unstamped instrument does not constitute the offence of abetment of the execution of the instrument. U.B.R. 1904 and Cr. Stamps, 1 [7 B. 82; 20 A. 440 and U.B.R. (1892-1896) 313, Ref.] 8 A. 18=1885 A.W.N. 317. It is not abetment of the execution of an unstamped instrument to receive it, any more than acceptance of stolen property is abetment of theft. 7 B. 82. The act of the person receiving the unstamped document may amount to abetment of an offence under sec. 61, and would then be an act provided for by any other law for the time being in force, namely the Penal Code, and is, therefore, beyond the scope of sec. 67 of the Act. 23 M. 155=1 Weir 907.

SANCTION OF COLLECTOR.—The Act does not require intention to be proved as a part of an offence under it, but in order to prevent indiscriminate prosecutions it confines the power of instituting the prosecutions to the Collector, and instructs him to exercise it only when it appears to him that the offence had been committed with an intention to evade payment of the proper duty. 7 M. 537=1 Weir 899. See also 24 W.R. (Cr.)

63. Any person required by section 12 to cancel an adhesive stamp, and failing to cancel such stamp in manner prescribed by that section, shall be punishable with fine which may extend to one hundred rupees.

Penalty for failure to cancel adhesive stamp.

Penalty for omission to comply with provisions of section 27.

64. Any person who, with intent to defraud the Government,—

(a) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth; or

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances; or

(c) does any other act calculated to deprive the Government of any duty or penalty under this Act; shall be punishable with fine which may extend to five thousand rupees.

Penalty for refusal to give receipt, and for devices to evade duty on receipts.

65. Any person who,—

1; 12 M. 231=1 Weir 903. Again it is not necessary in proceedings under the Act that the document should be impounded under sec. 33. U.B.R. (1892-1896), Vol. I, p. 313.

SECS. 62 (b) AND 64 (a).—Where a complaint is brought under sec. 64 (a) before accused can be convicted under sec. 62 (b) the Magistrate must direct the attention of the accused to the fact that though the complaint was brought under sec. 64 (a) they also stood in jeopardy under sec. 62 (b). 146 I.C. 1055=1933 Lah. 959. The offences under sec. 62 (b) and sec. 64 (a) are not respectively minor and major offences and it cannot be presumed that a sanction to prosecution under sec. 64 (a) is a sanction by implication to a prosecution under sec. 62 (b). The Collector is required by sec. 43, when instituting a prosecution under sec. 62 (b) to consider whether there has been fraud. An express sanction would, no doubt, be evidence that he had considered the question. 146 I.C. 1055=1933 Lah. 959.

SECS. 62 AND 65: PASSING UNSTAMPED RECEIPT—FAILURE TO GIVE PROPER RECEIPT ON DEMAND—NATURE OF OFFENCE.—The offence under sec. 65 consists in not giving a properly stamped receipt when demanded. The offence under sec. 62 (1) consists in passing a receipt unstamped whether one is demanded by the payer or not. Hence where a person gives an unstamped receipt and refuses to give a stamped one even after demanding for same he commits two offences under sec. 62 and 65 in respect of the same transaction. 146 I.C. 807=35 Bom.L.R. 981=1933 Bom. 462.

SEC. 64: SCOPE OF THE SECTION.—Essentials of conviction under the section. 108 I.C. 427=29 Cr.L.J. 397; 1 Weir 905. Person in whose favour the document is executed is not hit by sec. 64 (a). 1929 Cr.C. 359=1929 C. 723. Each of the entries of receipts over Rs. 20 in a *sarkhar* left in the hands of debtor must be stamped as a receipt. 35 A. 290=11 A.L.J. 309. On this section, see also 12 M. 231=1 Weir 903; 1 Weir 901; 19 Cr.L.J. 515=45 I.C. 275 (C) (proof of

fraudulent intent is necessary). See also 108 I.C. 427=29 Cr.L.J. 397; 13 L.L.T. 18; 44 C. 321=24 C.L.J. 441 ("Any other Act", meaning of).

PROOF OF INTENT.—For a conviction under sec. 64 (a) proof of intent to defraud is necessary. 146 I.C. 1055=1933 Lah. 959.

SEC. 64 (b): APPLICABILITY—AUTHOR OF DEED GETTING IT WRITTEN THROUGH ANOTHER.—LIABILITY.—CL. (b) of sec. 64 does not mean that only the person whose hand actually writes the offending words with the guilty intent comes within the mischief of the clause; the words of the clause are wide enough to reach also and to punish the person in truth responsible for the deed, though he writes the deed through the hand of another. The clause can apply as well as to the author of the deed as to the actual scribe. I.L.R. (1944) Kar. 246=A.I.R. 1944 Sind 222.

SEC. 64 (c): CREDITOR OBTAINING INSTRUMENT NOT DULY STAMPED.—Merely receiving an unstamped document may not amount to an offence, but when a creditor himself intentionally procures the signing of an improper entry in his own account book, he commits a substantive offence under sec. 62, and is punishable under sec. 64 (c) which is not *ejusdem generis* with the other sub-sections. 1934 Cr. C. 1298=1934 Nag. 261.

SEC. 65: CONDITIONS TO BEING AN INSTRUMENT UNDER SEC. 64.—See 1884 A.W.N. 164. See also U.B.R. (1892-1896), Vol. I, p. 303 (execution of instrument of gift, or settlement); 10 A.L.J. 309=35 A. 390; 32 A. 171; 44 C. 321. The failure of the creditor to affix such stamp is not an offence under sec. 64. 1884 A.W.N. 164. Where a person neither refuses nor neglects to give a receipt, nor with intent to defraud the revenue gives a receipt for less than Rs. 20 when he has received more, nor with like intent separates or divides the money or property paid or delivered, he cannot be convicted under sec. 64 of the (old) Act. 8 M. 11=1 Weir. 902 (F.B.). See also 1903 A.W.N. 173. The term "receipt" explained. 1 Weir 901; 1903

(a) being required under section 30 to give a receipt, refuses or neglects to give the same; or

(b) with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered; shall be punishable with fine which may extend to one hundred rupees.

Penalty for not making out policy, or making one not duly stamped.

66. Any person who—

(a) receives, or takes credit for, any premium or consideration for any contract of insurance and does not, within one month after receiving, or taking credit for, such premium or consideration, make out and execute a duly stamped policy of such insurance; or

(b) makes, executes or delivers out any policy which is not duly stamped, or pays or allows in account, or agrees to pay or allow in account, any money upon, or in respect of, any such policy; shall be punishable with fine which may extend to two hundred rupees.

67. Any person drawing or executing a bill of exchange ¹[payable otherwise than on demand] or a policy of marine insurance

Penalty for not drawing full number of bills or marine policies purporting to be in sets.

purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set

to consist, shall be punishable with fine which may extend to one thousand rupees.

Penalty for post-dating bills, and for other devices to defraud the revenue.

68. Any person who—

(a) with intent to defraud the Government of duty, draws, makes or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made; or

(b) knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays or receives payment of, such bill or note, or in any manner negotiates the same; or

(c) with the like intent, practises or is concerned in any act, contrivance or device not specially provided for by this Act or any other law for the time being in force;

shall be punishable with fine which may extend to one thousand rupees.

Penalty for breach of rule relating to sale of stamps and for unauthorised sale.

69. (a) Any person appointed to sell stamps who disobeys any rule made under section 74; and

LEG. REF.

† Inserted by Act V of 1927.

Private persons cannot start prosecutions under this section. 104 I.C. 108=28 Cr.L.J. 780=1927 N. 202. Sanction of Collector is indispensable; subsequent sanction cannot validate previously instituted proceedings. (*Ibid.*) Such a defect is not cured by sec. 537 of the Code of Criminal Procedure. (*Ibid.*) Where the liability under a promissory note was extinguished by the execution by the debtor of a registered lease of his immovable property in favour of the creditor the creditor is not bound under sec. 30 to pass any receipt to the debtor for satisfaction of the debts due on the promissory note and his conviction under sec. 65 (a) is illegal. 1932 N. 172.

REFUSING TO GIVE RECEIPT.—See U.B.R.

(1897-1901), Vol. I, p. 378. See also 1 Weir 906; 34 A. 192 (refusal to give a second receipt); 9 A.L.J. 97; 13 I.C. 778=13 Cr.L.J. 122 (receipt of money by money order—Necessity for fresh receipt); 27 C. 324 (as to proof of demand of receipt); 23 B. 54 (memo. of receipt of money by third person requires no stamp); 21 P.R. 1915 (Cr.); 16 Cr.L.J. 787=31 I.C. 643=38 P.W.R. 1915 (Cr.) (Collector's sanction is necessary). See also 9 B. 27.

SECS. 67 AND 68: SCOPE AND APPLICATION OF SECTIONS—ILLUSTRATIVE CASES.—9 M. 138 (F.B.). As to essentials of offence under secs. 68, see 40 I.C. 725=21 C.W.N. 758; 1 Weir 907. Intention is essential to constitute offence under the section. 16 C. 432; 23 M. 115; 21 C.W.N. 758.

SEC. 69: SELLING STAMPS WITHOUT LICENCE.—Cr. Reg. 3 of 1887. The sale of court-

(b) any person not so appointed who sells or offers for sale any stamp (other than a one-anna ¹[or half an anna] adhesive stamp);

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

70. (1) No prosecution in respect of any offence punishable under this Act or any Act hereby repealed shall be instituted without the sanction of the Collector or such other officer as ²[the collecting Government] generally, or the Collector specially, authorises in that behalf.

(2) The Chief Controlling Revenue authority, or any officer generally or specially authorised by it in this behalf, may stay any such prosecution or compound any such offence.

(3) The amount of any such composition shall be recoverable in the manner provided by section 48.

71. No Magistrate other than a Presidency Magistrate or a Magistrate whose powers are not less than those of a Magistrate of the second class, shall try any offence under this Act.

72. Every such offence committed in respect of any instrument may be tried in any district or presidency-town in which such offence might be tried under the Code of Criminal Procedure for the time being in force.

THE STANDARDS OF WEIGHT ACT (IX OF 1939).

[N.B.—See also Weights and Measures of Capacity Act (XXXI of 1871), *infra*.]

An Act to establish standards of weight throughout British India.

WHEREAS it is expedient to establish standards of weight throughout British India;

It is hereby enacted as follows:—

Short title, extent and commencement. 1. (1) This Act may be called THE STANDARDS OF WEIGHT ACT, 1939.

(2) It extends to the whole of British India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. (1) The unit for weight shall be the standard grain, that is to say, that weight which when multiplied by 1799·84585 is the weight *in vacuo* of the iridioplatinum cylinder in the custody of the Mint Master, Bombay, certified by the Standards Department of the British Board of Trade as having a weight of 1799·84585 grains *in vacuo*.

LEG. REF.

¹ Inserted by Act V of 1906.

² Substituted for 'Local Government' by A.O., 1937:

fee stamps without licence was no offence under Act XVIII of 1869, but was specially made so under sec. 68, Act I of 1879. 4 A. 216 (F.B.). See also 24 M. 319 (thief selling stamps stolen by him). Admission of a person, who is not a licensed vendor that he, at the request of licensed vendor, made endorsement on and entries in sale register in respect of stamps sold by the latter is not sufficient evidence to hold that he abetted the offence of a breach of R. 11, framed under sec. 74, within the meaning of sec. 107,

Penal Code. 30 Cr.L.J. 881=118 I.C. 206=1929 S. 118.

SEC. 70: SANCTION OF COLLECTOR.—1883 A. W.N. 98. Private persons cannot start the prosecution. 9 A. I. Cr. R. 2.

SANCTION—PROSECUTION UNDER SECS. 30 AND 65.—For a prosecution for an offence under secs. 30 and 65, the sanction of the Collector is indispensable and subsequent according of sanction cannot validate institution of such proceedings without sanction nor is the defect curable by sec. 537, Cr. P. Code. (9 Bom. 27; 9 Bom. 288; 21 P.B. 1915 (Cr.); 37 Cal. 467 R.L. on.) 104 I.C. 158=10 N.L.J. 21=28 Cr.L.J. 780=1927 Nag. 202.

(2) The standard grain shall be the only unit from which all other standard weights shall be ascertained.

Standard weights.

3. (1) There shall be the following standard weights, namely:—

- (a) the standard tola, being a weight of 180 standard grain;
- (b) the standard seer, being a weight of 80 standard tolas or 14,400 standard grains;
- (c) the standard maund, being a weight of 40 standard seers;
- (d) the standard pound, being a weight of 7,000 standard grains;
- (e) the standard ounce, being one-sixteenth part of the weight of a standard pound;
- (f) the standard hundredweight, being a weight of 112 standard pounds;
- (g) the standard ton, being a weight of 2,240 standard pounds.

(2) No weight other than the weights set forth in sub-section (1) and integral multiples or sub-multiples of any such weight shall be used as a standard weight.

4. (1) The Central Government shall cause to be prepared one set of such

Sets of standard weights. of the standard weights specified in sub-section (1) of section 3 or multiples or sub-multiples thereof as the Central Government may consider expedient, and shall cause each weight of such set to be authenticated as having been ascertained from the standard grain, and shall deposit the set in such custody as the Central Government may think fit.

(2) The Central Government shall cause similar sets of weights, similarly authenticated, to be prepared, and shall supply one set to each Provincial Government.

(3) The Central Government shall cause similar sets of weights, similarly authenticated, to be prepared and shall supply one set to the Government of any Indian State or foreign settlement situated in India which applies for it and pays the price fixed by the Central Government.

5. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying into effect the provisions of this Act.

Rules.

(2) Without prejudice to the generality of the foregoing power, rules made under this section may regulate—

(a) the preparation of the sets of standard weights referred to in section 4;

(b) the custody of the set of such weights which is to be maintained by the Central Government and the periodical verification and adjustment thereof;

(c) the periodical verification and adjustment of the sets of standard weights supplied to Provincial and other Governments.

6. The Indian Weights and Measures of Capacity Act, 1871, in so far as it relates to the establishment of standards of weight, is hereby repealed.

Repeal.

THE STATE PRISONERS ACT (XXXIV OF 1850).¹

Year.	No.	Short Title.	Amendment.
1850	XXXIV.	The State Prisoners Act, 1850.	Repealed in part, Act XII of 1891; Supplemented, III of 1858.

LEG. REF.

¹ Short title, "The State Prisoners Act, (XIV of 1897). 1850." See the Indian Short Titles Act, 1897.

[23rd August, 1850.]

An Act for the better Custody of State Prisoners.

[Preamble.] Omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

- ¹[1. (1) The warrant of commitment of any State prisoner, under the Bengal State Prisoners Regulation, 1818, may, if it is issued by virtue of the powers conferred by that Regulation on the Central Government, be directed to the commandant of any fortress, or the officer in charge of any jail or place, anywhere in any Governor's Province or Chief Commissioner's Province and may, if it is issued by virtue of the powers conferred by that Regulation on Provincial Governments, be directed to the commandant of any fortress, or the officer in charge of any jail or place, anywhere within the Province in question; but any such warrant issued under that Regulation, whatever the powers by virtue of which it is issued, shall be sufficient authority for the arrest of the State prisoner anywhere in any Governor's Province or Chief Commissioner's Province and for his detention until he can be handed over to the commandant or officer to whom the warrant is directed, or dealt with in accordance with sub-section (1) of section five of the State Prisoners Act, 1858:

Persons to whom warrants of commitment may be addressed and effect of warrants of commitment.

Provided that a State prisoner shall not be arrested under a warrant issued by virtue of the powers conferred by the said Regulation on Provincial Governments, except with the consent of the Government of the Province in which he is arrested.

- (3). This section applies throughout British India (including Berar).]

2. [Regulation III of 1818 extended]. Rep. by the A.O.

3. [Confinement of State prisoners legalized.] Rep. by the Amending Act, 1891 (XII of 1891).

LEG. REF.

¹ Substituted by A.O., 1937.

REGULATION III of 1818 (Bom.) was applicable only to natives and those subjects to the jurisdiction of the Provincial Courts. It was passed under 37 Geo. III C. 142, sec. 28 to 13 Geo. III, C. 63, sec. 36. It was passed by a legislative authority full power in that behalf. Considering the circumstances under which it was enacted, Act III of 1858, which extended the effect of that Regulation to Calcutta was not *ultra vires*. 6 B.L.R. 392. The regulation provides that the Governor-General may place an individual under restraint as a state prisoner where the reasons stated in the preamble seem to him to require it. 14 C.W.N. 713 (730); 6 I. C. 81. The reasons of State there set out embrace amongst others the security of the British Dominions from internal commotion. (*Ibid.*) And this may be done even though there is ground for judicial proceedings when such proceedings are not adapted to the nature of the case or may for other reasons be not advisable or improper. (*Ibid.*) A Mahomedan subject of the Crown was arrested in Calcutta, taken into the mofussil, and there detained in jail, under a warrant of the Governor-General in Council in the form prescribed by Reg. III of 1818. *Held*, that

such arrest and detainer were not acts of state, but matters organizable by a mofussil Court. 6 Beng.L.R. 382. Assuming the power of the Judge of the High Court to issue a writ in *habeas corpus* and assuming the right of appeal against an order refusing to such writ, *held*, that as it appeared, that the prisoner was in custody under a warrant in the form prescribed by Reg. III of 1818 the detention was legal. The detention to be legal, need only be covered by an actually existing warrant of the Governor-General in Council in the form prescribed, without regard to the lawfulness of the arrest. 6 Beng.L.R. 459. The Governor-General in issuing a warrant of commitment under Reg. III of 1818 does not in any way act judicially or as a Court of justice, nor is he to be considered as having adjudicated that the person placed under personal restraint had been guilty of some specific offence. The proceeding is not in the nature of the conviction of the person placed under restraint; therefore the person so placed under restraint cannot in any future proceeding taken against him, plead that he has been already tried, convicted, and punished. 9 Beng.L.R. 36. For power to remove a State prisoner to any other place of confinement in British India, see Act III of 1858, sec. 5. On this section, see also 18 Bom. at pp. 649-654.

THE STATE-PRISONERS ACT (III OF 1858).¹

Year.	No.	Short title.	Amendment.
1858	III	The State Prisoners Act, 1858.	Repealed in Part, XIV of 1870; XII of 1891.

[23rd January, 1858.

An Act to amend the Law relating to the arrest and detention of State Prisoners.

[Preamble.] Omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

1. *Repeal of part of section 1, clause first of Bombay Regulation XXV, of 1827.] Rep. by the Repealing Act, 1870 (XIV of 1870).*

2. [Regulations as to arrest and confinement of State Prisoners in force within Presidency-towns.] Rep. by A.O.

²[3. The provisions of section one of the State Prisoners Act, 1850 (which

Persons to whom warrants of commitments may be addressed and effect of warrant of commitment.

relate to the persons to whom warrants of commitment under the Bengal State Prisoners Regulation, 1818, may be addressed, and the effect of such warrants) shall apply in relation to warrants of commitment under Regulation II, 1819, of the Madras

Code, and Regulation XXV of 1827, of the Bombay Code, as they apply in relation to warrants of commitment issued under the Bengal State Prisoners Regulation, 1818, by virtue of the powers conferred thereby on Provincial Governments.

4. [Arrests, etc., made before the passing of this Act legalized.] Rep. by the Amending Act, 1891 (XII of 1891).

²[5. (1) A State prisoner who is or is to be confined in any Province under

Removal of State prisoners from one Province to another Province.

the provisions of any of the said Regulations for reasons connected with the maintenance of public order therein may, by arrangement between the Provincial Governments concerned, be transferred to

or, as the case may be, retained in another Province and confined in that other Province in accordance with that one of the said Regulations which is in force in that other Province in all respects as if reasons connected with the maintenance of public order in that other Province required his confinement therein.

(2) Nothing in this section shall be construed as limiting the power of the Central Government to transfer State prisoners from one place of confinement in a Governor's Province or a Chief Commissioner's Province to another place of confinement in that or any other Province, or the power of a Provincial Government to transfer State prisoners from one place of confinement in the Province to another place of confinement in the Province.]

Extent.

²[6. This Act extends to the whole of British India (including Berar).]

LEG. REF.

¹Short title "The State Prisoners Act, 1858." See the Indian Short Titles Act, 1897

(XIV of 1897).

²Secs. 3 and 5 substituted by A.O., 1937.

²Sec. 6 inserted by A.O., 1937.

THE BENGAL STATE-PRISONERS REGULATION (III OF 1818),¹

Year.	No.	Short title.	Where in force.	Effect of Subsequent Legislation.
1818	III	The Bengal State Prisoners Regulation, 1818.	Punjab and North-West Frontier Province.	Repealed in part XVI of 1874. " " Act I of 1903. Amended Act XXXIV of 1850. " Act XII of 1891.

[7th April, 1818.]

A Regulation for the confinement of State-prisoners.

1. WHEREAS reasons of State, embracing the due maintenance of the alliances formed by the British Government with foreign powers, the preservation of tranquillity in territories of Native Princes entitled to its protection and the security of the British dominions from foreign hostility and from internal commotion, occasionally render it necessary to place under a personal restraint individuals against whom there may not be sufficient ground to institute any judicial proceeding, or when such proceeding may not be adopted to the nature of the case, or may for other reasons be unadvisable or improper; and whereas it is fit that, in every case of the nature herein referred to, the determination to be taken should proceed immediately from the authority of the² [Government]; and whereas the ends of justice require that, when it may be determined that any person shall be placed under personal restraint, otherwise than in pursuance of some judicial proceeding, the grounds of such determination should from time to time come under revision, and the person affected thereby should at all times be allowed freely to bring to the notice of the² [Government] all circumstances relating either to the supposed grounds of such determination, or to the manner in which it may be executed; and whereas the ends of justice also require that due attention be paid to the health of every State-prisoner confined under this Regulation, and that suitable provision be made for his support according to his rank in life, and to his own wants and those of his family; and whereas the reasons above declared sometimes render it necessary that the estates and lands of zamindars, taluqdars and others³ []

should be attached and placed under the temporary management of the Revenue-authorities without having recourse to any judicial proceeding; and whereas it is desirable to make such legal provisions as may secure from injury the just rights and interests of individuals whose estates may be so attached under the direct authority of Government; [it is hereby enacted as follows:—]

2. *First.*—When the reasons stated in the preamble of this Regulation

LEG. REF.

¹ Short title, "the Bengal State Prisoners Regulation, 1818", see the Amending Act (V of 1897).

The whole of Regulation III of 1818 was declared to be in force in the Punjab by the Punjab Laws Act (IV of 1872), sec. 3 and Sch. I, *infra*; as to its application to the North-West Frontier Province, see sec. 4 of the North-West Frontier Province Law and Justice Regulation (VII of 1901), *infra*.

² Substituted for 'Governor-General in Council' by A.O., 1937.

³ Omitted by *ibid.*

⁴ Substituted by A.O., 1937.

SEC. 2: NATURE OF PROCEEDINGS UNDER THE REGULATION.—The Governor-General in Council in issuing a warrant of commitment under Regulation III of 1818, does not in any way act judicially or as a Court of Justice, nor is he to be considered as having adjudicated that the person placed under personal restraint, had been guilty of some specific offence. The proceeding is not in the nature of the conviction of the person placed under restraint: therefore, the person so placed under restraint, cannot, in any future proceeding taken against him, plead that he has

Proceeding for placing persons under restraint as State prisoners.

¹[may seem to the Government] to require that an individual should be placed under the personal restraint, without any immediate view to ulterior proceedings of a judicial nature, ²[a warrant of commitment shall be issued by the Government] to the officer in whose custody such person is to be placed:

³*Second.*—The warrant of commitment shall be in that one of the forms set out in the Appendix to this Regulation which is appropriate to the case.]

⁴[*Third.*—The warrant of commitment shall, in relation to a person to be confined for reasons connected with defence, external affairs or the discharge of the functions of the Crown in its relations with Indian States, be sufficient authority for his detention in any fortress, jail or other place in any Governor's Province or Chief Commissioner's Province, and in relation to any person to be confined for reasons connected with the maintenance of public order in a Province shall be sufficient authority for his detention in any fortress, jail or other place in that Province.]

3. Every officer in whose custody any State prisoner may be placed shall, on the first of January, and first of July of each year, submit a report to the ⁵[Government] ⁶[* * * * *] on the conduct, the health and the comfort of such state prisoner, in order that the ⁷[Government] may determine whether the order for his detention shall continue in force or shall be modified.

4. *First.*—When any State prisoner is in the custody of a Zila ⁸[* * *], Magistrate, the Judges ⁹[* * *] are to visit such state-prisoner on the occasion of the periodical sessions, and they are to issue any orders concerning the treatment of the State prisoner which may appear to them advisable, provided they be not inconsistent with the orders of the ¹⁰[Government] issued on that head.

Second.—When any State prisoner is placed in the custody of any public officer not being a Zila ¹¹[* * *] Magistrate, the ¹²[Government] will instruct either the Zila ¹³[* * *] Magistrate, or the Judge ¹⁴[* * *] or any other public officer, not being the person in whose custody the prisoner may be placed, to visit such prisoner at stated periods, and to submit a report to Government regarding the health and treatment of such prisoner.

5. The officer in whose custody any State prisoner may be placed is to forward, with such observations as may appear necessary, every representation which such state prisoner may from time to time be desirous of submitting to the ¹⁵[Government].

LEG. REF.

¹Substituted for the words 'may seem to the Governor-General in Council by A.O., 1937.

²Substituted for the words 'a warrant of commitment under the authority of the Governor-General in Council, and under the hand of the Chief Secretary, or of one of the Secretaries to Government, shall be issued' by *ibid.*

³Substituted for the original second and third paragraphs by *ibid.*

⁴Substituted for the words 'Governor-General in Council' by *ibid.*

⁵The words 'through the Secretary to Government in the Political Department omitted by *ibid.*

⁶The words "or City" in sec. 4 were repealed by the Repealing and Amending Act (I of 1903).

⁷The words "of Circuit" were repealed by the Repealing Act (XVI of 1874).

been already tried, convicted and punished. 9 Beng.L.E. 36. See also 14 C.W.N. 713 (730)=6 I.C. 81. On this section, see also 18 B. 636 at pp. 649-654.

6. Every officer in whose custody any State prisoner may be placed shall, as soon after taking such prisoner into his custody as may be practicable, report to the ¹[Government] whether the degree of confinement to which he may be subjected appears liable to injure his health, and whether the allowance fixed for his support be adequate to the supply of his own wants and those of his family, according to their rank in life.

7. Every officer in whose custody any State prisoner may be placed shall take care that the allowance fix for the support of such State prisoner is duly appropriated to that object.

²[7-A. (1) Where a person is, or is to be, confined in a Governor's Province under this Regulation for reasons connected with defence, external affairs or the discharge of the functions of the Crown in its relations with Indian States, the warrant of commitment, and any orders as to his release or the place of his detention shall be issued by the Central Government, and the amount of the allowance to be fixed for his support shall be fixed by the Central Government and shall be paid by the Central Government to, and applied by, the Provincial Government; and all reports and representations to be made under the foregoing provisions of this Regulation shall be submitted and forwarded both to the Central Government and the Provincial Government.

(2) Subject as aforesaid, all things to be done by or to the Government in relation to any persons confined or to be confined under this Regulation shall be done by or to the Provincial Government.

(3) Reference in the preceding sections of this Regulation to the Government shall be construed in accordance with the foregoing provisions of this section.

(4) No Government shall, in relation to any person confined or to be confined for reasons of State connected with the discharge of the functions of the Crown in its relations with Indian States, act otherwise than with the concurrence of the Crown Representative.]

8. [Applicability of sections 3-7 to persons now confined as State prisoners.] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

LEG. REF.

¹ Substituted for 'Governor-General in Council' by A.O., 1937.

² Sec. 7-A inserted by A.O., 1937.

POWER OF INDIAN LEGISLATURE.—Regulation III of 1818 was applicable only to natives and those subject to the jurisdiction of the Provincial Courts. It was passed under 37 Geo. III, c. 142, sec. 28, not 13 Geo. III, c. 63, sec. 36. It was passed by a legislative authority having full power in that behalf. Considering the circumstances under which it was enacted, Act III of 1858, which extended the effect of that Regulation to Calcutta, was not *ultra vires*. 6 Beng.L.R. 392; 14 C.W.N. 713 (730).

JURISDICTION OF HIGH COURT.—A Mahomedan subject to the Crown was arrested in Calcutta, taken into the mofussil, and there detained in jail, under a warrant of the Governor-General in Council in the form prescribed by Regulation III of 1818. *Held* that such arrest and detainer were not acts of State, but matters cognizable by a Munj-

icipal Court. 6 Beng.L.R. 392. Assuming the Power of the Judge of the High Court to issue a writ of *habeas corpus*, and assuming the right of appeal against an order refusing such writ, *held*, that has it appeared, that the prisoner was in custody under a warrant in the form prescribed by Regulation III of 1818, the detention was legal. The detention, to be legal, need only be covered by an actually existing warrant of the Governor-General in Council in the form prescribed, without regard to the lawfulness of the arrest. The Regulation is not confined to prisoners of war or foreigners held in confinement for 'political' reasons. 6 Beng.L.R. 459.

SECS. 6 AND 7.—Pensions and allowances under this Regulation bear no analogy to maintenance award to widows under Hindu Law. 50 Mad. 711—1927 Mad. 604—52 M. M.L.J. 622. The allowance granted to the Ex-Maharaja of Poona is a political pension restricted in its enjoyment to the owner personally and its transfer is not valid. (*Ibid.*)

9. Whenever the ¹[Provincial Government], for the reasons declared in the preamble to this Regulation, shall judge it necessary to attach the estates or lands of any *zamindar*, *jagirdar*, *taluqdar*, or other person, without any previous decision of a Court of Justice, or other judicial proceeding, the grounds on which the Resolution of Government may have been adopted, and such other information connected with the case as may appear essential, shall be communicated, ²[* * *], to the Judge and Magistrate of the district in which the lands or estates may be situated, ³[and] ⁴[* * *] to the *Sadar Diwani Adalat* and *Nizamat Adalat*.

10. *First*.—The lands or estates which may be so temporarily attached shall be held under the management of the officers of Government in the Revenue Department; and the collections shall be made and adjudged on the same principles as those of other estates held under khas management.

Second.—Such lands or estates shall not be liable to be sold in execution of decrees of the Civil Courts, or for the realization of fines or otherwise, during the period in which they may be so held under attachment.

Third.—In the cases mentioned in the preceding clause the Government will make such arrangement as may be fair and equitable for the satisfaction of the decrees of the Civil Courts.

11. Whenever the ⁵[Provincial Government] shall be of opinion that the circumstances which rendered the attachment of such estate necessary have ceased to operate, and that the management of the estate can be committed to the hands of the proprietor without public hazard or inconvenience, the Revenue authorities will be directed to release the estate from attachment, to adjust the accounts of the collections during the period in which they may have been superintended by the Officers of Government, and to pay over to the proprietor the profits from the estate which may have accumulated during the attachment.

⁶[12. This Regulation, so far as it relates to the confinement of persons for reasons connected with defence, external affairs and the discharge of the functions of the Crown in its relations with the Indian States, extends to the whole of all the Governor's Provinces and Chief Commissioners Provinces and so far as relates to order matters, extend to act those provinces except Madras, Bombay and Sind.]

* [APPENDIX.]

FORMS OF COMMITMENT

Form of commitment for reasons connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States.
To the (here insert the officer's designation).

Whereas the [Governor-General in Council] [Governor-General] (omit the inappropriate words) for good and sufficient reasons, being reasons connected with [defence external affairs and the discharge of the functions of the Crown in its relations with Indian States] (omit any inappropriate words), has seen fit to determine that (here insert the State prisoner's name) shall be placed under personal restraint at (here insert the name of the place) you are hereby required and commanded in pur-

LEG. REF.

¹ Substituted for the words 'Governor-General in Council' by A.O., 1937.

² The words 'under the hand of one of the Secretaries to Government' omitted by *ibid*.

³ The word "and" was inserted by the Repealing and Amending Act (XII of 1891),

Sch. II.

⁴ The words "to the Provincial Court of Appeal and Circuit and" were repealed by the Repealing Act (XVI of 1874).

⁵ Substituted by A.O., 1937.

⁶ Sec. 12 and Appendix inserted by A.O., 1937, Sch. XIV.

suance of that determination to receive the person above named into your custody and to deal with him in accordance with the orders of the Government and the provisions of the Bengal State Prisoners Regulation, 1818.

Form of Commitment in Other Cases.

To the *(here insert officer's designation.)*

Where the [Governor] [Governor-General in Council] [Governor-General] *(omit the inappropriate words)* for good and sufficient reasons being reasons connected with the maintenance of the public order, has seen fit to determine that *(here insert the name of the place)* you are hereby required and commanded, in pursuance of that determination, to receive the person above named into your custody, and to deal with him in conformity with the orders of the Government and the provisions of the Bengal State Prisoners Regulation, 1818.

THE MADRAS STATE-PRISONERS REGULATION (II OF 1819).

[Rep. in part by Acts, XVI of 1874; and XII of 1876.]

A Regulation for the confinement of State Prisoners.

WHEREAS ¹[reasons connected with the maintenance of Public order in the Province] occasionally render it necessary to place
Preamble. under personal restraint individuals against whom

there may not be sufficient ground to institute any judicial proceeding, or when such proceeding may not be adopted to the nature of the case, or may for other reasons be inadvisable or improper; and whereas it is fit that, in every case of the nature herein referred to, the determination to be taken should proceed immediately from the authority of the Provincial Government; and whereas the ends of justice require that, when it may be determined that any person shall be placed under personal restraint otherwise than in pursuance of some judicial proceeding, the grounds of such determination should from time to time come under revision and the person affected thereby should at all times be allowed freely to bring to the notice of the Provincial Government all circumstances relating either to the supposed grounds of such determination or to the manner in which it may be executed; and whereas the ends of justice also require that due attention be paid to the health of every State prisoner confined under this Regulation, and that suitable provision be made for his support, according to his rank in life and to his own wants and those of his family; and whereas the ¹[reasons of State] sometimes render it necessary that the estates and lands of zamindars, taluqdars and others ²[* * * * *] should be attached and placed under the temporary management of the Revenue authorities, without having recourse to any judicial proceeding; and whereas it is desirable to make such legal provisions as may secure from injury the just rights and interests of individuals whose estates may be so attached under the direct authority of Government; ¹[it is hereby enacted as follows] :—

2. *First.*—When ¹[reasons connected with the maintenance of Public

Procedure in placing persons under restraint as State prisoners.

order in the Province] may seem to the Provincial Government to require that an individual should be placed under personal restraint, without any immediate view to ulterior proceedings of a judicial nature, a warrant of commitment ¹[shall be issued by the Provincial Government] to the officer in whose custody such person is to be placed.

Form of warrant.

Second.—The warrant of commitment shall be according to the form prescribed in the Appendix to this Regulation.

Warrant to be authority for detention of State prisoner.

Third.—The warrant of commitment shall be sufficient authority for the detention of any State prisoner in any fortress, jail or other place within the ¹[Province].

LEG. REF.

¹ Substituted by A.O., 1937.

² Omitted by *ibid.*

3. Every officer in whose custody any State prisoner may be placed shall,

Officers having custody of State prisoners to report to Government.

on the first of January and first of July of each year submit a report to the Provincial Government ¹[* * *], on the conduct, the

health the comfort of such State prisoner, in order that the Provincial Government may determine whether the orders for his detention shall continue in force or shall be modified.

4. [State prisoners to be periodically visited.] Repealed by Act XVI of 1874.

5. The officer in whose custody any State prisoner may be placed is to

Representations by State prisoners to be submitted to Government.

forward, with such observations as may appear necessary, every representation which such State prisoner may from time to time be desirous of submitting to the Provincial Government.

6. Every officer in whose custody any State prisoner may be placed shall,

Report as to their confinements, health and allowances.

as soon after taking such prisoner into his custody as may be practicable, report to the Provincial Government whether the degree of confinement to which he may be subjected appears liable to injure his health,

and whether the allowance fixed for his support be adequate to the supply of his own wants and those of his family according to their rank in life.

7. Every officer in whose custody any State prisoner may be placed shall

Allowance to be appropriated for support of State prisoners.

take care that the allowance fixed for the support of such State prisoner is duly appropriated to that object.

8. [Foregoing provisions made applicable to persons already confined as State prisoners.] Repealed by Act XII of 1876.

9. Whenever the Provincial Government for ²[reasons of State] shall judge

Attachment of estates by orders of Government when to be communicated to Court.

it necessary to attach the estates or lands of any zamindar, jagirdar, taluqdar or other person, without any previous decision of a Court of Justice or other judicial proceeding, the grounds on which the resolution of Government may have been adopted, and such

other information connected with the case as may appear essential, shall be communicated, ³[* * *] to the Judge of the district in which the lands or estates may be situated ⁴[* * *] and to the Sadr and Faujdari Adalat.

10. First.—The lands or estates which may be so temporarily attached

Management of attached estates.

shall be held under the management of the officers of Government in the Revenue Department, and the collections shall be made and adjusted on the same

principles as those of other estates held under khas management.

Second.—Such lands or estates shall not be liable to be sold in execution

Not liable to be sold while under attachment.

of decrees of the Civil Courts or for the realisation of fines or otherwise, during the period in which they may be so held under attachment.

Third.—In the cases mentioned in the preceding clause the Government

Satisfaction of decrees of Courts.

will make such arrangement as may be fair and equitable for the satisfaction of the decrees of the Civil Courts.

11. Whenever the Provincial Government shall be of opinion that the

Procedure when Government releases estate from attachment.

circumstances which rendered the attachment of such estate necessary have ceased to operate, and that the management of the estate can be committed to the hands of the proprietor without public hazard or

LEG. REF.

¹ Omitted by *ibid.*

² Substituted by A.O., 1937.

³ Omitted by *ibid.*

⁴ Omitted by Act XII of 1876.

inconvenience, the Revenue authorities will be directed to release the estate from attachment, to adjust the accounts of the collections during the period in which they may have been superintended by the officers of Government, and to pay over to the proprietor the profits from the estate which may have accumulated during the attachment.

Extent.

⁴[12. This Regulation extends to the whole of the Province of Madras.]

APPENDIX.

FORM OF WARRANT OF COMMITMENT.

To the (*here insert the officer's designation*).

Whereas the Governor ²[* *] for good and sufficient reasons, has seen fit to determine that (*here insert the State prisoner's name*) shall be placed under personal restraint at (*here insert the name of the place*), you are hereby required and commanded, in pursuance of that determination, to receive the person above-named into your custody, and to deal with him in conformity to the orders of the Governor ²[* *] and the provisions of Regulation II of 1819.

THE TEA DISTRICTS EMIGRANT LABOUR ACT (XXII OF 1933).

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LEG. REF.

¹ Sec. 12 inserted by A.O., 1937.

² Omitted by *ibid*.

[Rep. in part by Act XX of 1937.]

[8th October, 1932.]

An Act to amend the law relating to emigrant labourers in the tea districts of Assam.

WHEREAS it is expedient to amend the law relating to emigrant labourers in the tea districts of Assam; it is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called THE TEA DISTRICTS EMIGRANT LABOUR ACT, 1932.

(2) It extends to the whole of British India, including the Sonthal Parganas.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “tea district” means any of the following districts in the Province of Assam, namely,—

Lakhimpur, Sibsagar, Nowgong, Darrang, Kamrup, Goalpara, Cachar and Sylhet, and the Balipara Frontier Tract;

(b) “tea estate” means an estate, situated in the tea districts, any part of which is used or is intended to be used for the cultivation or manufacture of tea or for any purpose connected therewith;

(c) “recruiting Province” means any Province other than Assam;

(d) “adult” means a person who has completed his sixteenth year, and, “child” means a person who is not an adult;

(e) a “labourer” means an adult working on wages not exceeding fifty rupees a month, but does not include a clerk or domestic servant, or a mechanic, carpenter, mason, bricklayer or other artisan;

(f) an “assisted emigrant” means an adult who, after the commencement of this Act, has left his home in any recruiting Province or in any Indian State, is proceeding through any part of British India to any place in Assam to work as a labourer on a tea estate, and has received assistance from any person,

but does not include any person who at any time within the two preceding years has worked as a labourer on a tea estate;

(g) “assistance” means the gift or offer of any money, goods or ticket entitling to conveyance to any person as an inducement to such person to proceed to Assam to work as a labourer on a tea estate, and “assisted” and “with assistance” when used with reference to any person mean that such person has received assistance;

(h) an “emigrant labourer” means a person who has last entered Assam as an assisted emigrant and is employed on a tea estate.

and includes any person who, having accompanied, an assisted emigrant to Assam as a child dependent on him, has become an adult and is so employed,

but does not include any person who, at any time after his last entry into Assam and after he has become an adult has taken employment not on a tea estate;

(i) the “family” of any person includes the following, if living with him, namely,—

(i) in the case of a male,—his wife and any child and aged or incapacitated relative dependent on him,

(ii) in the case of a married woman,—her husband and any child and aged or incapacitated relative dependent on her or on her husband, and

(iii) in the case of any other woman,—any child and aged or incapacitated relative dependent on her,

and in the case of an emigrant labourer, includes any person who, having accompanied him to Assam as a child dependent on him, has become an adult and is living with him;

(j) "employing interest" means any employer of labourers, or any group or association of such employers; and

(k) "prescribed" means prescribed by rules made by the Central Government.

Appointment and status
of Controller and Deputy
Controllers.

3. (1) The Central Government may appoint a person to be Controller of Emigrant Labour, to exercise the powers and discharge the duties conferred and imposed upon the Controller by or under this Act.

(2) The Central Government may also appoint one or more Deputy Controllers of Emigrant Labour, who shall exercise such of the powers and discharge such of the duties of the Controller as the Central Government may determine.

(3) The Controller may, from time to time and subject to the control of the Central Government, make a distribution of work as between himself and the Deputy Controllers.

(4) The Controller and Deputy Controllers shall be deemed to be public servants within the meaning of the Indian Penal Code.

Powers of the Controller.

4. The Controller shall have power—

(a) to enter—

(i) all open places on a tea estate,

(ii) any enclosed place on a tea estate where he knows or has reason to believe emigrant labourers are working or are accommodated,

(iii) any office of a tea estate,

(iv) any office or depot maintained by a labour recruiting agency, in Assam or in a recruiting province,

(v) any train, vessel or vehicle which he knows or has reason to believe is being used for the conveyance of assisted emigrants;

(b) to inspect, in any office or depot mentioned in sub-clauses (iii) and (iv) of clause (a), any register or other document required to be kept under this Act;

(c) to carry out in any place mentioned in clause (a) any inquiry which he may deem to be expedient for carrying out the purposes of this Act; and

(d) to do any other reasonable act which may be expedient in the discharge of his duties.

5. (1) In order to meet expenditure incurred in connection with the Con-

Emigrant Labour Cess.

troller, the Deputy Controllers and their staff, or under this Act, an annual cess shall be levied, to be

called the 'Emigrant Labour Cess.

(2) It shall be paid in respect of the entry into Assam of each assisted emigrant and shall be payable by the employing interest on whose behalf he was recruited.

(3) It shall be levied at such rate, not exceeding nine rupees, for each such emigrant as the Central Government may, by notification in the Official Gazette, determine for the year of levy.

(4) The proceeds of the cess shall be credited to a fund to be called the Emigrant Labour Fund, to be administered by the Central Government.

Power to make rules for
the collection of the Emi-
grant Labour Cess.

6. (1) The Central Government may, by notification in the Official Gazette, make rules—

(a) prescribing the agency which shall collect the Emigrant Labour Cess;

(b) prescribing the returns to be submitted to such agency by employers of emigrant labourers, and by persons who recruit or forward emigrant labourers, and the form and date of such returns;

(c) regulating the procedure of the collecting agency;

(d) prescribing the mode of payment of the cess;

- (e) determining the date when any sum payable as cess shall be an arrear;
- (f) declaring that an arrear of cess may be recovered as an arrear of land-revenue and prescribing the procedure to be followed to secure such recovery; and
- (g) generally, to secure the equitable collection of the cess.

CHAPTER II.

REPATRIATION.

General right of repatriation after three years in Assam.

7. Every emigrant labourer, on the expiry of three years from the date of his entry into Assam, shall have the right of repatriation as against the employer employing him at such expiry.

8. (1) Any emigrant labourer who, before the expiry of three years from his entry into Assam, is dismissed by his employer, otherwise than for wilful and serious misconduct, shall have the right of repatriation against such employer.

Right to repatriation on dismissal.

(2) Where any emigrant labourer is dismissed by his employer before the expiry of three years from his entry into Assam, and his employer refuses or fails to repatriate him, the labourer may apply to the Controller, and the Controller, after such inquiry as he may think fit and after giving the employer an opportunity to be heard, may declare that the labourer has the right of repatriation against such employer.

9. (1) Where an emigrant labourer other than a married woman living with her husband and having no child living with her dies within three years of his entry into Assam, the family of such labourer shall be entitled to be repatriated by the employer last employing him.

(2) Where such deceased labourer leaves a widow, she shall be deemed to be an emigrant labourer in whom a right of repatriation has arisen.

(3) Where there is no such widow, the Controller shall have all powers necessary to enforce the rights of the family under this section, and may take such action as he may deem to be expedient in their interests.

Right to apply for repatriation in certain circumstances.

10. (1) An emigrant labourer may, before the expiry of three years from his entry into Assam, apply to the Controller for a declaration of his right to repatriation on any of the following grounds, namely,—

(a) that his state of health makes it imperative that he should leave Assam, or

(b) that his employer has failed to provide him with work suited to his capacity, at the normal rate of wages for that class of work, or

(c) that his employer has unjustly withheld any portion of any wages due to him, or

(d) any other sufficient cause.

(2) An emigrant labourer may, before the expiry of one year from his entry into Assam, apply to the Controller for a declaration of his right to repatriation on any of the following grounds, namely,—

(a) that he was recruited by coercion, undue influence, fraud or misrepresentation, or

(b) that he was recruited otherwise than in accordance with the provisions of this Act and the rules made thereunder.

(3) The Controller, after such inquiry as he may think fit and after giving the employer an opportunity to be heard, may declare that an emigrant labourer applying under this section has a right of repatriation against his employer:

Provided that a declaration in pursuance of clause (d) of sub-section

(1) may be made by the Controller only and not by any other officer exercising the powers of the Controller by or under this Act.

11. Where any employer of an emigrant labourer, or any agent of such employer in authority over such labourer, is convicted of any offence committed against such labourer and punishable under Chapter XVI of the Indian Penal Code with imprisonment for one year or upwards, the convicting Court or the appellate Court or the High Court when exercising its powers of revision may declare that such labourer has a right of repatriation against such employer.

12. (1) When an emigrant labourer has a right of repatriation against any employer, the employer or his agent shall defray the cost of the return journey of the emigrant labourer and his family from the station nearest the employer's tea estate to the home of the labourer and shall provide subsistence allowances on the prescribed scale for such labourer and his family for the time requisite for him and his family to travel from such estate to his home:

Provided further that a married woman living with her husband is entitled with her husband who is also an emigrant labourer, her right of repatriation arising under section 7 shall extend only to herself and any children dependent on her:

Provided further that a married woman living with her husband is entitled to be treated as a member of his family notwithstanding that she is herself an emigrant labourer.

(2) In the event of any dispute regarding the cost of the return journey or subsistence allowances, the question shall be referred for decision to the Controller.

13. (1) Within fifteen days from the date on which a right of repatriation arises to an emigrant labourer, or within such shorter period as the authority declaring such right may determine, the employer concerned shall, subject to any agreement under section 14, make all necessary arrangements for the homeward journey of the labourer and his family, and shall despatch them on their journey:

Provided that an employer shall not be required to make such arrangements for any payment in respect of any adult person who does not wish to leave Assam.

(2) Where an employer fails to comply with the provisions of sub-section (1), the right of repatriation of the emigrant labourer concerned shall not be affected, but the employer shall be liable to pay to the labourer one rupee for each day on which he is in default:

Provided that on application made to him by either party the Controller may direct that the labourer shall be paid at a lower rate than one rupee a day or at a higher rate not exceeding two rupees a day, and may also determine the number of days, being a reasonable number regard being had to all the circumstances of the case, for which the payment shall be made.

14. (1) An emigrant labourer may, by agreement with his employer, postpone his exercise of the right of repatriation, or may waive it conditionally or unconditionally, but no such agreement shall be valid unless it is in writing and in the prescribed form and has been made not more than one month before the right of repatriation arises:

Provided that the Central Government may, by notification in the Official Gazette, make rules requiring that in any area such agreement shall be made in the prescribed manner before a prescribed authority and that the prescribed

authority, if satisfied that the labourer understands the terms of his agreement, and his rights in regard to repatriation, shall ratify the agreement:

Provided further that after such rules come into force no such agreement shall be valid unless it is so made and ratified.

(2) Where an emigrant labourer having a right to repatriation fails without reasonable cause to proceed on his homeward journey at the time arranged by his employer, the employer may notify the Controller of such failure, and the Controller, after such inquiry as he may think fit and after giving the labourer an opportunity to be heard, may declare that the labourer has forfeited his right of repatriation, and such labourer shall not be entitled to repatriation again as against any employer, save by an order of the Court under section 11.

15. (1) Where the Controller, on information obtained from any source and after such inquiry as he may think fit and after giving the employer concerned an opportunity to be heard, is of opinion that an emigrant labourer is entitled to repatriation under any of the provisions of this Chapter, or is entitled to the payment of any sum of money under the provisions of sub-section (2) of section 13, the Controller may direct the employer concerned to despatch such labourer and his family or to pay him the sum of money within such period as the Controller may fix.

(2) If the employer fails to comply with such direction, the Controller may repatriate the labourer and his family or pay him the sum of money out of any funds at the Controller's disposal, and shall recover the costs incurred from the employer.

(3) For the purposes of such recovery the Controller may certify the costs to be recovered to the Collector, who shall recover the amount and may recover it as an arrear of land-revenue.

(4) The Controller shall have similar powers in regard to any person in Assam who he knows or has reason to believe is a member of the family of a repatriated emigrant labourer who should have been repatriated along with such labourer.

CHAPTER III.

CONTROLLED EMIGRATION AREAS.

16. ¹[(1) The Central Government may, by notification in the Official Gazette, declare any area within a recruiting Province to be a controlled emigration area, and thereupon the provisions of this Chapter shall apply to that area:

Power to declare controlled emigration areas. Provided that the Central Government may by the same or any subsequent notification declare that any of the provisions of this Chapter shall not apply in that area, or shall apply subject to such general or special relaxations as may be specified.]

(2) A notification under sub-section (1) shall be expressed to take effect from a date not earlier than two months from the date of its publication, and during the said two months licences may be granted under section 17 and such licences shall be dated as being granted on the date on which the notification takes effect and shall not be valid until that date.

17. (1) The Central Government, or any District Magistrate empowered by it in this behalf, may grant a licence to any person to act as local forwarding agent in any part of a controlled emigration area, on behalf of an employer or employers of labourers.

(2) Such licences shall be granted only on the application of an employing interest.

(3) No such application shall be entertained unless the Controller has certified that the employing interest making the application has made proper provision, in accordance with section 20 and rules made under section 21, for the forwarding, accommodation and feeding of assisted emigrants on their journey to the tea estates on which they are to be employed.

(4) A local forwarding agent may be granted separate licences on applications by separate employing interests.

18. (1) Whoever arranges with any person in a controlled emigration area that such person shall proceed to Assam with assistance, shall take or send such person, along with the members of his family who are to accompany him to Assam, to the depot of a local forwarding agent licensed for the area in which the arrangement was made, unless the arrangement was made at such a depot.

(2) Whoever arranges with any person in an Indian State that such person shall proceed to Assam with assistance and brings or sends such person and any of the members of his family into any controlled emigration area, shall take or send such person and members to the depot of a local forwarding agent licensed for that area.

(3) At every such depot proper arrangements shall be made for the accommodation and feeding of assisted emigrants and their families.

19. An assisted emigrant and his family shall be forwarded to Assam from the depot of a local forwarding agent by such agent and only by such routes and in such manner as may be prescribed by rules made under section 37, and shall be accompanied on their journey by a competent person deputed by the local forwarding agent.

20. Every employing interest which recruits labour in a controlled emigration area shall maintain or have the right to use depots at reasonable intervals on the prescribed routes by which it forwards assisted emigrants to Assam, for the accommodation and feeding of assisted emigrants and their families.

Power of Central Government to make rules. 21. (1) The Central Government may, by notification in the Official Gazette, make rules—

(a) prescribing the form and particulars of licences to be granted to local forwarding agents, and the annual fees, not exceeding ten rupees, which may be levied from persons holding such licences;

(b) prescribing returns relating to assisted emigrants and their families which shall be made by local forwarding agents and the registers and the form thereof which shall be maintained by such agents;

(c) prescribing the scales of diet which shall be provided for assisted emigrants and their families at depots;

(d) prescribing the accommodation which shall be provided for assisted emigrants and their families at depots, and the sanitary and medical arrangements at such depots;

(e) providing for the detention, for a period not exceeding three days, at depots of local forwarding agents of women unaccompanied by their husbands who propose to proceed to Assam as assisted emigrants, and for investigation into their circumstances;

(f) prescribing the information which shall be supplied by local forwarding agents to assisted emigrants regarding the conditions of life and work on tea estates, and the methods in which it shall be supplied;

(g) providing for any other matter which in the opinion of the Central Government may be required to give effect to the provisions of this Chapter.

(2) In making rules under clause (b), clause (c), clause (f) or clause (g) of sub-section (1), the Central Government may provide that a contra-

vention thereof shall be punishable with fine which may extend to one hundred rupees.

22. (1) The Civil Surgeon, the District Magistrate or the Sub-Divisional Magistrate, or any Magistrate or police-officer not below the rank of Inspector, deputed by the District Magistrate or the Sub-Divisional Magistrate, may enter a local forwarding agent's depot, or any depot maintained by an employing interest on a prescribed route to Assam, and inspect the accommodation, feeding arrangements, and sanitary arrangements provided for assisted emigrants and their families and all registers and other documents required to be maintained or kept by or under this Act and shall record the results of such inspection in a book to be kept in such depot for the purpose.

(2) The Civil Surgeon or such Magistrate or person deputed may also enter and inspect any vessel, train or vehicle on which assisted emigrants are travelling, or on which he has reason to believe that any assisted emigrant is travelling, whether along a prescribed route or not.

23. If the Central Government is satisfied that an employing interest recruiting assisted emigrants in a controlled area is not making proper provisions for the forwarding, accommodation or feeding of such emigrants and their families on their journey to Assam, ¹[the Central Government may] direct all district Magistrates concerned to cancel or suspend all licences under section 17 held by local forwarding agents on behalf of such employing interest:

Provided that the Central Government shall not ¹[direct the cancellation of any] licences under this section until ¹[it] has given the employing interest concerned an opportunity to submit its explanation.

24. (1) The Central Government may cancel wholly or in part any licence granted to a local forwarding agent, and a District Magistrate may cancel wholly or in part any licence granted by him to a local forwarding agent,—

(a) if, in the opinion of the Central Government or of the District Magistrate, as the case may be, such agent has been guilty of misconduct or wilful default or negligence in the discharge of the duties imposed upon him by or under this Act, or

(b) if the employing interest, on whose application the licence was granted, has applied to the Central Government or to the District Magistrate, as the case may be, for the cancellation of the licence, or

(c) if in the opinion of the Central Government or of the District Magistrate, as the case may be, an employer on whose behalf the agent is licensed to act has been guilty of misconduct, or wilful default or negligence in the discharge of the duties imposed upon him by or under this Act:

Provided that no licence shall be cancelled under clause (a) until the holder thereof has or under clause (c) until the holder thereof and the employer concerned have had an opportunity to show cause against the cancellation:

Provided further that a cancellation under clause (c) shall, where the agent is licensed to act on behalf of more than one employer, operate only to prevent the agent from acting on behalf of the employer held guilty.

(2) A local forwarding agent whose licence has been cancelled by a District Magistrate under clause (a) of sub-section (1), or any employing interest on whose behalf he acts, may, within three months from the date of the District Magistrate's order, appeal to the Central Government, whose decision shall be final.

25. Where any person who is required to be taken or sent to a local forwarding agent's depot in any district under section 18 leaves that district on his journey to Assam without being so taken or sent, or, being an assisted emigrant, proceeds to Assam otherwise than in accordance with section 19, or by any route other than a route prescribed under section 37, any person who abets him in so leaving the district or in so proceeding to Assam, shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER IV.

RESTRICTED RECRUITING AREAS.

26. ¹[(1) The Central Government may, by notification in the Official Gazette, declare any controlled emigration area or any part of a controlled emigration area within a recruiting Province to be a restricted recruiting area, and thereupon the provisions of this Chapter shall apply to that area:

Power to declare restricted recruiting areas. Provided that the Central Government may, by the same or any subsequent notification, declare that any of the provisions of this Chapter shall not apply in relation to that area, or shall apply subject to such general or special relaxations as may be specified.]

(2) A notification under sub-section (1) shall be expressed to take effect from a date not earlier than two months from the date of its publication, and during the said two months licences may be granted under section 27 or certificates may be granted and endorsements made under section 28, and such licences, certificates and endorsements shall be dated as being granted or made on the date on which the notification takes effect and shall not be valid until that date.

27. (1) Subject to rules made under sub-section (2) and sub-section (3), the District Magistrate may grant a licence to any person to act as recruiter in the whole or any part of his district.

Grant of licences to recruiters. (2) the Central Government may, by notification in the Official Gazette, make rules prescribing the qualifications for persons who may be granted licences under this section.

(3) The Central Government may, by notification in the Official Gazette, make rules ²[as respects any restricted recruiting area.]

(a) regulating the procedure of the District Magistrate in granting such licences,

(b) prescribing the form and particulars of such licences, and the fees, not exceeding ten rupees, to be paid therefor.

28. (1) Subject to rules made under sub-section (2), the owner or manager of a tea estate may grant a certificate to any person employed on such estate as a labourer or in a position of supervision or management empowering him to recruit labour for such estate in the whole or any part of a restricted recruiting area, and such person shall thereupon be entitled to recruit labour for such estate as a garden-sardar in the area specified:

Grant of certificates to garden-sardars. Provided that the ¹[Central Government] may, by notification in the Official Gazette, make rules ²[as respects any restricted recruiting area] directing that certificates of garden-sardars or of specified classes of garden-sardars shall not be valid in any district in any such area until they have been endorsed as valid for that district by the District Magistrate or a Magistrate authorised by the District Magistrate in this behalf.

(2) The ¹[Central Government] may make rules ²[for Assam]—

(a) regulating the procedure of owners and managers in granting and withdrawing such certificates,

(b) prescribing the form and particulars of such certificates.

29. The District Magistrate may, for reasons to be recorded by him, cancel or suspend the licence of a recruiter on the ground of his misconduct or wilful neglect or default in the discharge of the duties imposed on him by or under this Act:

Provided that no licence shall be cancelled under this section until the holder thereof has had an opportunity of showing cause against the cancellation.

30. (1) The District Magistrate of any district in respect of any part of which a garden-sardar holds a certificate may cancel the certificate if he is satisfied that the garden-sardar has contravened any of the provisions of this Act or of the rules made thereunder.

(2) A District Magistrate cancelling a certificate under sub-section (1) shall record his reasons, and shall send intimation of his action to the District Magistrate of every other district in respect of any part of which the certificate was valid and to the person who granted the certificate.

31. Whoever, not being a licensed recruiter holding a licence under section 27, or a garden-sardar holding a valid certificate under section 28, or a local forwarding agent holding a licence under section 17, in any part of a restricted recruiting area gives or offers any money or goods to any person, or defrays or offers to defray any travelling expenses of any person, as an inducement to such person to proceed to Assam as an assisted emigrant, shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER V. SUPPLEMENTAL.

32. (1) No person shall in any way assist a child to proceed from any recruiting province to Assam, to work in any capacity on a tea estate, unless such child is accompanied by a parent or other adult relative on whom he is dependent, and no person shall so assist a married woman who is living with her husband unless she is so proceeding with the consent of her husband.

(2) Any person who knowingly contravenes the provisions of this section shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

33. (1) Where it appears to the Controller that any person proceeding to a tea garden with assistance, or any member of the family of such person, is suffering from an infectious or contagious disease, or is not in a fit state of health to proceed on his journey, the Controller may—

(a) detain such person and his family,
(b) send the sufferer for medical treatment to a hospital or dispensary or other suitable place, and

(c) cause all necessary arrangements to be made for the accommodation and feeding of the other members of the party so detained, and all arrangements for such detention and treatment shall be made by and at the cost of the employing interest on whose behalf such person was recruited.

(2) Where it appears that a sufferer detained under sub-section (1) is not likely to be in a fit state of health to proceed on his journey within a reasonable time, the Controller may direct that he and the other members of his party detained with him shall be returned to the home of the person proceeding with assistance by and at the cost of the employing interest on whose behalf such person was recruited.

34. Where it appears to the Controller after such inquiry as he thinks fit to make that any person proceeding to a tea estate with assistance—

(a) has been recruited by coercion, undue influence, fraud or misrepresentations, or

(b) has been recruited or forwarded otherwise than in accordance with the provisions of this Act and the rules made thereunder, the Controller may direct that such person and his family shall if such person so desires be returned to his home by and at the cost of the employing interest on whose behalf he was recruited.

35. (1) If an employing interest fails to make arrangements to the satisfaction of the Controller for the detention or treatment of any person detained under sub-section (1) of section 33, the Controller may himself make such arrangements and defray the cost out of any funds at his disposal.

(2) In making a direction under sub-section (2) of section 33 or under section 34 the Controller may fix a period within which such person and family shall be forwarded by the employing interest concerned, and shall send a copy of his direction to the employing interest concerned, and to the nearest agent, if any, of such employing interest in the Province where such person then is.

(3) If the employing interest fails to comply with the direction within the time fixed, the Controller may cause such person and his family to be returned to his home and defray the costs out of any funds at the Controller's disposal.

(4) The Controller shall recover any costs incurred by him under this section from the employing interest concerned, and for the purposes of such recovery may certify the costs to be recovered to the Collector of any district in which a tea estate belonging to the employing interest concerned, or to any member thereof, is situated, and the Collector shall recover the amount and may recover it as an arrear of land revenue.

(5) Any costs so certified may, where the employing interest concerned is a group or association of employers, be recovered from any one of such employers.

36. (1) Subject to the provisions of sub-section (3) of section 10, any District Magistrate in Assam may exercise in respect of his district any power which the Controller by or under this Act could exercise in such district.

(2) The Controller may transfer any proceeding under Chapter II pending before him to the District Magistrate having jurisdiction under sub-section (1) to dispose of it.

(3) ¹[The Central Government may invest a District Magistrate or a Sub-Divisional Magistrate in any recruiting Province and a Sub-Divisional Magistrate in Assam] with any of the powers of the Controller under section 4 or section 33 or section 34 or section 35 in respect of his district or sub-division, as the case may be.

(4) The Central Government may invest any medical officer not below the rank of Assistant Surgeon with any of the powers of the Controller under section 33 and section 35.

Power of Central Government to make rules.

37. (1) The Central Government may, by notification in the Official Gazette, make rules—

(a) regulating the procedure of the Controller and of persons exercising the powers of the Controller in the exercise of their powers under this Act;

LEG. REF.

¹ Substituted by A.O., 1937.

(b) where there are more authorities than one exercising any of the powers of the Controller in the same area, regulating the exercise of their powers by such authorities;

(c) prescribing scales of subsistence allowances for the purposes of section 12;

(d) prescribing the form of agreements under section 14;

(e) prescribing the routes by which assisted emigrants may be forwarded from districts in controlled emigration areas to tea districts;

(f) prescribing the manner in which assisted emigrants and their families shall be forwarded to Assam from the depots of local forwarding agents;

(g) prescribing the action to be taken by local forwarding agents and by persons in charge of depots on prescribed routes where an assisted emigrant or a member of his family appears to be suffering from infectious or contagious disease or where an assisted emigrant appears to have been recruited by coercion, undue influence, fraud or misrepresentation, or to have been recruited or forwarded otherwise than in accordance with the provisions of this Act and the rules made thereunder;

(h) directing that employers of emigrant labourers shall keep registers of such labourers and their families, and prescribing the form of such registers;

(i) directing that employing interests which recruit emigrant labourers shall keep registers of such labourers and their families, and of their journeys to and from Assam, and prescribing the form of such registers;

(j) requiring employers of emigrant labourers and employing interests which recruit emigrant labourers to submit such return in respect of such labourers as the Central Government may think expedient for carrying out the purposes of this Act; and

(k) generally, to carry out the purposes of this Act.

(2) The Central Government may, by notification in the Official Gazette, make rules ¹[for Assam] requiring employers of labourers on tea estates to submit returns of wages and earnings of labourers employed by them.

(3) ²[Rules made under this section] may provide that a contravention thereof shall be punishable with fine which may extend to five hundred rupees.

38. (1) The Central Government may, by notification in the Official Gazette, declare that the provisions of this Act shall apply in all respects to such lands and premises as if they were tea estates.

(2) ²[The Central Government] may, by notification in the Official Gazette, declare that the provisions of this Act shall apply in any area in Assam other than the districts specified in clause (a) of section 2, and thereupon the provisions of this Act shall apply in all respects to such area as if it were a tea district.

39. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Bar of jurisdiction of Civil Courts.

40. No Civil Courts shall have jurisdiction—

(a) to deal with or decide any question which the Controller is, by or under this Act, empowered to deal with or to decide, or

(b) to enforce any liability incurred under this Act.

Repeal of Act VI of 1901 and certain consequences.

41. [Repealed by Act XX of 1937.]

THE SCHEDULE.

[Repealed by Act XX of 1937.]

THE INDIAN TELEGRAPH ACT (XIII OF 1885).¹

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Year.	No.	Short title.	Amendments.
1885	XIII	The Indian Telegraph Act, 1885.	Rep. in part, Act I of 1928. Amended, XI of 1888; VII of 1914; XIV of 1914; XXVII of 1930.

LEG. REF.

¹ For Statement of Objects and Reasons,

see Gazette of India, 1884, Pt. V, p. 481; for Report of the Select Committee, see *ibid.*,

[22nd July, 1885.]

An Act to amend the law relating to Telegraphs in India.

WHEREAS it is expedient to amend the law relating to telegraphs in India; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title, local extent and commencement.

1. (1) This Act may be called THE INDIAN TELEGRAPH ACT, 1885.

¹[(2) It extends to the whole of British India, including the Sonthal Parganas and the Pargana of Spiti, and it applies also to—

(a) all native Indian subjects of His Majesty in any place without and beyond British India,

(b) all other British subjects within the territories of any ²[Indian State], and

(c) all servants of the King, whether British subjects or not, within the territories of any ²[Indian State].

(3) It shall come into force on the first day of October, 1885.

2. [Repeal and savings.] Repealed by Act I of 1938.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

(1) “telegraph” means an electric, galvanic or magnetic telegraph, and includes appliances and apparatus for ³[making, transmitting or receiving] telegraphic, telephonic or other communications by means of electricity, galvanism or magnetism;

(2) “telegraph officer” means any person employed either permanently or temporarily in connection with a telegraph established, maintained or worked by ²[the Central Government] or by a person licensed under this Act:

(3) “message” means any communication sent by telegraph, or given to a telegraph officer to be sent by telegraph or to be delivered;

(4) “telegraph line” means a wire or wires used for the purposes of a telegraph, with any casing, coating, tube or pipe enclosing the same, and any appliances and apparatus connected therewith for the purpose of fixing or insulating the same;

(5) “post” means a post, pole, standard, stay, strut or other above-ground contrivance for carrying, suspending or supporting a telegraph line;

(6) “telegraph authority” means the Director-General of ⁴[Posts and Telegraphs,] and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act;

LEG. REF.

1885, Pt. IV, p. 192; and for Proceedings in Council, see *ibid.*, 1884, Supplement, pp. 1169 and 1296, and *ibid.*, Supplement p. 1181.

This Act was declared to be in force in Upper Burma (except the Shan States) by the Upper Burma Laws Act, 1886 (XX of 1886), sec. 6 (1), and is in force there under sec. 4 and the First Schedule to the Burma Laws Act, 1898 (XIII of 1898), Bur. Code, by which Act XX of 1886 has been repealed; in the Arakan Hill District by sec. 2 of Regulation I of 1916, Bur. Code; in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (III of 1872), sec. 3, as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (III of 1899), sec. 3, B. & O. Code; in British Baluchistan, see sec. 3 and Schedule to the British Baluchistan Laws Regulation, 1913 (II of 1913),

Bal. Code; in the Angul District under sec. 3 of the Angul Laws Regulation, 1913 (III of 1913), B. & O. Code; and in the Pargana of Manpur by the Manpur Laws Regulation, 1926 (II of 1926), sec. 2 and the Schedule.

¹ This sub-section was substituted by sec. 2 of the Indian Telegraph (Amendment) Act, 1914 (VII of 1914).

² Substituted by A.O., 1937.

³ These words were substituted for the words “transmitting or making” by sec. 3 of the Indian Telegraph (Amendment) Act (VII of 1914).

⁴ Substituted for “Telegraphs” by Act XIV of 1914, sec. 2.

SEC. 3 (1).—“Telegraph” includes a radio. I.L.R. (1943) Nag. 344=1943 N.L.J. 83 =1943 N.L.J. 143.

(7) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by ¹[the Central or any Provincial Government] with, the control or management of any municipal or local fund.

PART II.

PRIVILEGES AND POWERS OF THE GOVERNMENT.

Exclusive privilege in 4. ²[(1)] Within British India, the Central respect of telegraphs, and Government shall have the exclusive privilege of establishing, maintaining and working telegraphs: power to grant licences.

Provided that the Central Government may grant a licence, on such conditions and in consideration of such payments as ³[it] thinks fit, to any person to establish, maintain or work a telegraph within any part of British India:

²[Provided further that the Central Government may, by rules made under this Act and published in the Official Gazette, permit, subject to such restrictions and conditions as ³[it] thinks fit, the establishment, maintenance and working—

(a) of wireless telegraphs on ships within Indian territorial waters, ⁴[and on aircraft within or above British India, or Indian territorial waters], and

(b) of telegraphs other than wireless telegraphs within any part of British India.

(2) The Central Government may, by notification in the Official Gazette delegate to the telegraph authority all or any of ³[its] powers under the first proviso to sub-section (1).

The exercise by the telegraph authority of any power so delegated shall be subject to such restrictions and conditions as the Central Government may, by the notification, think fit to impose.]

5. (1) On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a Provincial Government, or any officer specially authorized in this behalf ³[by the Central or a Provincial Government] may—

(a) take temporary possession of any telegraph established, maintained or worked by any person licensed under this Act; or

(b) order that any message or class of messages to or from any person or class of persons or relating to any particular subject brought for transmission by, or transmitted or received by, any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to ³[the Government making the order] or an officer thereof mentioned in the order.

(2) If any doubt arises as to the existence of a public emergency, or whether any act done under sub-section (1) was in the interest of the public safety, ²[a certificate of the Central or, as the case may be, the Provincial Government] shall be conclusive proof on the point.

6. Any Railway Company, on being required so to do by the Central Government, shall permit the Government to establish and maintain a telegraph upon any part of the land of the Company, and shall give every reasonable facility for working the same.

7. (1) The Central Government may, from time to time, by notification in the Official Gazette, make rules⁵ consistent with this Act for the conduct of all or any telegraphs established, maintained or worked by the Government or by persons licensed under this Act.

LEG. REF.

¹ Substituted by A.O., 1937.

² Sec. 4 was renumbered sec. 4 (1) and the second proviso and sub-sec. (2) were added to that sec. by section 4 of the Indian

Telegraph (Amendment) Act, 1914 (VII of 1914).

³ Substituted by A.O., 1937.

⁴ Inserted by Act XXVII of 1930.

⁵ For the Indian Telegraph Rules, 1927.,

(2) Rules under this section may provide for all or any of the following, among other matters, that is to say:—

(a) the rates at which, and the other conditions and restrictions subject to which, messages shall be transmitted;

(b) the precautions to be taken for preventing the improper interception or disclosure of messages;

(c) the period for which, and the conditions subject to which, telegrams and other documents belonging to, or being in the custody of, telegraph officers shall be preserved; and

(d) the fees to be charged for searching for telegrams or other documents in the custody of any telegraph officer.

(3) When making rules for the conduct of any telegraph established, maintained or worked by any person licenced under this Act, the Central Government may, by the rules, prescribe fines for any breach of the same:

Provided that the fines so prescribed shall not exceed the following limits, namely:—

(i) when the person licensed under this Act is punishable for the breach, one thousand rupees, and in the case of a continuing breach a further fine of two hundred rupees for every day after the first during the whole or any part of which the breach continues;

(ii) when a servant of the person so licensed, or any other person, is punishable for the breach, one-fourth of the amounts specified in clause (i).

8. The Central Government may, at any time, revoke any licence granted under section 4, on the breach of any of the conditions therein contained, or in default of payment of any consideration payable thereunder.

9. The ¹[Crown] shall not be responsible for any loss or damage which may occur in consequence of any telegraph officer failing in his duty with respect to the receipt, transmission or delivery of any message; and no such officer shall be responsible for any such loss or damage unless he causes the same negligently, maliciously or fraudulently.

PART III.

POWERS TO PLACE TELEGRAPH LINES AND POSTS.

Power for telegraph authority to place and maintain telegraph lines and posts. 10. The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immovable property:

Provided that—

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the ¹[Central Government], or to be so established or maintained;

(b) the ¹[Central Government] shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post; and

(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and

(d) in the exercise of the powers conferred by this section, the telegraph

LEG. REF.

issued under this section, *see* Notification No. 4T, dated 21st December, 1926, Gazette of India, 1926, Pt. I, p. 1404.

¹ Substituted by A.O., 1937.

CR. C. M.-1-167

Sec. 10 (d).—*See* 52 L.W. 222=A.I.R. 1940 Mad. 900=(1940) 2 M.L.J. 254 cited under sec. 18, *infra*.

authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

Power to enter on property in order to repair or remove telegraph lines or posts. 11. The telegraph authority may, at any time, for the purpose of examining, repairing, altering or removing any telegraph line or post, enter on the property under, over, along, across, in or upon which the line or post has been placed.

Provisions applicable to Property vested in or under the Control or Management of Local Authorities.

Power for local authority to give permission under section 10, clause (c), subject to conditions. 12. Any permission given by a local authority under section 10, clause (c), may be given subject to such reasonable conditions as that authority thinks fit to impose, as to the payment of any expenses to which the authority will necessarily be put in consequence of the exercise of the powers conferred by that section, or as to the time or mode of execution of any work, or as to any other thing connected with or relative to any work undertaken by the telegraph authority under those powers.

Power for local authority to require removal or alteration of telegraph line or post. 13. When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property vested in or under the control or management of a local authority, and the local authority, having regard to circumstances which have arisen since the telegraph line or post was so placed, considers it expedient that it should be removed or that its position should be altered, the local authority may require the telegraph authority to remove it or alter its position, as the case may be.

Power to alter position of gas or water pipes or drains. 14. The telegraph authority may, for the purpose of exercising the power conferred upon it by this Act in respect of any property vested in or under the control or management of a local authority, alter the position thereunder on any pipe (not being a main) for the supply of gas or water, or of any drain (not being a main drain):

Provided that—

(a) when the telegraph authority desires to alter the position of any such pipe or drain, it shall give reasonable notice of its intention to do so, specifying the time at which it will begin to do so, to the local authority, and, when the pipe or drain is not under the control of the local authority, to the person under whose control the pipe or drain is;

(b) a local authority or person receiving notice under clause (a) may send a person to superintend the work, and the telegraph authority shall execute the work to the reasonable satisfaction of the person so sent.

Disputes between telegraph authority and local authority. 15. (1) If any dispute arises between the telegraph authority and a local authority in consequence of the local authority refusing the permission referred to in section 10, clause (c), or prescribing any condition under section 12, or in consequence of the telegraph authority omitting to comply with a requisition made under section 13, or otherwise in respect of the exercise of the powers conferred by this Act, it shall be determined by such officer as the ¹[Central Government] may appoint either generally or specially in this behalf.

LEG. REF.

¹ Substituted by A.O., 1937.

(2) An appeal from the determination of the officer so appointed shall lie to the ¹[Central Government]; and the order of the ¹[Central Government] shall be final.

Provisions applicable to other property.

Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority.

16. (1) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(2) If, after the making of an order under sub-section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code.

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient, or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3) or sub-section (4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority from the person who has received the same.

17. (1) When, under the foregoing provisions of this Act, a telegraph line

Removal or alteration of telegraph line or post on property other than that of a local authority.

or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in

such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line or post accordingly:

LEG. REF.

¹Substituted by A.O., 1937.

Sec. 16 (3).—See 52 L.W. 328=A.I.R. 1940 Mad. 900=(1940) 2 M.L.J. 254 cited under s. 18, *infra*. Sec. 16 of the Act does not refer to the sufficiency of the compensation actually paid but to the sufficiency of the compensation to be paid under s. 10. If damage is actually caused and Government proposes to pay nothing, while the other party insists that substantial damage has been done, then there is clearly a dispute with regard to the sufficiency of the compensation to be paid under sec. 10, and the District Judge has jurisdiction to entertain an application

for compensation by the party aggrieved. 201 I.C. 739=44 P.L.R. 275=A.I.R. 1942 Lah. 186=I.L.R. (1943) Lah. 677.

SEC. 16 (3) AND (5): ORDER OF DISTRICT JUDGE ON APPLICATION—REVISION—POWER OF HIGH COURT.—The District Judge is acting as a Civil Court in dealing with applications for compensation under sec. 16 (3) of the Telegraph Act, and the High Court has, therefore, power to entertain a petition for revision of an order passed by him on such an application. The High Court's powers of revision are not barred by sub-sec. (5) of sec. 16 of the Act. 44 P.L.R. 275=A.I.R. 1942 Lah. 186.

Provided that, if compensation has been paid under section 10, clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.

(3) A District Magistrate receiving an application under sub-section (2) may, in his discretion, reject the same or make an order absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level, or for the alteration of its form; and the order so made shall be final.

Provisions applicable to all Property.

18. (1) If any tree standing or lying near a telegraph line interrupts, or is likely to interrupt, telegraphic communication, a Magistrate of the first or second class may, on the application of the telegraph authority, cause the tree to be removed or dealt with in such other way as he deems fit.

(2) When disposing of an application under sub-section (1), the Magistrate shall, in the case of any tree in existence before the telegraph line was placed, award to the persons interested in the tree such compensation as he thinks reasonable, and the award shall be final.

19. Every telegraph line or post placed before the passing of this Act under, over, along, across, in or upon any property, for the purposes of a telegraph established or maintained by the ¹[Central Government] shall be deemed to have been placed in exercise of the powers conferred by, and after observance of all the requirements of, this Act.

²[19-A. (1) Any person desiring to deal in the legal exercise of a right with any property in such a manner as is likely to cause damage to a telegraph line or post which has been duly placed in accordance with the provisions of this Act, or to interrupt or interfere with telegraphic communication, shall give not less than one month's notice in writing of the intended exercise of such right to the telegraph authority, or to any telegraph officer whom the telegraph authority may empower in this behalf.

(2) If any such person without having complied with the provisions of sub-section (1) deals with any property in such a manner as is likely to cause damage to any telegraph line or post, or to interrupt or interfere with telegraphic communication, a Magistrate of the first or second class may, on the application of the telegraph authority, order such person to abstain from dealing with such property in such manner for a period not exceeding one month from

LEG. REF.

¹ Substituted by A.O., 1937.

² Secs. 19-A and 19-B were inserted by sec. 5 of the Indian Telegraph (Amendment) Act, 1914 (VII of 1914).

Sec. 18.—Sec. 18 of the Telegraph Act contemplates action by a Magistrate on the application of the telegraph authority but not direct action of cutting down trees by the telegraph authority itself. The section further applies only to the cutting down of trees after a line has been erected and not before erection of a line. In the case of

cutting down of trees for the purpose of laying a line, the order of the Magistrate as to the amount of compensation is not final, as it does not fall under sec. 18. On the other hand sec. 10 (d) of the Act gives the telegraph authority power to lay a line upon any land and to cut trees. For that purpose he is bound to award compensation, but his award is open to reconsideration by the District Judge upon an application under sec. 16 (3). Sec. 18 would cover only the case of trees cut down after the laying of the line. 1940 M.W.N. 799=52 L.W. 328=A.I.R. 1940 Mad. 900=(1940) 2 M.L.J. 254.

the date of his order and forthwith to take such action with regard to such property as may be in the opinion of the Magistrate necessary to remedy or prevent such damage, interruption or interference during such period.

(3) A person dealing with any property in the manner referred to in sub-section (1) with the *bona fide* intention of averting imminent danger of personal injury to himself or any other human being shall be deemed to have complied with the provisions of the said sub-section if he gives such notice of the intended exercise of the right as is in the circumstances possible, or where no such previous notice can be given without incurring the imminent danger referred to above, if he forthwith gives notice of the actual exercise of such right to the authority or officer specified in the said sub-section.

19-B. The Central Government may, by notification in the Official Gazette,

Power to confer upon licensee powers of telegraph authority under this Part.

confer upon any licensee under section 4, in respect of the extent of his licence and subject to any conditions and restrictions which the Central Government may think fit to impose and to the provisions of this Part, all or any of the powers which the telegraph authority possesses under this Part with regard to a telegraph established or maintained by the Government or to be so established or maintained:

Provided that the notice prescribed in section 19-A shall always be given to the telegraph authority or officer empowered to receive notice under section 19-A (1).]

PART IV.

PENALTIES.

1[20. (1) If any person establishes, maintains or works a telegraph within

Establishing, maintaining or working unauthorized telegraph.

British India in contravention of the provisions of section 4 or otherwise than as permitted by rules made under that section, he shall be punished, if the telegraph is a wireless telegraph, with imprisonment

which may extend to three years, or with fine or with both, and, in any other case, with a fine which may extend to one thousand rupees.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, offences under this section in respect of a wireless telegraph shall, for the purposes of the said Code, be bailable and non-cognizable.

(3) When any person is convicted of an offence punishable under this section, the Court before which he is convicted may direct that the telegraph in respect of which the offence has been committed, or any part of such telegraph, be forfeited to His Majesty.]

2[20-A. If the holder of a licence granted under section 4 contravenes

Breach of condition of licence.

any condition contained in his licence, he shall be punished with fine which may extend to one thousand rupees, and with a further fine which may extend to

five hundred rupees for every week during which the breach of the condition continues.]

LEG. REF.

¹ This section was substituted by sec. 6 of the Indian Telegraph (Amendment) Act, 1914 (VII of 1914).

² This section was inserted by sec. 7 of the Indian Telegraph (Amendment) Act, 1914 (VII of 1914).

SEC. 20.—Where a person is convicted under secs. 3 and 6 of the Telegraph Act, 1933, no separate conviction and sentence under this section is necessary. It is also doubtful whether a wireless set

without licence would amount to offence under this section. 1938 M.W.N. 823= (1938) 2 M.L.J. 281.

SECS. 20-A, 3 AND 4.—After the amendment in 1914 of the word 'Telegraph' in sec. 3 of the Telegraph Act, it cannot be said that it does not include a radio which is undoubtedly an apparatus for receiving a communication by means of electricity. Any violation of any of the conditions under which the license to use a radio set is issued, would entail a conviction under sec. 20-A of the Act. Where a person obtained a licence

21. If any person, knowing or having reason to believe that a telegraph has been established or is maintained or worked, in contravention of this Act, transmits or receives any message by such telegraph, or performs any service incidental thereto, or delivers any message for transmission by such telegraph, or accepts delivery of any message sent thereby, he shall be punished with fine which may extend to fifty rupees.

22. If a Railway Company or an officer of a Railway Company neglects or refuses to comply with the provisions of section 6, it or he shall be punished with fine which may extend to one thousand rupees for every day during which the neglect or refusal continues.

Opposing establishment of telegraphs on railway land.
Intrusion into signal-room, trespass in telegraph office or obstruction.

23. If any person—

(a) without permission of competent authority, enters the signal-room of a telegraph office of the Government, or of a person licensed under this Act, or

(b) enters a fenced enclosure round such a telegraph office in contravention of any rule or notice not to do so, or

(c) refuses to quit such room or enclosure on being requested to do so by any officer or servant employed therein, or

(d) wilfully obstructs or impedes any such officer or servant in the performance of his duty, he shall be punished with fine which may extend to five hundred rupees.

24. If any person does any of the acts mentioned in section 23 with the intention of unlawfully learning the contents of any message, or of committing any offence punishable under this Act, he may (in addition to the fine with which he is punishable under section 23) be punished with imprisonment for a term which may extend to one year.

Unlawfully attempting to learn contents of messages.
Intentionally damaging or tampering with telegraphs.

25. If any person, intending—

(a) to prevent or obstruct the transmission or delivery of any message, or

(b) to intercept or to acquaint himself with the contents of any message, or

(c) to commit mischief, damages, removes, tampers with or touches any battery, machinery, telegraph line, post or other thing whatever, being part of or used in or about any telegraph or in the working thereof,

he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

¹[**25-A.** If, in any case not provided for by section 25, any person deals with any property and thereby wilfully or negligently damages any telegraph line or post duly placed on such property in accordance with the provisions of this Act, he shall be liable to pay the telegraph authority such expenses (if any) as may be incurred in making good such damage, and shall also, if the telegraphic communication is by reason of the damage so caused interrupted, be punishable with a fine which may extend to one thousand rupees:

LEG. REF.

¹ This section was inserted by sec. 8 of the Indian Telegraph (Amendment) Act, 1914. (VII of 1914).

to have a set in his private room but had it in one of the two rooms which together was a shop, it was held, that from the mere situ-

ation of the set it could not be inferred that it was being used for purposes other than private and domestic purposes in the absence of evidence that it was used to attract or amuse members of the public. I.L.R. (1943) Nag. 344=1943 N.L.J. 83=A.I.R. 1943 Nag. 143.

Provided that the provisions of this section shall not apply where such damage or interruption is caused by a person dealing with any property in the legal exercise of a right if he has complied with the provisions of section 19-A (1).]

Telegraph officer or other official making away with or altering or unlawfully intercepting or disclosing messages or divulging purport of signals.

26. If any telegraph officer, or any person, not being a telegraph officer but having official duties connected with any office which is used as a telegraph office,—

(a) wilfully secretes, makes away with or alters any message which he has received for transmission or delivery, or

(b) wilfully and otherwise than in obedience to an order of the Central Government or of a Provincial Government, or of an officer specially authorized [by the Central or a Provincial Government] to make the order, omits to transmit, or intercepts or detains, any message or any part thereof, or otherwise than in pursuance of his official duty or in obedience to the direction of a competent Court, discloses the contents or any part of the contents of any message, to any person not entitled to receive the same, or

(c) divulges the purport of any telegraphic signal to any person not entitled to become acquainted with the same,

he shall be punished with imprisonment for a term which may extend to three years or with fine, or with both.

27. If any telegraph officer transmits by telegraph any message on which the charge prescribed by the ²[Central Government], or by a person licensed under this Act, as the case may be, has not been paid, intending thereby to defraud the ²[Central Government] or that person, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Telegraph officer fraudulently sending messages without payment.

28. If any telegraph officer, or any person not being a telegraph officer but having official duties connected with any office which is used as a telegraph office, is guilty of any act of misconduct, drunkenness, carelessness or other misconduct whereby the correct transmission or the delivery of any message is impeded or delayed, or if any telegraph officer loiters or delays in the transmission or delivery of any message, he shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

29. If any person transmits or causes to be transmitted by telegraph a message which he knows to be false or fabricated, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Sending fabricated message.

Penalty.

²[29-A. If any person without due authority,—

L.E.G. REF.

¹ Substituted for 'by the Governor-General in Council' by A.O., 1937.

² Substituted by A.O., 1937, for 'Government'.

³ This section was inserted by sec. 9 of the Indian Telegraph (Amendment) Act (VII of 1914).

SEC. 27 is intended only to apply to those cases in which the charge prescribed is recoverable before transmission of the message. The defrauding should be the result of transmission of the message without recovering the prescribed charge. Where the charges for the messages are not payable

before the transmission of the messages according to the rules but it is to be recovered from the telephone owners by submitting monthly bills to them for the calls made by them and the head operator of the telephone exchange transmits a certain message on behalf of the telephone owner without recovering the charge for the message beforehand, the head operator cannot be said to have committed an offence under sec. 27, although he prepares false memorandum so as to furnish the basis for the monthly bills in order to defraud Government. A.I.R. 1938 Lah. 251—I.L.R. (1938) Lah. 236—40 P.L.R. 1029.

SEC. 29.—See 26 A.W.N. 1903.

(a) makes or issues any document of a nature reasonably calculated to cause it to be believed that the document has been issued by, or under the authority of, the Director-General of ¹[Posts and Telegraphs], or

(b) makes on any document any mark in imitation of, or similar to, or purporting to be, any stamp or mark of any telegraph office under the Director-General of ¹[Posts and Telegraphs], or a mark of a nature reasonably calculated to cause it to be believed that the document so marked has been issued by, or under the authority of, the Director-General of ¹[Posts and Telegraphs], he shall be punished with fine which may extend to fifty rupees.]

30. If any person fraudulently retains, or wilfully secretes, makes away with or detains a message which ought to have been delivered to some other person, or, being required by a telegraph officer to deliver up any such message, neglects or refuses to do so, he shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

31. A telegraph officer shall be deemed a public servant within the meaning of sections 161, 162, 163, 164 and 165 of the Indian Penal Code; and in the definition of "legal remuneration" contained in the said section 161, the word "Government" shall, for the purposes of this Act, be deemed to include a person licensed under this Act.

Attempts to commit offences.

32. Whoever attempts to commit any offence punishable under this Act shall be punished with the punishment herein provided for the offence.

PART V.

SUPPLEMENTAL PROVISIONS.

33. (1) Whenever it appears to the Provincial Government that any act causing or likely to cause wrongful damage to any telegraph is repeatedly and maliciously committed in any place, and that the employment of an additional police-force in that place is thereby rendered necessary, the Provincial Government may send such additional police-force as it thinks fit to the place, and employ the same therein so long as, in the opinion of that Government, the necessity of doing so continues.

(2) The inhabitants of the place shall be charged with the cost of the additional police-force, and the District Magistrate shall, subject to the orders of the Provincial Government, assess the proportion in which the cost shall be paid by the inhabitants according to his judgment of their respective means.

(3) All moneys payable under sub-section (2) shall be recoverable either under the warrant of a Magistrate by distress and sale of the movable property of the defaulter within the local limits of his jurisdiction, or by suit in any competent Court.

(4) The Provincial Government may, by order in writing, define the limits of any place for the purposes of this section.

²[34. (1) This Act, in its application to the Presidency-towns, shall be read as if for the words "District Magistrate" in section 16, sub-section (1), and section 17, sub-sections (2) and (3), for the words "Magistrate of the first or second class" in section 18, sub-section (1) ³[and section 19-A, sub-

Application of Act to Presidency-towns.

LEG. REF.
¹ These words were substituted for the word "Telegraphs" by sec. 2 of the Indian Post Office and Telegraph (Amendment) Act (XIV of 1914).

² Sec. 34 was added by the Indian Tele-

graphs (Presidency-towns) Act, 1888 (XI of 1888).

³ These words were inserted by sec. 10 of the Indian Telegraph (Amendment) Act, 1914 (VII of 1914).

section (2)] and for the word "Magistrate" in section 18, sub-section (2), there had been enacted the words "Commissioner of Police", and for the words "District Judge," in section 16, sub-sections (3), (4) and (5), the words "Chief Judge of the Court of Small Causes".

(2) [Omitted by Government of India (Adaptation of Indian Laws) Order, 1937].

(3) The fee in respect of an application to the Chief Judge of a Presidency Court of Small Causes under sub-section (3) of section 16 shall be the same as would be payable under the Court-Fees Act, 1870, in respect of such an application to a District Judge beyond the limits of a Presidency-town, and fees for summonses and other processes in proceedings before the Chief Judge under sub-section (3) or sub-section (4) of that section shall be payable according to the scale set forth in the fourth schedule to the Presidency Small Cause Courts Act, 1882.]

THE INDIAN TERRITORIAL FORCE ACT (XLVIII OF 1920).

[PASSED BY THE INDIAN LEGISLATIVE COUNCIL.]

[Amended by Acts XXXI of 1921; IX of 1928;
XIII of 1922 and V of 1931.]

[22nd September, 1920.

An Act to constitute an Indian Territorial Force. ¹[* * *]

WHEREAS it is expedient to provide for the constitution of an Indian Territorial Force. ¹[* * *] it is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called THE INDIAN TERRITORIAL FORCE ACT, 1920.

(2) It extends to the whole of British India, including British Baluchistan and the Southal Parganas.

(3) It shall come into force on the first day of October, 1920.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—¹[* * *]

"entrolled" means enrolled or re-enrolled in the Indian Territorial Force under this Act;

"European British subject" means any person who is a European British subject as defined in the Code of Criminal Procedure, 1898, or is a British subject of European descent in the male line;

²["non-commissioned officer" means a person holding non-commissioned rank in the Indian Territorial Force, and includes an acting non-commissioned officer; "officer" means a senior officer or a junior officer;]

"prescribed" means prescribed by rules made under this Act; and

³[* * * * *]

⁴[2-A. For the purposes of this Act, the Provinces of Bombay and

Special provisions as to Sind and Orissa.

Sind, and the Provinces of Bihar and Orissa, shall be deemed to be one Province until in either case the Central Government by notification in the Official

Gazette otherwise directs.]

Constitution of Indian Territorial Force.

3. There shall be raised and maintained in the manner hereinafter provided a force to be designated the Indian Territorial Force:

Provided that the Central Government shall establish all or any of the branches of the Force as circumstances may permit from time to time.

LEG. REF.

² Omitted by Act IX of 1928.

¹ Omitted by Act IX of 1928.

⁴ Sec. 2-A inserted by A.O., 1937.

³ Inserted by Act IX of 1928.

or unit in which he is serving is located, save when it is, in the opinion of the senior military officer present, necessary to proceed beyond those limits in the course of the military operations upon which the corps or unit or any portion thereof is for the time being engaged.]

(2) Any portion of the Indian Territorial Force which, having been called out or embodied under section 9, is performing military service shall be replaced by regular troops or otherwise as soon as circumstances permit, and shall not be required to perform such service after such replacement has been effected to the satisfaction of the senior military officer in charge or after the cancellation of the order or notification under clause (a) or (b), as the case may be, of section 9.

¹[11. (1) Every senior officer of the Indian Territorial Force, when doing duty as such officer, shall be subject to the Army Act, and any orders or regulations made thereunder, whereupon the said Act, orders and regulations shall apply to him as if he held the same rank in His Majesty's Army as he holds for the time being in the said Force, subject to the terms of his commission and the orders of His Majesty.

(2) Every junior officer of the Indian Territorial Force, when doing duty as such officer shall be subject to the Indian Army Act, 1911, and the rules and regulations made thereunder, whereupon the said Act, rules and regulations shall apply to him as if he held the same rank in His Majesty's Indian Forces as he holds for the time being in the said Force, subject to the terms of his commission and the orders of the Governor-General.

(3) Every non-commissioned officer and man of the Indian Territorial Force,—

(a) when called out or embodied for military service under section 9,

(b) When attached to, or otherwise acting as part of, or with, any regular force, or

(c) when embodied for, or otherwise undergoing, military training in the prescribed manner, shall be subject to the Indian Army Act, 1911, and the rules and regulations made thereunder, whereupon the said Act, rules and regulations shall apply to him as if he held the same rank in His Majesty's Indian Forces as he holds for the time being in the said Force, subject to the orders of the Governor-General:

Provided that the said Act, rules and regulations shall, in their application to such non-commissioned officers and men when embodied for or otherwise undergoing military training, be modified to such extent and in such manner as may be prescribed:

Provided further that non-commissioned officers and men of an urban corps or unit, when undergoing military training without having been embodied for that purpose, and non-commissioned officers and men of a University Corps when undergoing training, shall, in respect of such training, be subject only to such disciplinary and other rules as may be prescribed.

(4) Where an offence punishable under the Indian Army Act, 1911, or, as the case may be, under that Act as modified under sub-section (3), has been committed by any person whilst subject to that Act under the provisions of this section, such person may be taken into and kept in military custody and tried and punished for such offence, although he has ceased to be so subject as aforesaid, in like manner as he might have been taken into and kept in military custody, tried or punished if he had continued to be so subject:

Provided that no such person shall be kept in military custody after he has ceased to belong to the Indian Territorial Force, unless he has been taken

into or kept in military custody on account of the offence before the date on which he ceased so to belong; nor shall he be kept in military custody or be tried or punished for the offence after the expiry of two months from that date, unless his trial has already commenced before such expiry.

11-A. In addition to, or in substitution for, any punishment or punishments Summary trial and to which he may be liable under the Indian Army Act, 1911, a junior officer, non-commissioned officer or man of the Indian Territorial Force not being a member of a University Corps, may be punished, either by a Criminal Court or summarily by order of the prescribed authority, for any offence under that Act, or for the contravention of any rule or regulation under this Act, with fine which may extend to fifty rupees, to be recovered in such manner and by such authority as may be prescribed:

Provided that no fine shall be summarily inflicted by order of the prescribed authority in any case in which the accused claims to be tried by a Criminal Court:

Provided further that no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence made punishable by or under this Act.

11-B. Where a junior officer, non-commissioned officer or man of the Indian Territorial Force is required by or in pursuance of any rule, regulation or order made under this Act, to attend any place, a certificate purporting to be signed by the prescribed officer, stating that the person so required to attend failed to do so in accordance with such requirement, shall, without proof of the signature or appointment of such officer, be evidence of the matters stated therein.]

¹[12. ²[(1) In each Province in which any unit or units of the Indian Territorial Force is or have been constituted, the Central Government shall constitute a Provincial Advisory Committee for all such units and a Unit Advisory Committee for each of such units.]

(2) The Central Government shall constitute a Central Advisory Committee to advise ³[it] on matters connected with the Indian Territorial Force generally.

(3) The constitution, powers and procedure of the Advisory Committees shall be such as may be prescribed.]

13. (1) The Central Government may, after Power to make rules. previous publication, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may—

(a) prescribe the manner in which, the period for which and the conditions subject to which, persons may be enrolled under section 5;

(b) prescribe the manner in which persons enrolled may be appointed to corps and units under section 6 or transferred under section 7 ⁴[or section 7-A];

(c) prescribe the authorities by which and the conditions subject to which persons enrolled may be discharged under section 8;

(d) prescribe ⁵[preliminary and periodical military training, compulsory and voluntary, for] any persons or class of persons enrolled and provide for the embodiment of any corps or unit for that purpose;

LEG. REF.

¹ New section 12 substituted for old section 12 by Act IX of 1928.

² Sub-section (1) of section 12 substituted

by A.O., 1937.

³ Substituted by the A.O., 1937, for 'him.'

⁴ Added by Act IX of 1928.

⁵ Substituted by Act V of 1931.

(e) prescribe the military or other obligations to which members of a University Corps shall be liable when undergoing military training and provide generally for the maintenance of discipline in such cases;

(f) provide for the medical examination of persons offering themselves for enrolment under section 5;

(g) provide for and regulate the remuneration, allowances, gratuities or compensation (if any) to be paid to any person or class of persons enrolled or to their dependants; and

(h) provide for any other matter which under this Act is to be or may be prescribed.

(3) All rules made under this Act shall be published in the Official Gazette, and on such publication shall have effect as if enacted in this Act.

14. (1) The Commander-in-Chief of His Majesty's Forces in India may make regulations consistent with this Act and the rules made thereunder providing generally for all details connected with the organization and personnel of the Indian Territorial Force and for the duties, military training, clothing, equipment, allowances and leave of persons enrolled.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may specify the courses of training or instruction to be followed by any person or class of persons enrolled.

15. For the purposes of sections 128, 130 and 131 of the Code of Criminal Procedure, 1898, all officers, non-commissioned officers and men of the Indian Territorial Force who have been appointed to a corps or unit shall be deemed to be officers, non-commissioned officers and soldiers, respectively, of His Majesty's Army.

16. No person shall be liable to pay any municipal or other tax in respect of any horse, bicycle, motor bicycle, motor car, or other means of conveyance which he is authorised by regulations made under section 14 to maintain in his capacity as a member of the Indian Territorial Force.

Certain persons subject to this Act to be deemed part of His Majesty's Army for certain purposes.

Exemption from local taxation.

THE TRADE MARKS ACT (V OF 1940) (Extracts).

CHAPTER X.

OFFENCES AND RESTRAINT OF USE OF ROYAL ARMS AND STATE EMBLEMS.

67. If any person makes, or causes to be made, a false entry in the register, or a writing falsely purporting to be a copy, of an entry in the register, or produces or tenders, or causes to be produced, or tendered, in evidence any such writing, knowing the entry or writing to be false, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

68. (1) From such date, not being earlier than one year from the commencement of this Act, as the Central Government may, by notification in the Official Gazette, appoint in this behalf, no person shall make any representation—

(a) with respect to a mark not being a registered trade mark, to the effect that it is a registered trade mark; or

(b) with respect to a part of a registered trade mark not being a part separately registered as a trade mark, to the effect that it is separately registered as a trade mark; or

(c) to the effect that a registered trade mark is registered in respect of any goods in respect of which it is not in fact registered; or

(d) to the effect that the registration of a trade mark gives an exclusive

Penalty for falsification of entries in register.

Penalty for falsely representing a trade mark as registered.

right to the use thereof in any circumstances in which, having regard to limitations entered on the register, the registration does not in fact give that right.

(2) If any persons contravenes any of the provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(3) For the purposes of this section, the use in British India in relation to a trade mark of the word "registered", or of any other expression referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the register, except—

(a) where that word or other expression is used in direct association with other words delineated in characters at least as large as those in which that word or other expression is delineated and indicating that the reference is to registration as a trade mark under the law of a country outside British India, being a country under the law of which the registration referred to is in fact in force; or

(b) where that other expression is of itself such as to indicate that the reference is to such registration as is mentioned in clause (a); or

(c) where that word is used in relation to a mark registered as a trade mark under the law of a country outside British India and in relation solely to goods to be exported to that country.

Restraint of use of Royal Arms and State emblems.

69. If a person, without due authority, uses in connection with any trade, business, calling or profession—

(a) the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or

(b) any device, emblem or title in such manner as to be calculated to lead to the belief that he is employed by, or supplies goods to, or is connected with, His Majesty's Government or the Central Government or any Provincial Government or any department of any such Government, he may, at the suit of any person who is authorised to use such Arms or such device, emblem or title or of the Registrar, be restrained by injunction from continuing so to use the same.

THE INDIAN TREASURE-TROVE ACT (VI OF 1878).

HISTORICAL MEMOIR.

Year.	No. of Act	Name of Act.	How affected.
1878	VI	Treasure-Trove.	Rep. in part, Act XII of 1891. " " X of 1914.

[13th February, 1878.

An Act to amend the law relating to treasure-trove.

Preamble. WHEREAS it is expedient to amend the law relating to treasure-trove; It is hereby enacted as follows:—

Preliminary.

Short title. 1. This Act may be called THE INDIAN TREASURE-TROVE ACT, 1878.

Extent. It extends to the whole of British India.

The Act applies only to things which have been hidden. 133 I. O. 564=1931 C. 430=59 C. 21 (following 31 M. 397).

Applicability of Act and respective rights

of owner of places and finder. 3 M. 397=4 M.L.T. 219. Act applies only to things which have been hidden. 1931 C. 430; also 31 M. 397.

* * * * *

1[
2. [Repeal of enactment.] Repealed by the Amending Act, 1891 (XII of 1891).]

Interpretation clause.

“Treasure.”

“Collector” means

“Collector.”

Collector under this Act.

When any person is entitled, under any reservation in an instrument of transfer of any land or thing affixed thereto, to treasure in such land or thing, he shall, for the purposes of this Act, be deemed to be the owner of such land or thing.

Procedure on finding Treasure.

Notice by finder of treasure.

4. Whenever any treasure exceeding in amount or value ten rupees is found, the finder shall, as soon as practicable, give to the Collector notice in writing—

- (a) of the nature and amount or approximate value of such treasure;
- (b) of the place in which it was found;
- (c) of the date of the finding;

and either deposit the treasure in the nearest Government treasury, or give the Collector such security as the Collector thinks fit, to produce the treasure at such time and place as he may from time to time require.

Notification requiring claimants to appear.

5. On receiving a notice under section 4, the Collector shall, after making such enquiry (if any) as he thinks fit, take the following steps (namely):—

(a) he shall publish a notification in such manner as the Provincial Government from time to time prescribes in this behalf, to the effect that on a certain date (*mentioning it*) certain treasure (*mentioning its nature, amount and approximate value*) was found in a certain place (*mentioning it*); and requiring all persons claiming the treasure, or any part thereof, to appear personally or by agent before the Collector on a day and at a place therein mentioned, such day not being earlier than four months, or later than six months, after the date of the publication of such notification;

(b) when the place in which the treasure appears to the Collector to have been found was at the date of the finding in the possession of some person

LEG. REF.

¹ Omitted by Act X of 1914.

SEC. 3.—Property not hidden is not treasure-trove and belongs to owner of land on which it is found. 31 M. 397=4 M.L.T. 219; 1931 C. 430.

SEC. 4.—“Finder”—Coolies finding in their employer’s presence treasure in the course of felling trees. 27 M.L.J. 477=25 I.C. 640. A person who was not present at the finding of a treasure and who has had no sort of connection with the matter up to the time when the actual finder decides not to report to the Collector about the finding cannot be found guilty of the offence of abetment of an offence under sec. 4 of the Act, though they may have subsequently shared the treasure illegally with the finder. 175 I.C. 502=47 L.W. 320=1938 M.W.N. 350=A.I.B. 1938 Mad. 508.

SECS. 4 AND 20.—If any person takes Gov-

ernment money and deposits it in a bank or even if he uses that money for purchasing articles, the money ceases to be Government money when it changes hands. When the money is deposited in a bank it becomes a part of the assets of the bank the latter becoming a debtor for that amount to the person who deposits the money into the bank. *S* found a bangle, sold it for Rs. 1,000 and deposited portions of that sum in three banks. The crown sought to recover the sums of money deposited in the banks. *Heid*, that though the proceeds of the sale of the bangle was Government money it ceased to be so when it changed hands, and the Crown could not in criminal proceedings claim the refund of the moneys deposited in the banks out of the proceeds of the sale of the bangle. 47 L.W. 813=A.I.B. 1938 Mad. 710=(1938) 1 M.L.J. 767.

SEC. 5.—In the absence of notice, Act does not apply. 19 B. 668; see 7 M. 150.

other than the finder, the Collector shall also serve on such person a special notice in writing to the same effect.

6. Any person having any right to such treasure or any part thereof, as owner of the place in which it was found or otherwise, and not appearing as required by the notification issued under section 5, shall forfeit such right.

Forfeiture of right on failure to appear.
Matters to be enquired into and determined by the Collector.

7. On the day notified under section 5, the Collector shall cause the treasure to be produced before him, and shall enquire as to and determine—

(a) the person by whom, the place in which, and the circumstances under which, such treasure was found; and

(b) as far as is possible, the person by whom, and the circumstances under which, such treasure was hidden.

8. If, upon enquiry made under section 7, the Collector sees reason to believe that the treasure was hidden within one hundred years before the date of the finding, by a person appearing as required by the said notification and claiming such treasure, or by some other person under whom such person claims, the Collector shall make an order adjourning the hearing of the case for such period as he deems sufficient, to allow of a suit being instituted in the Civil Court by the claimant, to establish his right.

Time to be allowed for suit by person claiming the treasure.
When treasure may be declared ownerless.

9. If upon such enquiry the Collector sees no reason to believe that the treasure was so hidden; or

if, where a period is fixed under section 8, no suit is instituted as aforesaid within such period to the knowledge of the Collector; or

if such suit is instituted within such period, and the plaintiff's claim is finally rejected;

the Collector may declare the treasure to be ownerless.

Appeal against such declaration.

Any person aggrieved by a declaration made under this section may appeal against the same within two months from the date thereof to the Chief Controlling Revenue authority.

Subject to such appeal, every such declaration shall be final and conclusive.

10. When a declaration has been made in respect of any treasure under section 9, such treasure shall, in accordance with the provisions hereinafter contained, either be delivered to the finder thereof, or be divided between him and the owner of the place in which it has been found in manner hereinafter provided.

11. When a declaration has been made in respect of any treasure as aforesaid, and no person other than the finder of such treasure has appeared as required by the notification published under section 5 and claimed a share of the treasure as owner of the place in which it has been found, the Collector shall deliver such treasure to the finder thereof.

When no other person claims as owner of place, treasure to be given to finder.

12. When a declaration has been made as aforesaid in respect of any treasure, and only one person other than the finder of such treasure has so appeared and claimed, and the claim of such person is not disputed by the finder, the Collector shall proceed to divide the treasure between the finder and the person so claiming according to the following rule (namely):—

When only one such person claims and his claim is not disputed, treasure to be divided.

If the finder and the person so claiming have not entered into any agreement then in force as to the disposal of the treasure, three-fourths of the treasure shall be allotted to such finder and the residue to such person. If such finder and such person have entered into any such agreement, the treasure shall be disposed of in accordance therewith:

Provided that the Collector may, in any case, if he thinks fit, instead of dividing any treasure as directed by this section,—

(a) allot to either party the whole or more than his share of such treasure, on such party paying to the Collector for the other party such sum of money as the Collector may fix as the equivalent of the share of such other party, or of the excess so allotted, as the case may be; or

(b) sell such treasure or any portion thereof by public auction, and divide the sale-proceeds between the parties according to the rule hereinbefore prescribed:

Provided also that, when the Collector has by his declaration under section 9 rejected any claim made under this Act by any person other than the said finder or person claiming as owner of the place in which the treasure was found, such division shall not be made until after the expiration of two months without an appeal having been presented under section 9 by the person whose claim has been so rejected, or when an appeal has been so presented, after such appeal has been dismissed.

When the Collector has made a division under this section, he shall deliver to the parties the portions of such treasure, and shares to be delivered to parties. or the money in lieu thereof, to which they are respectively entitled under such division.

13. When a declaration has been made as aforesaid in respect of any treasure, and two or more persons have appeared as

In case of dispute as to ownership of place, proceedings to be stayed. aforesaid and each of them claimed as owner of the place where such treasure was found, or the right of any person who has so appeared and claimed is disputed by the finder of such treasure, the Collector shall retain such treasure and shall make an order staying his proceedings with a view to the matter being enquired into and determined by a Civil Court.

14. Any person who has so appeared and claimed may, within one month

Settlement of such dispute, from the date of such order, institute a suit in the Civil Court to obtain a decree declaring his right; and in every such suit the finder of the treasure and all persons disputing such claim before the Collector shall be made defendants.

15. If any such suit is instituted and the plaintiff's claim is finally established therein, the Collector shall, subject to the provisions of section 12, divide the treasure between him

and division thereupon. and the finder.

If no such suit is instituted as aforesaid, or if the claims of the plaintiffs in all such suits are finally rejected, the Collector shall deliver the treasure to the finder.

16. The Collector may, at any time after making a declaration under

Power to acquire the treasure on behalf of Government. section 9, and before delivering or dividing the treasure as hereinbefore provided, declare by writing under his hand his intention to acquire on behalf of the Government the treasure, or any specified portion thereof, by payment to the persons entitled thereto of a sum equal to the value of the materials of such treasure or portion, together with one-fifth of such value, and may place such sum in deposit in his treasury to the credit of such persons; and thereupon such treasure or portion shall be deemed to be the property of Government, and the money so deposited shall be dealt with, as far as may be, as if it were such treasure or portion.

Decision of Collector final, and no suit to lie against him for acts done *bona fide*.

Collector to exercise powers of Civil Court.

Power to make rules.

Such rules shall, on being published in the Official Gazette, have the force of law.

Penalties.

20. If the finder of any treasure fails to give the notice, or does not either make the deposit or give the security, required by section 4, or alters or attempts to alter such treasure so as to conceal its identity, the share of such treasure, or the money in lieu thereof to which he would otherwise be entitled, shall vest in Her Majesty,

and he shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

21. If the owner of the place in which any treasure is found abets, with in the meaning of the Indian Penal Code, any offence under section 20, the share of such treasure, or the money in lieu thereof to which he would otherwise be entitled, shall vest in Her Majesty,

and he shall, on conviction before a Magistrate, be punished with imprisonment which may extend to six months, or with fine, or with both.

SCHEDULE.

[Repealed by the Amending Act, 1891 (XII of 1891).]

THE VACCINATION ACT (XIII OF 1880).¹

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LEG. REF.

¹ For Statement of Objects and Reasons, see "Gazette of India 1880, Pt. V, p. 80; for Report of the Select Committee, see *ibid.*, p. 205; for Proceedings in Council, see *ibid.*, 1879, Supplement, p. 1225, *ibid.*, 1880, pp. 566 and 1204.

SEC. 20.—Coolies finding treasure in their employer's presence while felling trees. 25 I.C. 640=27 M.L.J. 471. Where the person who failed to give notice is neither the finder nor employed or instructed by the finder to give notice on his behalf, he is not guilty. 15 A.L.J. 796=42 I.C. 995=19 Cr.L.J. 35. A person found a bangle, sold it

for Rs. 1,000 and deposited portions of that sum in three banks. The Crown sought to recover the sums of money deposited in the banks. *Held*, that though the proceeds of the sale of the bangle was Government money it ceased to be so when it changed hands, and the Crown could not in criminal proceedings claim the refund of the moneys deposited in the banks out of the proceeds of the sale of the bangle. (1938) I.M.L.J. 767=47 L.W. 813=A.I.R. 1938 Mad. 710.

SEC. 21.—Persons other than the owner of the place who abet an offence under sec. 20 of the Act are punishable under the Penal Code. 1 Weir 919.

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[9th July, 1880.]

An Act to give power to prohibit inoculation and to make the vaccination of children compulsory in certain Municipalities and cantonments.

WHEREAS it is expedient to give power to prohibit inoculation, and make the vaccination of children compulsory in certain municipalities and cantonments; It is hereby enacted

Preamble.

as follows:—

Short title.

1. This Act may be called THE VACCINATION ACT, 1880; and

It shall apply only to such municipalities and cantonments situate in the

Application.

territories administered respectively by the Lieutenant-Governors of the North-Western Provinces² and

the Punjab, and the Chief Commissioners of Oudh, the Central Provinces, [* * *] Assam, Ajmer and Coorg as it may be extended to in manner herein after provided.

Interpretation-clause.

2. In this Act, unless there is something repugnant in the subject or context,—

(1) the expression “municipal commissioners” means a body of municipal commissioners or a municipal committee constituted under the provisions of any enactment for the time being in force:

“Municipal commissioners”:

“parent”:

(2) “parent” means the father of a legitimate child and the mother of an illegitimate child:

“guardian”:

(3) “guardian” includes any person who has accepted or assumed the care or custody of any child:

(4) “unprotected child” means a child who has not been protected from small-pox by having had that disease either naturally

“unprotected child”:

or by inoculation, or by having been successfully vaccinated, and who has not been certified under this Act to be insusceptible to

vaccination:

LEG. REF.

¹ To be construed now “Governors”, see sec. 81 of the General Clauses Act, 1897 (X of 1897).

² To be construed now the “Governor of the United Provinces of Agra and Oudh,” see the United Provinces (Designation) Act 1902 (VII of 1902).

³ In the North-West Frontier Province this reference to the territories administered by the Lieutenant-Governor of the Punjab is to be construed as referring to the North-West Frontier Province, see sec. 6 (1) (a)

of the North-West Frontier Law and Justice Regulation, 1901 (VII of 1901).

⁴ Words “British Burma” omitted by A. O., 1937.

SEC. 1.—As to failure to comply with a notice for vaccination of child, see 2 L.B.R. 279; 1 Weir 95, 96. Entry in vaccination register regarding father's name of an illegitimate child made three years after the child's birth is inadmissible in evidence. 1930 M. 191.

(5) "inoculation" means any operation performed with the object of producing the disease of small-pox in any person by means of variolous matter:

(6) "vaccination-circle" means one of the parts into which a municipality or cantonment has been divided under this Act for the performance of vaccination:

(7) "vaccinator" means any vaccinator appointed under this Act to perform the operation of vaccination, or any private person authorised ¹[* * *] in manner hereinafter provided to perform the same operation; and includes a "Superintendent of vaccination":

(8) "vaccination-season" means the period from time to time fixed² by the Provincial Government for any local area under its administration by notification in the Official Gazette, during which alone vaccination may be performed under this Act.

3.³ A majority in number of the persons present at a meeting of the Extension of Act to Municipal Commissioners specially convened in this behalf may apply to the Provincial Government to extend this Act to the whole or any part of a municipality, and thereupon the Provincial Government may, if it thinks fit, by notification published in the Official Gazette, declare its intention to extend this Act in the manner proposed.

Any inhabitant of such municipality or part thereof who objects to such extension may within six weeks from the date of such publication, send his objection in writing to the Secretary to the Provincial Government, and the Provincial Government shall take such objection into consideration. When six weeks from the said publication have expired, the Provincial Government, if no such objections have been sent as aforesaid, or (when such objections have been so sent) if in its opinion they are insufficient, may by like notification effect the proposed extension.

4. The Provincial Government may, [* * *] by notification in the Official Gazette extend this Act to the whole or any part of a military cantonment.

5. The Provincial Government may, by notification in the Official Gazette, withdraw any local area in a municipality, or [* * *] any local area in a cantonment, from the operation of this Act.

LEG. REF.

¹ The words "by the Local Government" were repealed by the Decentralization Act, 1914 (IV of 1914).

² For list of notifications fixing vaccination periods for different municipalities, see Punjab Local Rules and Orders, Coorg Rules and Orders and United Provinces Rules and Orders.

³ Insertion of new sec. 3-A in the United Provinces and Central Provinces by U.P. Act II of 1907 and by C.P. Act III of 1915 respectively, which runs as follows:—

3-A. The Provincial Government may, by notification in the Official Gazette declare its intention to extend this Act to the whole or any part of a notified

area.

Any inhabitant of such notified area or part thereof who objects to such extension may, within six weeks from the date of such publication, send his objection in writing to the Secretary to the Provincial Government, and the Provincial Government shall take such objection into consideration. When six weeks from the said publication have expired, the Provincial Government, if no such objections have been sent as aforesaid, or (when such objections have been so sent) if in its opinion they are insufficient, may by like notification effect the proposed extension.

⁴ The words "subject to the control of the Governor-General in Council" were omitted by the Devolution Act, 1920 (XXXVIII of 1920), sec. 2 and Sch. I.

Prohibition of inoculation.

6. In any local area to which the provisions of this Act apply, inoculation shall be prohibited; and no person who has undergone inoculation shall enter such area before the lapse of forty days from the date of the operation,

Inoculated persons not to enter, without certificate local area subject to Act.

without a certificate from a medical practitioner, of such class as the Provincial Government may from time to time by written order authorise to grant such

certificates stating that such person is no longer likely to produce small-pox by contact or near approach.

7. Every local area to which this Act applies shall be a vaccination-circle, or shall in manner hereinafter provided be divided into a number of such circles;

Vaccination circles.

Vaccinators.

one or more vaccinators shall be appointed in manner hereinafter provided for each such circle; and one or more Superintendents of vaccination shall be appointed in manner hereinafter provided for each such local area.

Superintendent of vaccination.

8. The ¹[Commissioner] may by written licence authorise private vaccinators to perform vaccination in any vaccination circle, and may suspend or cancel any such licence.

Private vaccinators.

9. When any unprotected child, having attained the age of six months has resided for a period of one month during the vaccination season in any local area to which the provisions of this Act apply, and has not at the expiration of such period attained the age, if a boy, of fourteen years, and if a girl, of eight years, the parent or guardian of such child shall take it, or cause it to be taken, to a vaccinator to be vaccinated, or send for a vaccinator to vaccinate it.

Unprotected children to be vaccinated.

Such vaccinator shall vaccinate the child and deliver to its parent or guardian a memorandum stating the date on which the vaccination has been performed and the date on which the child is to be inspected in order to ascertain the result of the operation, or shall, if he finds such child in a state unfit for vaccination, deliver to its parent or guardian a certificate under his hand to the effect that the child is in a state unfit for vaccination for the whole or part of the current vaccination season.

Vaccinator to vaccinate children, or deliver certificates of postponement.

10. The parent or guardian of every child which has been vaccinated under section 9 shall, on the date of inspection stated in the memorandum, take the child, or cause it to be taken, to a vaccinator for inspection, or get it inspected at his own house by a vaccinator; and

Inspection after vaccination.

such vaccinator shall then append to the memorandum a certificate stating that the child has been inspected and the result of such inspection.

11. When it is ascertained at the time of inspecting a child under section 10 that the vaccination has been successful, a certificate shall be delivered by the vaccinator to the parent or guardian of such child to that effect, and such child shall thereafter be deemed to be protected.

Procedure when vaccination is successful.

12. When it is ascertained as aforesaid that the vaccination has been unsuccessful, the parent or guardian shall, if the vaccinator so direct, cause the child to be forthwith again vaccinated and subsequently inspected in manner

hereinbefore provided.

LEG. REF.

¹Substituted for the words "Local Government" by the Decentralization Act, 1914 (IV of 1914).

SEC. 7.—Vaccinators are public servants. M.H.C.B. Ap. 48; 1 Weir 182.

13. A certificate granted under section 9 showing the unfitness of a child for vaccination shall remain in force for the period stated therein, and on the termination of that period, or, if that period terminates after the vaccination season is over, when the next vaccination season begins, the parent or guardian of such child shall take the child, or cause it to be taken, to a vaccinator to be vaccinated, or procure its vaccination at his own house by a vaccinator:

Renewal of postpos-
ment certificates. in a state unfit for vaccination, the certificate granted under section 9 shall be renewed.

14. If the Superintendent of vaccination is of opinion that a child which has been three times unsuccessfully vaccinated is insusceptible of successful vaccination, he shall deliver to the parent or guardian of such child a certificate under his hand to that effect; and the parent or guardian shall thenceforth not be required to cause the child to be vaccinated.

15. The vaccination of a child shall ordinarily be performed with such lymph as may be prescribed by the rules to be made under this Act.

Provided that,

1st, if animal-lymph is so prescribed and the parent or guardian of any child desires that such child shall be vaccinated with human-lymph, it shall be so vaccinated; and

2nd, if in any local area in which animal-lymph is procurable human-lymph is so prescribed, and the parent or guardian of any child desires that such child should be vaccinated with animal-lymph, and tenders to the vaccinator the amount of such fee, not exceeding one rupee, as may be fixed by such rules in this behalf, such child shall be so vaccinated.

16. No fee shall be charged by any vaccinator except a private vaccinator to the parent or guardian of any child for any of the duties imposed on such vaccinator by or under the provisions of this Act:

Provided that it shall be lawful for a vaccinator to accept a fee for vaccinating a child by request of the parent or guardian elsewhere than in the circle for which such vaccinator is appointed.

17. The Superintendent of vaccination, in addition to the other duties imposed on him by or under the provisions of this Act, shall ascertain whether all unprotected children, under the age of fourteen years if boys, and under the age of eight years if girls, within the local area under his superintendence have been vaccinated; and, if he has reason to believe that the parent or guardian of any such child is bound by the provisions hereinbefore contained to procure the vaccination of such child or to present it for inspection, and has omitted so to do, he shall personally go to the house of such parent or guardian, and there make enquiry, and shall, if the fact is proved, forthwith deliver to such parent or guardian, or cause to be affixed to his house, a notice requiring that the child be vaccinated, or (as the case may be) that it be presented for inspection, at a time and place to be specified in such notice.

Notice to parent or guardian neglecting to comply with Act.

18. If such notice is not complied with, the Superintendent of vaccination

SEC. 18.—*Disobedience to the notice issued by the vaccinating authorities is not an offence, and such officers' report to the Magistrate is not a complaint of any offence.* 4 L.B.R. 12—6 Cr.L.J. 124. A Magistrate, therefore, who makes an order under sec. 18 of that Act for compliance with such notice, cannot order the payment of

Order by Magistrate when notice not complied with. shall report the matter to the Magistrate of the District, or such Magistrate as the Provincial Government or the Magistrate of the district may from time to time appoint in this behalf; and the Magistrate receiving such report shall summon the parent or guardian of the child and demand his explanation, and shall, if such explanation is not satisfactory, make an order in writing directing such parent or guardian to comply with the notice before a date specified in the order.

If on such date the order has not been obeyed, the Magistrate shall summon the parent or guardian before him, and unless just cause or excuse is shown, shall deal with the disobedience as an offence punishable under section 22.

Magistrates to be non-official natives.

The Magistrates appointed under this section shall, as far as is conveniently practicable, be natives of India, and not paid servants of the ¹[Crown].

²19. When this Act has been applied to any municipality or any part thereof, the Municipal Commissioners may, from time to time, make ³rules consistent with this Act for the proper enforcement of this Act within the limits to which it applies. Such rules shall be made in the manner in which, under the law for the time being in force, the ⁴[Municipal] Commissioners make rules or bye-laws for the regulation of other matters within the limits of the municipality, and shall, when confirmed by the ⁵[Commissioner] and published in the Official Gazette, have the force of law:

Provided that the ⁵[Commissioner] may at any time rescind or modify any such rule.

20. When this Act has been applied to any can-

LEG. REF.

¹ Substituted for 'Government' by A.O., 1937.

² See now the Punjab Vaccination Law Amendment Act (IX of 1925), sec. 3.

The following additions made by the Local Acts may also be noticed:—

(For C. P. only). [19-A. When this Act has been applied to any notified area or any part thereof (or to any area under the authority of a district council or part thereof), the Local Government may, from time to time, make rules consistent with this Act for the proper enforcement of this Act, within the limits to which it applies. Such rules when published in the local official Gazette shall have the force of law.

19-B. When this Act has been applied to any local area under the authority of a district council or to any part thereof or to specified village therein, the district council may, from time to time, make rules consistent with this Act for the proper enforcement of this Act within the limits to which it applies. Such rules shall be made in the manner in which, under the law for the time being in force, the district council makes

rules or bye-laws for the regulation of other matters within the limits of the district council, and shall, when confirmed by the Local Government and published in the official Gazette, have the force of law.] (C. P. Act III of 1915).

For U.P. only.—[19-A. When this Act has been applied to any notified area or any part thereof, the Local Government may, from time to time, make rules consistent with this Act, for the proper enforcement of this Act within the limits to which it applies. Such rules, when published in the official Gazette, shall have the force of law.] (U. P. Act III of 1907).

³ For rules made under this section, see the Punjab Local Rules and Orders "Punjab Gazette," 1907, Pt. I, p. 149.

⁴ Added by Act IV of 1914.

⁵ Substituted by IV of 1914.

costs, as there is no authority for it in the Vaccination Act, and cannot direct the refund of court-fees, as sec. 31, Court-Fees Act, does not apply. 4 L.B.R. 12=6 Cr.L.J. 124. See also 2 L.B.R. 279. Child above six months—Parent refusing to allow child to be vaccinated—Propriety of conviction. See 7 R. 14=117 I.C. 246=30 Cr.L.J. 750 =1929 Cr.C. 58=1929 R. 150,

Power to make rules for cantonments.

tonment or any part thereof, the Provincial Government may, from time to time ¹[* * *] make such ²rules.

What rules under sections 19 and 20 may provide for.

21. The rules to be made for any local area under section 19 or 20 may, among other matters, provide for—

(a) the division of such local area into circles for the performance of vaccination;

(b) the appointment of a place in each vaccination circle as a public vaccine-station, and the posting of some distinguishing mark in a conspicuous place near such station;

(c) the qualifications to be required of public vaccinators, and Superintendents of vaccination;

(d) the authority with which their appointment, suspension and dismissal shall rest;

(e) the time of attendance of public vaccinators at the vaccine-stations, and their residence within the limits of the vaccination-circles;

(f) the distinguishing mark or badge to be worn by them;

(g) the amount of fee chargeable by private vaccinators, and their guidance generally in the performance of their duties;

(h) the facilities to be afforded to people for procuring the vaccination of their children at their own houses;

(i) the grant and form of certificates of successful vaccination, of unfitness for vaccination or of insusceptibility of vaccination;

(j) the nature of the lymph to be used and the supply of a sufficient quantity of such lymph;

(k) the fee to be paid for vaccination with animal-lymph under section 15;

(l) the fee to be paid to a public vaccinator for vaccinating a child beyond the vaccination circle at the request of the parent or guardian of the said child;

(m) the preparation and keeping of registers showing—

the names of children born in such local area on or after the date of the application of this Act;

the names of unprotected children born in such local area previous to the application of this Act, and who are, at the time this Act is applied, under the age of fourteen years if boys, and of eight years if girls;

the names of unprotected boys and girls respectively under those ages brought within such local area at any time after the application of this Act and who have resided there for a month;

the result of each vaccination or its postponement, and the delivery of certificates, if any;

(n) the assistance to be given by the municipal commissioners and municipal servants in the preparation of these registers, and in other matters; and

(o) the preparation of vaccination-reports and returns.

Punishment of offences. 22. Whoever commits any of the undermentioned offences (that is to say):—

(a) violates the provisions of section 6,

(b) neglects without just excuse to obey an order made under section 18,

(c) breaks any of the rules made under section nineteen or twenty, or

(d) neglects without just cause to obey an order made under section 18 after having been previously convicted of so neglecting to obey a similar order made in respect of the same child,

LEG. REF.

¹ The words "subject to the control of the Governor-General in Council" were repealed by the Devolution Act (XXXVIII of 1920), sec. 2 and Schedule I.

² For rules under this section for the regulation of vaccine-operations in cantonments, see the Punjab Local Rules and Orders.

shall be punished as follows (that is to say):—

in the case of the offence mentioned in clause (a), with simple imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both;

in the case of the offences mentioned in clauses (b) and (c), with fine which may extend to fifty rupees; and

in the case of the offence mentioned in clause (d), with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Municipal funds to receive fees and meet expenditure.

23. The amount of all fees ¹[* *] realized, and the amount of all expenditure incurred, under this Act in any municipality shall respectively be credited to and paid from the municipal fund.

THE INDIAN WEIGHTS AND MEASURES OF CAPACITY ACT (XXXI OF 1871).²

[*Rep. in part by Standard of Weights Act (IX of 1939).*]

N.B.—(1) Throughout this Act, save as expressly provided, for ‘Governor-General in Council’ and ‘Local Government’ the words ‘appropriate Government’ are substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

(2) “The Indian Weights and Measures of Capacity Act, 1871, in so far as it relates to the establishment of standards of weight, is hereby repealed.” (Act IX of 1939, S. 6.)

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[30th October, 1871.]

An Act to regulate the Weights and Measures of Capacity of British India.

WHEREAS it is expedient to provide for the ultimate adoption of a uniform system of Weights and Measures of Capacity throughout British India; It is hereby enacted as follows:—

I.—Preliminary.

1. This Act may be called THE INDIAN WEIGHTS

AND MEASURES OF CAPACITY ACT, 1871, and extends to the whole of British India.

LEG. REF.

¹ Words ‘and fines’ omitted by A.O., 1937.

² For the Statement of Objects and Reasons, see *Gazette of India*, 1871, Pt. V, p. 398; for Proceedings in Council, see *ibid.*,

1871, Supplement, pp. 1181, 1290, 1424, 1575.

SEC. 1.—See 23 I.C. 535. See Notes under Penal Code, Secs. 265 and 266.

II.—Standards.

2. The primary standard of weight shall be called a ser, and shall be a standard of weight. weight of metal in the possession of the ¹[Central Government], equal, when weighed in a vacuum, to the weight known in France as the Kilogramme de Archives.

Units of weights and measures of capacity. 3. The units for weight and of measures of capacity shall be—
for weights, the said ser;

for measures of capacity, a measure containing one such ser of water at its maximum density weighed in a vacuum.

4. The appropriate Government may, from time to time, by notification in the Official Gazette, declare the magnitude and denominations of the weights and measures of capacity, other than the said units, to be authorized under this Act:
Special weights and measures of capacity may be authorized.

Provided that every such weight or measure of capacity shall be an integral multiple or integral sub-multiple of one of the units aforesaid.

The appropriate Government may, in like manner, revoke such notification.

Unless it be otherwise ordered in any such notification, the sub-divisions of all such weights and measures of capacity shall be expressed in decimal parts.

5. The appropriate Government may, from time to time, by notification in the Official Gazette, define the limits of districts for the purposes of this Act.
Districts how defined.

The appropriate Government may, from time to time, by notification in the Official Gazette, define the limits of sub-districts for the purposes of this Act.
Sub-districts how defined.

6. The appropriate Government may provide, for such districts as ²[it] thinks fit, proper primary standards and sets of the said authorized weights and measures of capacity.
Primary standards to be provided.

Such standards shall, for the purposes of this Act, be deemed the standards for such districts.

7. The appropriate Government may provide, for such sub-districts as it thinks fit copies of such of the said authorized weights and measures of capacity as shall be necessary to serve as local standards in such sub-districts.
Local standards to be provided.

Such local standards shall be deemed correct, until they are proved to be otherwise.

III.—Use of new Weights and Measures of Capacity.

8. Whenever the appropriate Government considers that proper standard weights and measures of capacity have been made available for the verification of the weights and measures of capacity to be used by any Government office or municipal body or railway company, the appropriate Government may, by notification in the Official Gazette, direct that, after a date to be fixed therein, all or any of the weights and measures of capacity authorized as aforesaid shall be used in dealings and contracts by such
Use of new weights and measures of capacity in Government offices, etc.

LEG. REF.

¹ Substituted by A.O., 1937, for 'Government of India'.

² Substituted by A.O., 1937, for 'he'.

SECS. 1 AND 2: CASE LAW.—See 56 P.L. R. 1914; 23 I.C. 535; 40 A. 84—19 Cr.L.

J. 146—43 I.O. 433—15 A.L.J. 897; 20 P.R. (Cr.) 1913; 15 Cr.L.J. 11; 36 P.L. R. 1914; 1929 Nag. 239.

SEC. 4.—See 22 I.C. 115—15 Cr.L.J. 11 and also cases cited *supra* under secs. 1 and 2.

office, body or company; and may, in like manner, from time to time, alter or revoke such direction.

9. After the date fixed in any notification under section 8, all dealings and contracts had and made by the officers, bodies or companies, mentioned in such notification, for any work to be done or goods to be sold or delivered by weight or measure of capacity, shall, in the absence of a special agreement to the contrary, be deemed to be had and made according to the weights or measures of capacity directed in such notification, to be used by such officers, bodies or companies.

IV.—Wardens.

10. The appropriate Government shall appoint Wardens for the custody of the primary and local standards and sets of authorized weights and measures of capacity hereinbefore mentioned.

The appropriate Government may, at any time, suspend or remove any such Warden and appoint another.

11. The appropriate Government may, from time to time, make rules consistent with this Act for regulating the following matters:—

(a) the appointment of Wardens;
(b) the guidance of Wardens in all matters connected with the performance of their duties;

(c) the provision, replacement, custody and use of the standards;
(d) the method of verifying local standards and weights, weighing machines and measures of capacity authorized under this Act, and balances, and of certifying such verification:

Provided that such verification shall not be required to be made oftener than once in two years;

(e) the errors which may be tolerated in weights, weighing machines and measures of capacity authorized under this Act, and in balances;

(f) the shapes, proportions and dimensions to be given to weights, weighing machines, and measures of capacity authorized under this Act, and to balances, and the materials of which they may be made;

(g) marking weights and measures of capacity authorized under this Act with their several denominations;

(h) the conditions under which Government offices, municipal bodies and railway companies shall be subject to inspection and verification of the weights, weighing machines and measures of capacity authorized under this Act, and of the balances used by them;

(i) the fees to be paid for verifying, correcting and certifying the verification of weights, weighing machines and measures of capacity authorized under this Act, and of balances.

Publication of rules.

12. Such rules shall be published in the Official Gazette.

And the appropriate Government may, by notification in the Official Gazette, declare that, from and after a day to be named therein, all or any of the said rules shall come into force in respect of any Government office, municipal body or railway company: and thereupon, to the extent specified in such notification, such rules or rule shall have the force of law.

Officers of Government and others to comply with rules.

13. All officers of Government, municipal officers and officers and servants of railway companies shall comply with such rules so far as they concern them, and pay such fees as the said rules shall prescribe.

14. The Warden may deface, or render incapable of use, or refuse to verify, correct or mark, anything brought to him for verification or correction, which appears to him unfit for verification or correction.

15. Any of the powers and duties conferred and imposed by this Act on a Warden may be exercised and performed by any other officer whom the appropriate Government may, from time to time, appoint.

16. Whoever knowingly counterfeits any mark used by a Warden under section 11 shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

17. The appropriate Government may, from time to time, prepare tables of the equivalents of weights and measures of capacity, other than those authorized under this Act, in terms of the weights and measures of capacity so authorized, and the equivalents so stated, after notification in the Official Gazette, shall be deemed the true equivalents.

18. In this Act "the appropriate Government" means, in relation to standards of weight, the Central Government, and in relation to measures of capacity, the Provincial Government.]

THE WEEKLY HOLIDAYS ACT (XVIII OF 1942).

[3rd April, 1942.

An Act to provide for the grant of weekly holidays to persons employed in shops, restaurants and theatres.

WHEREAS it is expedient to provide for the grant of weekly holidays to persons employed in shops, restaurants and theatres;

It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called THE WEEKLY HOLIDAYS ACT, 1942.

(2) It extends to the whole of British India.

(3) It shall come into force in a Province or in a specified area within a Province only if the Provincial Government by notification in the official Gazette so directs.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "establishment" means a shop, restaurant or theatre;

(b) "day" means a period of twenty-four hours beginning at midnight;

(c) "restaurant" means any premises in which is carried on principally or wholly the business of supplying meals or refreshments to the public or a class of the public for consumption on the premises but does not include a restaurant attached to a theatre;

(d) "shop" includes any premises where any retail trade or business is carried on including the business of a barber or hair dresser, and retail sales by auction, but excluding the sale of programmes, catalogues and other similar sales at theatres;

(e) "theatre" includes any premises intended principally or wholly for the presentation of moving pictures, dramatic performances or stage entertainments;

(f) "week" means a period of seven days beginning at midnight on Saturday.

LEG. REF.

¹ Sec. 18 inserted by A.O., 1937.

3. (1) Every shop shall remain entirely closed on one day of the week, which day shall be specified by the shopkeeper in a notice permanently exhibited in a conspicuous place in the shop.

(2) The day so specified shall not be altered by the shopkeeper more often than once in three months.

4. Every person employed otherwise than in a confidential capacity or in a position of management in any shop, restaurant, or theatre shall be allowed in each week a holiday of one whole day:

Provided that nothing in this section shall apply to any person whose total period of employment in the week including any days spent on authorised leave is less than six days or entitle to an additional holiday a person employed in a shop who has been allowed a whole holiday on the day on which the shop has remained closed in pursuance of section 3.

5. (1) The Provincial Government may, by notification in the official Gazette, require in respect of shops or any specified class of shops that they shall be closed at such hour in the afternoon of one week-day in every week in addition to the day provided for by section 3 as may be fixed by the Provincial Government, and, in respect of theatres and restaurants or any specified class of either or both, that every person employed therein otherwise than in a confidential capacity or in a position of management shall be allowed in each week an additional holiday of one half-day commencing at such hour in the afternoon as may be fixed by the Provincial Government.

(2) The Provincial Government may, for the purposes of this section, fix different hours for different shops or different classes of shops or for different areas or for different times of the year.

(3) The weekly day on which a shop is closed in pursuance of a requirement under sub-section (1) shall be specified by the shop-keeper in a notice permanently exhibited in a conspicuous place in the shop and shall not be altered by the shopkeeper more often than once in three months.

6. No deduction or abatement of the wages of any person employed in an establishment to which this Act applies shall be made on account of any day or part of a day on which the establishment has remained closed or a holiday has been allowed in accordance with sections 3, 4 and 5, and if such person is employed on the basis that he would not ordinarily receive wages for such day or part of a day he shall none the less be paid for such day or part of a day the wages he would have drawn had the establishment not remained closed or the holiday not been allowed on that day or part of a day.

7. (1) The Provincial Government may, by notification in the official Gazette, appoint persons to be inspectors for the purposes of this Act within such local limits as it may assign to each such person.

(2) Every inspector appointed under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

8. (1) Subject to any rules made in this behalf by the Provincial Government, an Inspector may, within the local limits for which he is appointed,—

(a) enter and remain in any establishment to which this Act applies with such assistants, if any, being servants of the Crown, as he thinks fit;

(b) make such examination of any such establishment and of any record, register or notice maintained therein in pursuance of rules made under clause (c) of sub-section (2) of section 10, and take on the spot or otherwise

such evidence of any person as he may deem necessary for carrying out the purposes of this Act;

(c) exercise such other powers as may be necessary for carrying out the purposes of this Act.

(2) Any person having the custody of any record, register or notice maintained in pursuance of rules made under clause (c) of sub-section (2) of section 10 shall be bound to produce it when so required by the inspector, but no person shall be compellable to answer any question if the answer may tend directly or indirectly to criminate himself.

9. In the event of any contravention of the provisions of section 3 of section 4, of a requirement imposed by notification

Penalties.

under sub-section (1) of section 5, of section 6, or of the rules made under clause (c) of sub-section (2) of section 10, the proprietor or other person responsible for the management of the establishment in which such contravention takes place shall be punishable with fine which may extend, in the case of first offence, to twenty-five rupees, and, in the case of a second or subsequent offence, to two hundred and fifty rupees.

10. (1) The Provincial Government may, subject to the condition of previous publication by notification in the official Gazette, make rules for carrying out the purposes

Rules.

of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) define the persons who shall be deemed to be employed in a confidential capacity or in a position of management for the purpose of sections 4 and 5;

(b) regulate the exercise of their powers and the discharge of their duties by inspectors;

(c) require registers and records to be maintained and notices to be displayed in establishments to which this Act applies and prescribe the form and contents thereof.

11. The Central Government in respect of establishments under its control, and the Provincial Government in respect of all

Power of exemption and suspension.

other establishments within the Province may, subject to such conditions, if any as it thinks fit to impose, exempt any establishment to which this Act applies from all or any specified provisions of this Act, and may, on any special occasion in connection with a fair or festival or a succession of public holidays, suspend for a specified period the operation of this Act.

THE WHIPPING ACT (IV OF 1909).¹

[22nd March, 1909.

Year.	No.	Short title.	Amendment.
1909	IV	The Whipping Act, 1909.	Repealed in part, XVII of 1914, S. 3; I of 1938.

An Act to consolidate and amend the law relating to the punishment of whipping.

WHEREAS it is expedient to consolidate and amend the law relating to the punishment of whipping; It is hereby enacted as follows:—

1. (1) This Act may be called THE WHIPPING Act, 1909; and

Short title and extent.

LEG. REF.

¹ For Statement of Objects and Reasons, see Gazette of India, 1908, Pt. V, p. 222;

SEC. 1: SCOPE OF SECTION.—The Act does not empower a Court, after passing a sentence of imprisonment to commute it to a

(2) It extends to the whole of British India, inclusive of British Baluchistan and the Santhal Parganas.

Whipping added to punishment described in Act XLV, 1860. 2. In addition to the punishments described in section 53 of the Indian Penal Code, offenders are also liable to the punishment of whipping.

Offences punishable with whipping in lieu of other punishment. 3. Whoever commits any of the following offences, namely:—

LEG. REF.

for Report of Select Committee, see *ibid.*, 1909, Pt. V, p. 47, and for Proceedings in Council, see *ibid.*, 1908, Pt. VI, p. 19, and *ibid.*, 1909, Pt. VI, pp. 14, 18 and 31.

This Act has been declared in force in the Angul District by the Angul Laws Regulation, 1913 (III of 1913), Sec. 3, see B. & O. Code, Vol. I; in the Arakan Hill District by Regulation I of 1916, Sec. 2, see Burma Code, Vol. I; in the Pargana of Manpur by sec. 2 of the Manpur Laws Regulation, 1926 (II of 1926).

It has been applied (subject to the substitution of a modified section for sec. 6) to members of a hill tribe in a hill tract to which Kachin Hill Tribe Regulation, 1895, applied and to Chins in the Chin Hills, see Burma Gazette, 1922, Pt. I, p. 229.

sentence of whipping. The sentence of whipping should be passed directly. 5 L.B.R. 22=10 Cr.L.J. 120=3 Bur.L.T. 7=2 I.C. 620. The Penal Code and the Code of Criminal Procedure must be read as if the Whipping Act formed a part of the Penal Code from the date of its enactment, and sec. 46 of the Code of Criminal Procedure (1861) is applicable to all offences and punishments as prescribed by the Penal Code in its present and amended form. 15 W.R. (Cr.) 89; 7 B.L.R. (F.B.) 165; see also L.B.R. (1940) Kar. 477=A.I.R. 1941 Sind 48. For further rulings under this and the older Acts, see 2 Weir 267; 3 L.B.R. 112; 3 Cr.L.J. 348; 4 Bom.L.R. 436; 6 C.P.L.R. 19 (Cr.); L.B.R. (1872-1892) 337; 12 Bom.L.R. 901=8 I.C. 623; 7 B.H.C.R. (Cr.) 68; 1 A. 666; 3 B.H.C. (Cr.) 37; 17 P.R. 1873 (Cr.); 7 C.P.L.R. (Cr.) 24; L.B.R. (1872-1892) 531; L.B.R. (1893-1900) 378; L.B.R. (1893-1900) 315; 8 C.P.L.R. 17 (Cr.); Rat. 537; 1 Ind. Jur. N.S. 181; Rat. 68; 1881 A.W.N. 138; 14 W.R. (Cr.) 7; 15 W.R. (Cr.) 89; 7 B.L.R. (F.B.) 165; 3 Bom.L.R. 419; 25 A. 712 (F.B.); 4 W.R. (Cr.) 20; 3 M.H.C. App. 1; 42 P.R. 1880 (Cr.); 2 W.R. (Cr.) 63; 1 W.R. (Cr.) 24; 5 M.H.C. App. 33; 5 M.H.C. App. 1; 15 W.R. (Cr.) 52; 8 P.R. 1885 (Cr.); 51 P.R. 1867 (Cr.); 1 Weir 931; U.B.R. (1897-1901) Vol. I, 392; 31 P.R. 1878 (Cr.); 54 P.R. 1866 (Cr.); 34 P.R. 1880 (Cr.); 4 P.R. 1881 (Cr.); 20 P.R. 1886 (Cr.); 39 P.R. 1880 (Cr.); L.B.R. (1872-1892) 399; 5 P.R. 1866 (Cr.); 7 B. 303; 33 P.R. 1901 (Cr.); 34 P.R. 1880 (Cr.); 54 P.R. 1866 (Cr.); 31 P.R. 1878 (Cr.); 20 W.R. (Cr.) 72; 15 W.R. (Cr.) 89; 7 B.L.R. (F.B.) 165; 121 P.R. 1866 (Cr.); 35 P.R. 1869 (Cr.); 16 P.R. 1875 (Cr.); B.L.R. Sup. Vol. 951; 9 W.R. (Cr.) 41; 22 P.R. 1872 (Cr.); 8 P.R. 1885 (Cr.); 9 P.R. 1885

(Cr.); 20 P.R. 1886 (Cr.); 5 P.R. 1866 (Cr.); 35 P.R. 1886 (Cr.); 95 P.R. 1866 (Cr.); 35 P.R. 1869 (Cr.); 5 M.H.C. App. 18; 3 Bom.L.R. 419=25 B. 712 (F.B.); 4 W.R. (Cr.) 20; 16 P.R. 1875 (Cr.); L.B.R. (1872-1892) 336; 6 M.H.C. App. 38; A.W.N. (1881) 138; 7 M.H.C. App. 29; 8 M.H.C. (Cr.) 9; 6 A. 482=A.W.N. (1884) 213; U.B.R. (1897-1901) Vol. I, 354; 3 M.H.C. App. 1.

SUBSTITUTION OF STRIPES FOR IMPRISONMENT.—Substitution of a sentence of 30 stripes for a sentence of one year's rigorous imprisonment or more or a substitution of a sentence of 25 stripes for a sentence of nine months' rigorous imprisonment or more or a substitution of a sentence of 20 stripes for a sentence of six months' imprisonment or more is not ordinarily an enhancement of sentence within the meaning of sec. 423 (1) (b) of Cr. P. Code and in the case of a person under 16 years of age the substitution of a sentence of 15 stripes for a sentence of imprisonment for six months or more or a substitution of a sentence of 10 stripes for a sentence of imprisonment for three months or more is not ordinarily an enhancement of sentence. But the substitution of a sentence of 30 stripes for a sentence of three months' rigorous imprisonment is an enhancement and therefore an illegal sentence under sec. 423 (1) (b) of the Code. (2 Weir 487; 6 B.L.R. App. 95, Not. Foll.; Rat. Un. Cr. C. 131; 17 A. 67; 23 Bom. 439; 27 C. 175; 30 M. 103 (F.B.); 36 A. 485, Ref.) 119 I.C. 209=7 R. 319=30 Cr.L.J. 986=1929 R. 177 (F.B.).

SEC. 2.—See Rat. 78; 14 C.P.L.R. 16; 15 W.R. (Cr.) 89; 7 B.L.R. (F.B.) 165; L.B.R. (1871-1892) 336; Rat. 564; U.B.R. (1897-1901), Vol. I, 391; 3 B.H.C. (Cr.) 38; W.R. 1864 (Cr.) 38; 12 C.P.L.R. 1 (Cr.).

SECS. 2, 3 AND 4.—Sec. 2 of the Act only lays down as a general proposition that offenders are also liable to the punishment of whipping in addition to the punishment described in sec. 53, I. P. Code, which do not include whipping. On a comparison of sec. 3 and sec. 4 it is clear that in regard to offences mentioned in sec. 3, the intention of the legislature was that whipping should be inflicted, if at all in lieu of any punishment to which the offender may be liable under the I. P. Code. It is only in cases of offences under secs. 375, 377, 390 and 391, I. P. Code and of abetment or attempt at an offence under sec. 375 that a person can be punished with whipping in addition to any punishment that can be awarded under the Penal Code. 1939 O.A. 384=14 Luck. 634=1939 O.W.N. 414=A.I.R. 1939 Oudh 222.

SEC. 3.—The special laws contemplated in

(a) theft, as defined in section 378 of the Indian Penal Code other than theft by a clerk or servant of property in possession of his master;

(b) theft in a building, tent or vessel, as defined in section 380 of the said Code;

(c) theft after preparation for causing death or hurt, as defined in section 382 of the said Code;

(d) lurking house-trespass, or house-breaking, as defined in sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section;

(e) lurking house-trespass by night, or house-breaking by night, as defined in sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section;

may be punished with whipping in lieu of any punishment to which he may for such offence be liable under the said Code.

secs. 40 and 41 of the Penal Code are only laws, such as the Excise, Opium and Cattle Trespass Acts, creating fresh offences, that is, laws making punishable certain things which are not already punishable under the general Penal Code. The Whipping Act is not a special law in this sense; it creates no fresh offences, but merely provides a supplementary or alternative form of punishment for offences which are already punishable primarily under the Penal Code or (in the case of juvenile offenders) other enactments. Persons convicted of abetment of theft or abetment of any of the other offences mentioned in sec. 3 of the Whipping Act, 1909, are not liable to the punishment of whipping. As the Whipping Act is a highly penal enactment, it must be construed in the sense most favourable to the subject. 7 L.B.R. 63=22 I.C. 147=15 Cr.L.J. 3=7 Bur.L.T. 99. Offence under sec. 325, I. P. Code—Whipping as an additional or alternative punishment. If the offence charged is punishable with imprisonment or fine and, if whipping is given as an additional punishment, it can be added either to imprisonment or fine. But in the case of an offence under sec. 325, I. P. Code, where imprisonment is imperative and fine is optional, whipping can only be given in addition to imprisonment or in addition to imprisonment and fine, but not in addition to fine alone. If, however, whipping is inflicted as an alternative punishment no other punishment is to be added. 13 Rang. 115. The offence of outraging a woman's modesty not being punishable with whipping, house-breaking in order to commit that offence cannot be so punished. 89 I.C. 146=23 A.L.J. 894=26 Cr.L.J. 1282=1925 A. 591. As to the legality of concurrent sentences of whipping, see 4 Bur.L.T. 174=12 Cr.L.J. 465=11 I.C. 1001=6 L.B.R. 22. When a man is tried for two offences, at one trial, there cannot be double sentences of whipping nor would they become legal if they are ordered to run concurrently, as the term 'concurrent' applies only to sentences of imprisonment. 1937 Rang.L.R. 366=170 I.C. 254=A.I.R.

1937 Rang. 286; 171 I.C. 71=A.I.R. 1937 Rang. 310. Sentence of whipping inadequate but carried out—Other punishment not to be awarded. 7 Bur.L.T. 292=15 Cr.L.J. 538=24 I.C. 946=8 L.B.R. 143. Under sec. 3 of the Whipping Act a sentence of whipping may be passed in lieu of any punishment to which the offender may be liable under the Penal Code, but it cannot be passed in addition to such imprisonment. Ordering a man to be whipped after he has already served part of a sentence of imprisonment, is illegal. (1917) U.B.R. 32=19 Cr.L.J. 207=46 I.C. 623. The word "punishment" in sec. 3 refers to the total of punishment awardable. In lieu of punishing the offender by imprisoning him or fining him the Court may punish him with whipping. But a fine in addition to whipping is illegal. (16 Bom. 357, Foll.). 82 I.C. 49=20 M.L.W. 881=25 Cr.L.J. 1185=1925 M. 183. See also 21 A.L.J. 916=1924 A. 455; 41 I.C. 149=10 Bur.L.T. 211=8 L.B.R. 466=18 Cr.L.J. 773. On this section see also U.B.R. 1907, 3rd Qr. Whipping 1=7 Cr.L.J. 212=14 Bur.L.R. 186; L.B.R. (1872-1892), 338; 42 P.R. 1880 (Cr.); 6 C.P.L.R. 19 (Cr.); 8 C.P.L.R. 17 (Cr.); U.B.R. (1897-1901) Vol. I, 388; U.B.R. (1892-1896) Vol. I, 331; 7 B.H.C. (Cr.) 70; 6 C.P.L.R. 19 (Cr.); 2 W.R. (Cr.) 63; 1 W.R. (Cr.) 24; 5 M.H.C. App. 38; 5 M.H.C. App. 1; 4 Bom.L.R. 436; 7 B.H.C. (Cr.) 70; 8 C.P.L.R. (Cr.) 17; 2 L.B.R. 14; 19 P.R. 1872 (Cr.); 39 P.R. 1882 (Cr.); 7 L.B.R. 63=15 Cr.L.J. 3=7 Bur.L.T. 99=22 I.C. 147; 10 Bur.L.T. 211=8 L.B.R. 466=18 Cr.L.J. 773=41 I.C. 149.

SEC. 3 (d).—Sentence of whipping passed for an offence under sec. 380 read with sec. 109, I. P. Code is not legal. 171 I.C. 71=A.I.R. 1937 Rang. 310. See also A.I.R. 1940 Rang. 81.

SECS. 3 AND 4.—Theft is not an offence punishable with whipping in addition to imprisonment by sec. 4, though under sec. 3 it may be punished with whipping in lieu of imprisonment. 12 R. 607.

SECS. 3 AND 5.—It is not correct to say that a convict who is over 16 years of age cannot

Offences punishable with whipping in lieu of or in addition to other punishment.

14. Whoever—

(a) abets, commits or attempts to commit, rape, as defined in section 375 of the Indian Penal Code;

(b) compels, or induces any person by fear of bodily injury, to submit to an unnatural offence as defined in section 377 of the said Code;

(c) voluntarily causes hurt in committing or attempting to commit robbery, as defined in section 390 of the said Code;

(d) commits dacoity as defined in section 391 of the said Code; may be punished with whipping in lieu of or in addition to any other punishment to which he may for such offence, abetment or attempt be liable under the said Code.

LEG. REF.

1 For other sections of the Indian Penal Code offences under which are made punishable with whipping in Burma, *see* Burma Act VIII of 1927.

be whipped. There is no limit of age for whipping under sec. 3 of the Whipping Act. Sec. 3 permits whipping in lieu of any punishment for which the offender is liable under the Cr. P. Code, to imprisonment irrespective of age. The age limit under sec. 393, Cr. P. Code, is 45 in the case of males, while a female cannot be whipped. All the sections of the Whipping Act must be read together with the Cr. P. Code. I.L.R. (1940) Kar. 477=A.I.R. 1941 Sind 48.

Sec. 4: ILLUSTRATIVE CASES.—Sec. 4 (b) of the Act does not apply to the case of an attempt to commit the offence mentioned in it; a sentence of whipping on a conviction under sec. 377, read with sec. 511, I. P. Code, is therefore illegal. 1937 A.L.J. 944=A.I.R. 1938 A. 16. It is not competent to a Judge to postpone the sentence of whipping till after the expiry of sentence of imprisonment imposed upon the accused. 4 Bom.L.R. 929. Where a sentence of whipping is passed as a sole punishment under the section (Act III of 1895, sec. 5), it is not necessary first to pass a sentence provided for the offence under the Penal Code, and then to convert such sentence into one of whipping. Sec. 390, Criminal Procedure Code, authorises the Court passing a sentence of whipping, only to fix the place and time of its execution but it does not contemplate a postponement of the execution of the sentence to a future day. Rat. 906=Cr. Rg. 17 of 1897. The Code makes no provision whereby a Magistrate imposing a sentence of whipping only can suspend its execution, nor does it provide for the detention of a person so sentenced to allow of his appealing, nor for his re-arrest to undergo whipping if the sentence is confirmed on appeal. It is only when whipping is added to imprisonment in an appealable case, that whipping may, and ought to be postponed. 26 M. 465=2 Weir 447. When the accused is convicted of two offences, for one of which he is sentenced to imprisonment and for the other to whipping, it is not permissible to postpone the whipping, merely because the accused appeals

against the conviction of the first sentence. 4 Bom.L.R. 436. Appeals from sentences of whipping are regulated by the Criminal Procedure Code, and not by the Whipping Act. 29 P.R. 1886 (Cr.). Under sec. 4 of the Act, a sentence of whipping may be imposed where in the commission of a robbery, hurt is caused. It should be inflicted in cases where there is a certain amount of aggravation in the commission of the original offence. 44 A. 538=20 A.L.J. 388=U.P.L.R. (A.) 67=1922 A. 245=66 I.C. 418=23 Cr.L.J. 274; 140 I.C. 23=33 Cr.L.J. 900=1932 S. 143. *See also* U.B.R. (1897-01) Vol. I, 388; L.B. R. 1872-1892, (Cr.) 337; 1881 A.W.N. 138; 12 W.R. (Cr.) 68; 4 B.H.C. (Cr.) 5. There is no justification for the taking into account of the period of imprisonment to which a man has already been sentenced before the commission of the offence for which the sentence of whipping with or without imprisonment is passed, in the computation of the maximum period of imprisonment fixed by sec. 393, of the Cr. P. Code. (7 R. 769; 1930 R. 138, Dist.). 12 R. 404=149 I.C. 1073=35 Cr.L.J. 1027=1934 R. 58. A Magistrate considering the question as to whether a sentence of whipping is appropriate in a particular case should not reject the punishment of whipping on the ground that the accused is too young and frail unless he has medical opinion in support of his own. 184 I.C. 464=A.I.R. 1939 Rang. 383=41 Cr.L.J. 22.

ADDITIONAL SENTENCE.—A sentence of imprisonment can be inflicted in the case of a juvenile in addition to whipping and the High Court has power to inflict a sentence of imprisonment, even when the sentence of whipping passed by the lower Court has already been carried out. (7 Bom.H.C.R. (Cr.) 70, Dist.) 119 I.C. 572=1929 A.L.J. 224=30 Cr.L.J. 1087=1929 A. 322. An additional punishment of whipping cannot be passed on a person who has received an adequate substantive sentence for an offence under sec. 436, Penal Code. 29 Cr.L.J. 666=110 I.C. 218=1928 O. 111. Before a sentence of whipping, in addition to imprisonment, can be passed, on a person found guilty under sec. 394, I. P. Code, there must be also a finding that he himself caused hurt while committing the robbery. 109 I.C. 810=29 Cr.L.J. 618=6 R. 48=1928 R. 112. *See also* 1922 A. 245.

Juvenile offenders when punishable with whipping.

5. Any juvenile offender who abets, commits or attempts to commit—

(a) any offence punishable under the Indian Penal Code, except offences specified in Chapter VI and in sections 153-A and 505 of that Code and offences punishable with death, or

(b) any offence punishable under any other law with imprisonment which the ¹[Provincial Government] may, by ²notification in the Official Gazette, specify in this behalf, may be punished with whipping in lieu of any other punishment to which he may for such offence, abetment or attempt be liable.

LEG. REF.

¹ Substituted for "Governor-General in Council" by A.O., 1937.

² For notifications enumerating the enactments for offences under which juvenile offenders may be punished with whipping, *see* Gazette of India, 1920, Pt. I, p. 1868.

SEC. 5.—Sec. 5 does not supersede sec. 4. sec. 5 is meant to be applied alternatively with secs. 3 and 4 which apply to juvenile offenders as well as to offenders who are not within the definition of juvenile offenders. 140 I.C. 11=13 P.L.T. 573=1932 P. 334. *See also* L.L.R. (1940) Kar. 477. The word "Court" does not exclude the Appellate Court, 119 I.C. 572=1929 A.L.J. 224=30 Cr.L.J. 1087=1929 A. 322. If the sentence of whipping is passed, no other sentence can be passed, for the whipping is considered to be in lieu of either a single punishment or a combined punishment. (16 Bom. 357, Appr.) 81 I.C. 260=46 A. 174=21 A.L.J. 916=25 Cr.L.J. 772=1924 A. 455.

ILLUSTRATIVE CASES.—Juvenile offenders are liable to whipping for attempts to commit offences not punishable with death under the Penal Code or any other law. Therefore a sentence of whipping for an attempt to commit an offence when the accused is not a juvenile offender is illegal. 2 L.B.R. 123. The section does not authorise the Court to pass a sentence of whipping in lieu of transportation or imprisonment under the Act, and at the same time to pass sentence of fine under the Penal Code. 5 L.B.R. 22=10 Cr. L.J. 120=3 Bur.L.T. 7=2 I.C. 620. The finding of a Magistrate as to the age of the accused is final under sec. 5 (Explanation) of the Whipping Act. Where the sentence of whipping has been carried out, no other punishment can be awarded, even if the sentence was inadequate. 15 Cr.L.J. 538=24 I.C. 946=7 Bur.L.T. 292=8 L.B.R. 143. A sentence of whipping and fine is illegal. L. R. 5 A. 54 (Cr.)=1924 All. 455; 21 A.L.J. 916. A sentence of whipping in one case cannot be directed to run concurrently with a similar sentence in another. The literal meaning of "concurrent sentences of whipping" would be that the prisoner is to be flogged by two operators simultaneously, a monstrous result. 4 Bur.L.T. 174=6 L.B.R. 22=12 Cr.L.J. 465=11 I.C. 1001. In the case of juvenile offenders, whipping can be awarded in lieu of the other punishment; and

not in addition to it. 1885 A.W.N. 178. *See also* 4 A.W.R. 669=1934 A. 976; A.L.R. 1940 Rang. 81=1939 Rang.L.R. 744. When the accused, a lad of fourteen years, was convicted of an unnatural offence under sec. 377, I. P. Code and sentenced to imprisonment, the Chief Court held that the punishment of whipping was far more suitable for a juvenile offender, convicted of bestiality, than the sentence of imprisonment which had been inflicted and that it was competent to the Appellate Court to alter the nature of the sentence by setting aside the sentence of imprisonment and substituting whipping for the same. 3 P.R. 1884, (Cr.). Under the Whipping Act, the Court cannot, after passing a sentence of imprisonment, commute it to a sentence of whipping, which ought to be passed directly. Under sec. 5, a juvenile offender may be punished with whipping in lieu of any other punishment to which he may be liable, but the words "in lieu of—" mean in lieu of the whole of the punishment to which he is liable. So, it is illegal to pass a sentence of whipping, in lieu of imprisonment, under the Whipping Act, and, at the same time, to pass a sentence of fine under the I. P. Code. 5 L.B.R. 22=2 I.C. 620. In the case of a juvenile offender committing an offence under sec. 380, I. P. Code, the Magistrate has two alternatives before him. He may send the offender to prison or, in lieu thereof, he may either cause him to be whipped or send him to Borstal. If the Magistrate orders him to be detained in the Borstal school, the Sessions Judge on appeal cannot pass a sentence of whipping in lieu of the order of detention, as he would be enhancing the sentence. Under sec. 3 of the Whipping Act, he can only pass a sentence of whipping in lieu of any punishment to which the offender might be liable under the Penal Code, that is to say, he can only pass a sentence of whipping in lieu of imprisonment. 1939 Rang.L.R. 744=187 I.C. 405=A.L.R. 1940 Rang. 81. *See also* A.L.R. 1937 Rang. 310=171 I.C. 71. *See also* on this section 46 A. 174=81 I.C. 260=1924 A. 455; Rat. 75; U.B.R. (1892-1896), Vol. I, 331=7 Bur.L.T. 292; 8 L.B.R. 143=15 Cr.L.J. 538=24 I.C. 946; 11 C.P.L.R. 8 (Cr.); L.B.R. (1872-1892), 355; 7 C.P.L.R. (Cr.) 32; 6 C.P.L.R. 34 (Cr.); 8 B.H.C. (Cr.) 9; 6 A. 482=1884 A.W.N. 213.

Explanation.—In this section the expression “juvenile offender” means an offender whom the Court, after making such enquiry (if any) as may be deemed necessary, shall find to be under sixteen years of age, the finding of the Court in all cases being final and conclusive.

16. Whenever any Provincial Government has, by ²notification in the Official Gazette, declared the provisions of this section to be in force in any frontier district or any wild tract of country within the jurisdiction of such Provincial Government, any person who in such district or tract of country after such notification as aforesaid commits any offence punishable under the Indian Penal Code with imprisonment for three years or upwards, may be punished with whipping in lieu of any other punishment to which he may be liable under the said Code.

Amendment of S. 392,
Act V of 1898.

7. [Rep. by Act I of 1938.]

8. [Repeals.] Repealed by S. 3 and 2nd Sch. of the Second Repealing and Amending Act, 1914 (XVII of 1914).

THE SCHEDULE.—Enactments repealed. [Repealed by S. 3 and 2nd Sch. of the Second Repealing and Amending Act, 1914 (XVII of 1914).]

THE WILD BIRDS AND ANIMALS PROTECTION ACT (VIII OF 1912).³

Year.	No.	Short title.	Amendment.
1912	VIII	Wild Birds and Animals Protection Act, 1912.	Repealed in part, Act XVII of 1914, S. 3.

[18th September, 1912.]

An Act to make better provision for the protection and preservation of certain wild birds and animals.

WHEREAS it is expedient to make better provision for the protection and preservation of certain wild birds and animals; it is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called THE WILD BIRDS AND ANIMALS PROTECTION ACT, 1912; and

(2) It extends to the whole of British India, including British Baluchistan, the Sonthal Parganas and the Pargana of Spiti.

Application of Act.

2. (1) This Act applies, in the first instance, to the birds and animals specified in the Schedule, when in their wild state.

(2) The Provincial Government may, by notification⁴ in the Official Gazette, apply the provisions of this Act to any kind of wild bird or animal, other

LEG. REF.

¹ As to application of sec. 6 in a modified form to members of a hill-tribe in a hill tract to which Kachin Hill Tribes Regulation, 1895, applied and to Chins in the Chin Hills, see Burma Gazette, 1922, Pt. I, p. 229.

² For notification declaring the section to be in force in the Bhamo Myitkina Ruby Mines and Upper Chindwin districts and the hill districts of Arakan, see Burma Gazette, 1909, Pt. I, p. 572.

³ For Statement of Objects and Reasons, see Gazette of India, 1912, Pt. V, p. 2; for Report of Select Committee, see *ibid.*, 1912, Pt. V, p. 173; and for Proceedings in Council see *ibid.*, 1912, Pt. VI, pp. 57 and 691.

⁴ For such a notification for Coorg, see Coorg District Gazette, 1913, Pt. I, p. 185.

For such a notification for United Provinces, see United Provinces Gazette, 1914, Pt. I, p. 169.

For such a notification for Madras, see Madras Rules and Orders, 1923, Vol. I, p. 439.

SEC. 1: ESSENTIALS FOR CONVICTION.—To convict a person under the Act, it is necessary to prove that he had either killed or attempted to kill one of the animals or birds mentioned in the Schedule. 107 I.C. 288= 29 Cr.L.J. 238.

than those specified in the Schedule, which, in its opinion, it is desirable to protect or preserve.

3. The Provincial Government may, by notification¹ in the Official Gazette, declare the whole year or any part thereof to be a close time throughout the whole or any part of its territories for any kind of wild bird or animal to which this Act applies, or for female or immature wild birds or animals of such kind; and, subject to the provisions hereinafter contained, during such close time, and within the areas specified in such notification, it shall be unlawful—

(a) to capture any such bird or animal, or to kill any such bird or animal which has not been captured before the commencement of such close time;

(b) to sell or buy, or offer to sell or buy, or to possess, any such bird or animal which has not been captured or killed before the commencement of such close time or the flesh thereof;

(c) if any plumage has been taken from any such bird, captured or killed during such close time to sell or buy, or to offer to sell or buy, or to possess, such plumage.

4. (1) Whoever does or attempts to do, any act in contravention of section 3, shall be punishable with fine which may extend to fifty rupees.

(2) Whoever, having already been convicted of an offence under this section, is again convicted thereunder shall, on every subsequent conviction, be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

5. (1) When any person is convicted of an offence punishable under this Act, the convicting Magistrate may direct that any bird or animal in respect of which such offence has been committed, or the flesh or any other part of such bird or animal, shall be confiscated.

(2) Such confiscation may be in addition to the other punishment provided by section 4 for such offence.

6. No Court inferior to that of a Presidency Magistrate or a Magistrate of the second class shall try any offence against this Act.

7. Where the Provincial Government is of opinion that, in the interests of scientific research, such a course is desirable, it may grant to any person a licence, subject to such restrictions and conditions as it may impose, entitling the holder thereof to do any act which is by section 3 declared to be unlawful.

8. Nothing in this Act shall be deemed to apply to the capture or killing of a wild animal by any person in defence of himself or any other person, or to the capture or killing of any wild bird or animal in *bona fide* defence of property.

9. [Repeal.] Repealed by section 3 and Sch. II of the Second Repealing and Amending Act, 1914 (XVII of 1914).

THE SCHEDULE.

(i) Bustards, ducks, floricans, jungle fowl, partridges, peafowl, pheasants, pigeons, quail, sand-grouse, painted snipe, spur-fowl, wood-cock, herons, egrets, rollers, and king-fishers.

(ii) Antelopes, asses, bison, buffaloes, deer, gazelles, goats, hares, oxen, rhinoceroses and sheep.

THE INDIAN WIRELESS TELEGRAPHY ACT (XVII OF 1933).

[11th September, 1933.

[Amended by Act XXXII of 1940].

An Act to regulate the possession of wireless telegraphy apparatus.

WHEREAS it is expedient to regulate the possession of wireless telegraphy apparatus in British India; it is hereby enacted as follows:—

Short title, extent and commencement. 1. (1) This Act may be called THE INDIAN WIRELESS TELEGRAPHY ACT, 1933.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "wireless communication" means the making, transmitting or receiving of telegraphic, telephonic or other communications by means of electricity or magnetism without the use of wires or other continuous electrical conductors between the transmitting and the receiving apparatus;

(2) "wireless telegraphy apparatus" means any apparatus, appliance, instrument or material used or capable of use in wireless communication, and includes any article determined by rule made under section 10 to be wireless telegraphy apparatus, but does not include any such apparatus, appliance, instrument or material commonly used for other electrical purposes, unless it has been specially designed or adapted for wireless communication or forms part of some apparatus, appliance, instrument or material specially so designed or adapted, nor any article determined by rule made under section 10 not to be wireless telegraphy apparatus; and

(3) "prescribed" means prescribed by rules made under section 10.

Prohibition of possession of wireless telegraphy apparatus without licence.

3. Save as provided by section 4, no person shall possess wireless telegraphy apparatus except under and in accordance with a licence issued under this Act.

4. The Central Government may by rules made under this Act exempt any person or any class of persons from the provisions of this Act either generally or subject to prescribed conditions, or in respect of specified wireless telegraphy apparatus.

Power of Central Government to exempt persons from provisions of the Act.

5. The telegraph authority constituted under the Indian Telegraph Act, 1885, shall be the authority competent to issue licences to possess wireless telegraphy apparatus under this Act, and may issue licences in such manner, on such conditions and subject to such payments as may be prescribed.

Licences.

SECS. 3 AND 6.—The accused was convicted under secs. 3 and 6 of the Act, of being in possession of a wireless receiving set without a licence and also of working the same without a licence under sec. 20 of the Telegraph Act, and sentenced to separate fines under each of the offences. It appeared that the accused had been taking out licences for some years before the offence and that actually a licence had been issued by the postmaster to take effect from a date earlier than the date on which the accused was said to have been in possession without a licence. Held (1) that the accused was guilty of an offence under secs. 3 and 6 of the Wireless

Telegraphy Act and that the issue of a licence subsequently would not give a sort of pardon in respect of an offence already committed; (2) that there was no justification for a separate conviction under sec. 20 of the Telegraph Act or for a separate sentence under that section. 1938 M.W.N. 823 = 48 L.W. 330 = A.I.R. 1938 Mad. 821 = (1938) 2 M.L.J. 281.

Quære: Whether the use of a wireless set without a licence would amount to an offence under sec. 20 of the Telegraph Act. 1938 M.W.N. 823 = A.I.R. 1938 Mad. 821 = (1938) 2 M.L.J. 281.

6. (1) Whoever possesses any wireless telegraphy apparatus in contravention of the provisions of section 3 shall be punished, in the case of the first offence, with fine which may extend to one hundred rupees, and, in the case of a second or subsequent offence, with fine which may extend to two hundred and fifty rupees.

(2) For the purposes of this section a Court may presume that a person possesses wireless telegraphy apparatus if such apparatus is under his ostensible charge, or is located in any premises or place over which he has effective control.

(3) If in the trial of an offence under this section the accused is convicted, the Court shall decide whether any apparatus in respect of which an offence has been committed should be confiscated, and if it so decides, may order confiscation accordingly.

7. (1) A Presidency Magistrate, or a Magistrate of the first class or a Magistrate of the second class specially empowered by the [Central Government] in this behalf, may issue a warrant for the search, at any time between sunrise and sunset, of any building, vessel or place in which he has reason to believe that any wireless telegraphy apparatus, in respect of which an offence punishable under section 6 has been committed is kept or concealed.

(2) The officer to whom a search warrant under sub-section (1) is addressed may enter into any building, vessel or place mentioned in the warrant and seize any wireless telegraphy apparatus in respect of which he has reason to believe an offence under section 6 has been committed.

8. All wireless telegraphy apparatus confiscated under the provisions of sub-section (3) of section 6, and all wireless telegraphy apparatus having no ostensible owner shall be the property of the Central Government.

29. [* * * * *]

Power of Central Government to make rules.

10. (1) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(i) determining that any article or class of article shall be or shall not be wireless telegraphy apparatus for the purposes of this Act;

(ii) the exemption of persons or classes of persons under section 4 from the provisions of this Act;

LEG. REF.

¹ Substituted for 'Local Government' by A.O., 1937.

² This section has been declared to cease to have effect by A.O., 1937 and has subsequently been repealed by Act XXXII of 1940.

SEC. 6 (1).—Where a person was prosecuted under sec. 6 (1) of the Act in respect of a period between the expiry of a licence and its renewal after the allowed 14 days of grace it was held that the offence did not consist in possessing a set without a licence but in possessing one 'except under and in accordance with a licence issued under this Act' and that as the Act when read with the rules states that the licence shall be valid for a period of 12 calendar months beginning from the first day of the month of issue if

the person charged was issued a licence covering the period in question he could not be said to have contravened the section. What might have been an illegal possession would be cured by the subsequent issue of a licence validating that possession, 1942 N. L.J. 575=1943 Nag. 115=I.L.R. (1943) Nag. 283.

SEC. 6 AND R. 2 (c).—The expression 'complete wireless set' as defined in r. 2 (c) of the rules made under the Wireless Telegraphy Act, shall be deemed to include an incomplete set when the parts necessary to complete it are of the description specified, namely, aerials, valves, etc. Hence the mere possession of an incomplete set without a licence would be an offence under sec. 6. 188 I.C. 371=13 R.N. 1=41 Cr.L.J. 580=1940 N.L.J. 299=A.L.R. 1940 Nag. 263.

(iii) the manner of and the conditions governing the issue, renewal, suspension and cancellation of licences, the form of licences and the payments to be made for the issue and renewal of licences;

(iv) the maintenance of records containing details of the acquisition and disposal by sale or otherwise of wireless telegraphy apparatus possessed by dealers in wireless telegraphy apparatus;

(v) the conditions governing the sale of wireless telegraphy apparatus by dealers in and manufacturers of such apparatus;

(vi) [Repealed by Act XXXII of 1940.]

(3) in making a rule under this section the Central Government may direct that a breach of it shall be punishable with fine which may extend to one hundred rupees.

11. Nothing in this Act contained shall authorise the doing of anything prohibited under the Indian Telegraph Act, 1885, and no licence issued under this Act shall authorise any person to do anything for the doing of which a licence or permission under the Indian Telegraph Act, 1885, is necessary.

THE INDIAN WORKS OF DEFENCE ACT (VII OF 1903).

N.B.—Throughout this Act, except in section 44 for 'Local Government' the words 'Central Government' have been substituted and the words 'with the previous sanction of the Governor-General in Council' have been omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

Year.	No.	Short title.	Amendments.
1903	VII	The Indian Works of Defence Act, 1903.	Amended, XI of 1921; III of 1935; XXVIII of 1940.

[20th March, 1903.

An Act to provide for imposing restrictions upon the use and enjoyment of land in the vicinity of works of defence in order that such land may be kept free from buildings and other obstructions, and for determining the amount of compensation to be made on account of such imposition.

WHEREAS it is expedient to provide for imposing restrictions upon the use and enjoyment of land in the vicinity of works of defence in order that such land may be kept free from buildings and other obstructions and for determining the amount of compensation to be made on account of such imposition; it is hereby enacted as follows:

PART I.

PRELIMINARY.

Short title and extent.

1. (1) This Act may be called THE INDIAN WORKS OF DEFENCE ACT, 1903; and

(2) it extends to the whole of British India, including British Baluchistan, the Santhal Parganas and the Pargana of Spiti.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

(a) the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth:

(b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the imposition of restrictions

upon the use and enjoyment of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land:

¹[(c) the expression 'District' means one of the Districts into which India is, for military purposes for the time being, divided; it includes a Brigade area which does not form part of any district, and any area which the Central Government may, by notification in the Official Gazette, declare to be a District for all or any of the purposes of this Act:

(d) the expression "General Officer Commanding the District" means the officer for the time being in command of the forces in a District:]

(e) the expression "Commanding Officer" means the officer for the time being in command of a work of defence:

(f) the expression "Collector" includes any officer specially appointed by the Central Government to perform the functions of a Collector under this Act:

(g) the expression "Court" means a principal Civil Court of original jurisdiction, unless the Central Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act:

(h) "maintain", with its grammatical variations and cognate expressions, does not, when used in relation to a house or other construction, include the doing of any act necessary for keeping such house or construction, until the making of the award referred to in section 12 or until the exercise, prior to the making of the award, of the powers of demolition conferred, in case of emergency, by section 6, sub-sections (1) and (3), in the state in which it was at the time of the publication of the notice referred to in section 3, sub-section (2):

(i) the following persons shall be deemed "entitled to act" as and to the extent hereinafter provided, that is to say,—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any case, and that to the same extent as the persons beneficially interested could have acted if free from disability:

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age: and

the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted:

Provided that—

(i) no person shall be deemed "entitled to act" whose interest in the subject-matter is shown to the satisfaction of the Collector or Court to be adverse to the interest of the person interested for whom he would otherwise be entitled to act;

(ii) in every case the person interested may appear by a next friend or, in default of his appearance by a next friend, the Collector or Court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof:

(iii) the provisions of Chapter XXXI of the Code of Civil Procedure shall, *mutatis mutandis*, apply in the case of persons interested appearing before a Collector or Court by a next friend, or by a guardian for the case, in proceedings under this Act; and

(iv) no person "entitled to act" shall be competent to receive the compensation money payable to the person for whom he is entitled to act, unless he would have been competent to alienate the land upon the use and enjoyment of which restrictions are to be imposed and receive and give a good discharge for the purchase-money on a voluntary sale.

LEG. REF.

and (d) by Act XI of 1921.

¹ Substituted for the original clauses (c)

PART II.

IMPOSITION OF RESTRICTIONS.

3. (1) Whenever it appears to the Central Government that it is necessary to impose restrictions upon the use and enjoyment of land in the vicinity of any work of defence or of any site intended to be used or to be acquired for any such work, in order that such land may be kept free from buildings and other obstructions, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders.

(2) The said declaration shall be published in the Official Gazette and shall state the district or other territorial division in which the land is situate and the place where a sketch plan of the land, which shall be prepared on a scale not smaller than six inches to the mile and shall distinguish the boundaries referred to in section 7, may be inspected; and the Collector shall cause public notice of the substance of the said declaration to be given at convenient places in the locality.

(3) The said declaration shall be conclusive proof that it is necessary to keep the land free from buildings and other obstructions.

4. It shall be lawful for such officer as the Central Government may, by general or special order, authorize in this behalf, and for his servants and workmen, at any time after publication of the notice mentioned in section 3, sub-section (2), to enter upon and survey and take levels of any land in such locality, to dig or bore into the sub-soil, to do all other acts necessary to ascertain whether any and, if so, what restrictions should be imposed on the use and enjoyment of the land, to set out the boundaries of the land upon the use and enjoyment of which restrictions are to be imposed; or of any part of such land, to mark such levels, boundaries and line by placing marks and cutting trenches, and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

5. The officer so authorized shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue-officer of the district, and such decision shall be final.

6. (1) Whenever a declaration has been made and public notice thereof has been given under section 3, it shall, subject to the provisions of sub-sections (2) to (4), be lawful for such officer as the Central Government may, by general or special order, authorize in this behalf, and for his servants and workmen, to enter and demolish any buildings or other constructions on the surface, to cut down or grub up all or any of the trees, to remove or alter all or any of the banks, fences, hedges and ditches, to make underground and other drains, to fill up all excavations,

SEC. 3.—Where the cantonment authorities had acquiesced in the existence of a platform within cantonment area for 30 years, *held*, that they were not entitled to demolish it having acquiesced in its exis-

tence for such a long period and that its existence could not be considered a danger to the defence of the town. 20 A.L.J. 169= 23 Cr. L. J. 199=65 I.C. 855=1922 A. 36.

and demolish all buildings and other constructions below the surface, and generally to level and clear the said land and do all such acts for levelling and clearing the same as he may deem necessary or proper, but in such manner nevertheless that evidence of the boundaries of the lands held by different owners may be preserved.

(2) The powers conferred by sub-section (1) shall not be exercised,—

(a) save as otherwise provided by sub-section (3) before the making of the award hereinafter referred to in section 12, nor

(b) save as otherwise provided by sub-section (4), after the expiration of six months from the making of the said award, or any shorter period on the expiration of which the officer exercising such powers gives notice to the Collector that there will be no further exercise of them.

(3) In case of emergency, the Central Government may, by notification in the Official Gazette, declare that all or any powers conferred by sub-section (1) may be exercised at any time within six months after the publication of the notice referred to in section 3, sub-section (2), and such powers may be exercised accordingly, and the said notification shall be conclusive proof of emergency.

(4) Nothing in sub-section (2) shall be deemed to preclude any such officer or his servants or workmen from exercising at any time the said powers for the purpose of removing, wholly or in part, any building or other obstruction maintained, created, added to, altered, planted, stacked, stored or otherwise accumulated in contravention of this Act or of any rule or order made thereunder or of any condition prescribed in accordance therewith.

7. From and after the publication the notice mentioned in section 3, sub-section (2), such of the following restrictions as the Central Government may in its discretion declare therein shall attach with reference to such land, namely:—

(a) Within an outer boundary which, except so far as is otherwise provided in section 39, sub-section (4), may extend to a distance of two thousand yards from the crest of the outer parapet of the work,—

(i) no variation shall be made in the ground-level, and no building, wall, bank or other construction above the ground shall be maintained, erected, added to or altered otherwise than with the written approval of the ¹[General Officer Commanding the District], and on such conditions as he may prescribe;

(ii) no wood, earth, stone, brick, gravel, sand or other material shall be stacked, stored or otherwise accumulated:

Provided that, with the written approval of the ¹[General Officer Commanding the District] and on such conditions as he may prescribe, road-ballast, manure and agricultural produce may be exempted from the prohibition:

Provided also that any person having control of the land as owner, lessee or occupier shall be bound forthwith to remove such road-ballast, manure or agricultural produce, without compensation, on the requisition of the Commanding Officer;

(iii) no surveying operation shall be conducted otherwise than by or under the personal supervision of a public servant duly authorized in this behalf, in the case of land under the control of military authority, by the Commanding Officer and, in other cases, by the Collector with the concurrence of the Commanding Officer; and

(iv) where any building, wall, bank or other construction above the ground has been permitted under clause (i) of this sub-section to be maintained, erected, added to or altered, repairs shall not, without the written approval of the ¹[General Officer Commanding the District] be made with materials different in kind from those employed in the original building, wall, bank or other construction.

(b) Within a second boundary which may extend to a distance of one thousand yards from the crest of the outer parapet of the work, the restrictions enumerated in clause (a) shall apply with the following additional limitations, namely:—

¹[(i) no building, wall, bank or other construction of permanent materials above the ground shall be maintained otherwise than with the written approval of the General Officer Commanding the District and on such conditions as he may prescribe, and no such building, wall, bank or other construction shall be erected:]

Provided that, with the written approval of the ²[General Officer Commanding the District] and on such conditions as he may prescribe, huts, fences or other constructions of wood or other materials, easily destroyed or removed, may be maintained, erected, added to or altered:

Provided, also, that any person having control of the land as owner, lessee or occupier shall be bound forthwith to destroy or remove such huts, fences or other constructions, without compensation, upon an order in writing signed by the ³[General Officer Commanding the District]; and

(ii) live hedges, rows or clumps of trees or orchards shall not be maintained, planted, added to or altered otherwise than with the written approval of the ¹[General Officer Commanding the District] and on such conditions as he may prescribe.

(c) Within a third boundary which may extend to a distance of five hundred yards from the crest of the outer parapet of the work, the restrictions enumerated in clauses (a) and (b) shall apply with the following additional limitation, namely:—

No building or other construction on the surface, and no excavation, building or other construction below the surface, shall be maintained or erected:

Provided that, with the written approval of the Commanding Officer and on such conditions as he may prescribe, ¹[a building or other construction on the surface may be maintained and] open railings and dry brushwood fences may be exempted from this prohibition.

8. As soon as may be after the publication of the declaration aforesaid, the Collector shall cause the land to be marked out

Land to be marked out, measured, registered and planned.

and measured, and shall also prepare a register and a detailed plan, which shall be on a scale not smaller than six inches to the mile, showing accurately every

building, tree and other obstruction.

Notice to persons interested.

9. (1) At any time before the expiration of—

(a) the period of eighteen months from the publication of the declaration referred to in section 3, or

(b) such other period not exceeding three years from the said publication as the Central Government may, by notification in the Official Gazette, direct in this behalf,--

the Collector shall cause public notice to be given at convenient places on or near the land, stating the effect of the said declaration and that claims to compensation for all interests in such land affected by anything done or ordered in pursuance of such declaration may be made to him:

Provided that, where anything has been done in exercise of the powers conferred, in case of emergency, by section 6, sub-section (3), the notice prescribed by this section shall be given as soon as may be thereafter.

(2) Such notice shall state the particulars of any damage ordered to be done or, in the case referred to in section 6, sub-section (3), done in exercise of any of the powers conferred by the said section, and the particulars of any restrictions attaching to the land under section 7, and shall require all persons in-

interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for damage to such interests and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue-district in which the land is situate.

(4) In case any person so interested resides elsewhere, and he has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business.

10. The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

Power to require and enforce the making of statements as to names and interest.

11. Every person required to make or deliver a statement under section 9 or section 10 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

12. On the day fixed under section 9 or on any other day to which the inquiry has been adjourned, the Collector shall proceed to inquire into the objections (if any) which any person interested has stated pursuant to a notice given under the said section to the measurements made under section 8, and into the decrease in the value of the land, and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of—

(a) the true area of the land and the nature of the obstructions from which the land is to be kept free;

(b) the compensation which in his opinion should be allowed for any damage caused or to be caused under section 6 and for any restrictions imposed under section 7; and

(c) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom or of whose claims he has information, whether they have respectively appeared before him or not.

13. (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area of the land, the nature of the said obstructions from which the land is to be kept free, the damage caused or to be caused under section 6, the value of the rights restricted under section 7, apportionment of the compensation among the persons interested.

Award of Collector when to be final.

(b) Within a second boundary which may extend to a distance of one thousand yards from the crest of the outer parapet of the work, the restrictions enumerated in clause (a) shall apply with the following additional limitations, namely:—

¹[(i) no building, wall, bank or other construction of permanent materials above the ground shall be maintained otherwise than with the written approval of the General Officer Commanding the District and on such conditions as he may prescribe, and no such building, wall, bank or other construction shall be erected:]

Provided that, with the written approval of the ²[General Officer Commanding the District] and on such conditions as he may prescribe, huts, fences or other constructions of wood or other materials, easily destroyed or removed, may be maintained, erected, added to or altered:

Provided, also, that any person having control of the land as owner, lessee or occupier shall be bound forthwith to destroy or remove such huts, fences or other constructions, without compensation, upon an order in writing signed by the ²[General Officer Commanding the District]; and

(ii) live hedges, rows or clumps of trees or orchards shall not be maintained, planted, added to or altered otherwise than with the written approval of the ¹[General Officer Commanding the District] and on such conditions as he may prescribe.

(c) Within a third boundary which may extend to a distance of five hundred yards from the crest of the outer parapet of the work, the restrictions enumerated in clauses (a) and (b) shall apply with the following additional limitation, namely:—

No building or other construction on the surface, and no excavation, building or other construction below the surface, shall be maintained or erected:

Provided that, with the written approval of the Commanding Officer and on such conditions as he may prescribe, ¹[a building or other construction on the surface may be maintained and] open railings and dry brushwood fences may be exempted from this prohibition.

8. As soon as may be after the publication of the declaration aforesaid,

Land to be marked out, measured, registered and planned.	the Collector shall cause the land to be marked out and measured, and shall also prepare a register and a detailed plan, which shall be on a scale not smaller than six inches to the mile, showing accurately every
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building, tree and other obstruction.

Notice to persons interested.

9. (1) At any time before the expiration of—

(a) the period of eighteen months from the publication of the declaration referred to in section 3, or

(b) such other period not exceeding three years from the said publication as the Central Government may, by notification in the Official Gazette, direct in this behalf,

the Collector shall cause public notice to be given at convenient places on or near the land, stating the effect of the said declaration and that claims to compensation for all interests in such land affected by anything done or ordered in pursuance of such declaration may be made to him:

Provided that, where anything has been done in exercise of the powers conferred, in case of emergency, by section 6, sub-section (3), the notice prescribed by this section shall be given as soon as may be thereafter.

(2) Such notice shall state the particulars of any damage ordered to be done or, in the case referred to in section 6, sub-section (3), done in exercise of any of the powers conferred by the said section, and the particulars of any restrictions attaching to the land under section 7, and shall require all persons in—

interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for damage to such interests and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue-district in which the land is situate.

(4) In case any person so interested resides elsewhere, and he has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business.

10. The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

Power to require and enforce the making of statements as to names and interest.

11. Every person required to make or deliver a statement under section 9 or section 10 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

12. On the day fixed under section 9 or on any other day to which the inquiry has been adjourned, the Collector shall proceed to inquire into the objections (if any) which any person interested has stated pursuant to a notice given under the said section to the measurements made under section 8, and into the decrease in the value of the land, and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of—

(a) the true area of the land and the nature of the obstructions from which the land is to be kept free;

(b) the compensation which in his opinion should be allowed for any damage caused or to be caused under section 6 and for any restrictions imposed under section 7; and

(c) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom or of whose claims he has information, whether they have respectively appeared before him or not.

13. (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area of the land, the nature of the said obstructions from which the land is to be kept free, the damage caused or to be caused under section 6, the value of the rights restricted under section 7, and the apportionment of the compensation among the persons interested.

Award of Collector when to be final.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

14. The Collector may, for any cause he thinks fit, from time to time adjourn the inquiry to a day to be fixed by him.

Adjournment of inquiry.

15. For the purpose of inquiries under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents, by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure.

Power to summon and enforce attendance of witnesses and production of documents.

16. In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24.

17. Whenever the officer exercising powers conferred by section 6 considers it necessary that anything in respect of which any person is or may be entitled to compensation but of which no notice has been given or compensation awarded, under sections 9 and 12, respectively, should be done in pursuance of the said powers, the Collector shall cause supplementary notice to be given, as nearly as may be, in the manner prescribed by section 9 and subject to the limit of time imposed by sub-section (1) of that section, and the provisions of sections 10 to 16 shall, so far as they are applicable, be deemed to apply to any further inquiry and award which may be held or made in consequence of such supplementary notice.

Matters to be considered and neglected.

PART III.

REFERENCE TO COURT AND PROCEDURE THEREON.

18. (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested:

Reference to Court.

Provided that every such application shall be made,—

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 13, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

(2) The application shall state the grounds on which objection to the award is taken.

19. (1) In making the reference the Collector shall state, for the information of the Court, in writing under his hand,—

(a) the situation and extent of the land with particulars of any damage caused under section 6 or of restrictions imposed under section 7;

(b) the names of the persons whom he has reason to think interested in such land;

(c) the amount of compensation awarded under section 12; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively.

20. The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely:—

Service of notice.

(a) the applicant;

(b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and

(c) if the objection is in regard to the area of the land, the nature of the obstructions or the amount of the compensation, the Collector.

Restrictions on scope of proceedings.

21. The scope of the inquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

22. Every such proceeding shall take place in open Court, and all persons entitled to practise in any Civil Court in the Province shall be entitled to appear, plead and act, as the case may be, in such proceeding.

23. (1) In determining the amount of compensation to be awarded for damage caused, or to be caused, or for restrictions imposed under this Act, the Court shall take into consideration—

Matters to be considered in determining compensation.

(a) the actual decrease in market-value of the land owing to the publication of the declaration relating thereto under section 3 and any damage caused or to be caused under section 6;

(b) the damage sustained by the person interested, by reason of the removal of any standing crops in the exercise of any power conferred by section 6;

(c) the damage (if any) sustained by the person interested, by reason of ceasing to be able to use such land conjointly with his other land;

(d) the damage (if any) sustained by the person interested by anything done or ordered under sections 6 and 7 injuriously affecting his other property, movable or immovable, in any other manner, or his earnings; and,

(e) if, in consequence of the imposition of restrictions, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change.

(2) In addition to the amount representing the actual decrease in the market-value of the land as above provided, the Court shall in every case award a further sum of fifteen per centum on such amount.

Matters not to be considered in determining compensation.

24. In determining the amount of compensation to be awarded for damage caused, or to be caused, or for restrictions imposed under this Act, the Court shall not take into consideration—

(a) the degree of urgency which has led to the damage or the imposition of restrictions;

(b) any disinclination of the person interested to submit to damage or restrictions;

(c) any damage sustained by him, which, if caused by a private person, would not render such person liable to a suit;

(d) any increase to the value of the other land of the person interested, accruing or likely to accrue from anything done under this Act; or

(e) any outlay or improvements on, or disposal of, the land commenced, made or effected without the sanction of the Collector after the date of the publication of the declaration under section 3.

SEC. 23.—Where some time after the publication of a notification under sec. 4 (1) of the Land Acquisition Act a second notification was issued on a later date which was wider than the first one, and embraced not only the land covered by it but more land of the claimant in addition and the earlier notification was neither cancelled nor superseded it was held that as regards the proceedings under the Act, the market value

of the property must be taken as from the date of the first notification in respect of land covered by it and not as from the date of the subsequent notification. But where under the Works of Defence Act an earlier declaration was cancelled by a later one, it was held, that it was the date of the second notification which must be taken into consideration as regards the market value of the property concerned. 1941 Rang.L.R. 40.

25. (1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 12.

Rules as to amount of compensation.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

26. Every award under this part shall be in writing signed by the Judge, and shall specify the amount awarded under section 23, sub-section (1), clause (a), and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

Form of awards.

27. (1) Every such award shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportion they are to be paid.

Costs.

(2) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the Court is of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

28. If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date of his award to the date of payment of such excess into Court.

Collector may be directed to pay interest on excess compensation.

PART IV.

APPORTIONMENT OF COMPENSATION.

29. Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

Particulars of apportionment to be specified.

30. When the amount of compensation has been settled under section 12, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

Dispute as to apportionment.

PART V.

PAYMENT.

31. (1) On making an award under section 12, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in sub-section (2).

Payment of compensation or deposit of same in Court.

(2) If they do not consent to receive it, or if there is no person competent to alienate the land, or if there is any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

Provided, first, that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided, secondly, that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided, thirdly, that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of the Central Government, instead of awarding a money-compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, or by the remission of land-revenue on the same or on other lands held under the same title, or in such other way as may be equitable having regard to the interest of the parties concerned.

(4) Nothing in sub-section (3) shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

Investment of money deposited in respect of lands belonging to persons incompetent to alienate.

32. (1) If any money is deposited in Court under section 31, sub-section (2), and it appears that the land in respect of which the same was awarded belonged to any person who had no power to alienate the same, the Court shall order the money to be invested—

(a) in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money was deposited is held, or

(b) if such purchase cannot be effected forthwith, then in such Government or other approved securities as it thinks fit;

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same are applied—

(i) in the purchase of such other lands as aforesaid; or

(ii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies, the Court shall order the cost of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Collector, namely:—

(a) the costs of such investments as aforesaid;

(b) the costs of the orders for the payment of the interest or other proceeds of the securities in which such moneys are for the time being invested and for the payment out of Court of the principal of such moneys and the costs of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

33. If any money is deposited in Court under this Act for any cause other

Investment of money deposited in other cases.

than that mentioned in section 32, the Court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it thinks fit, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as will, in its opinion, give the parties interested therein the same benefit therefrom as they might have had from the land in respect of which such money was deposited or as near thereto as may be.

34. When the amount of any compensation awarded under this Act is not paid or deposited within fifteen days of making the award, the Collector shall pay the amount awarded with interest thereon at the rate of six per centum per annum from the date of the award until it is so paid or deposited.

PART. VI.

MISCELLANEOUS.

35. (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 3, sub-section (2), by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the Court house and also in some conspicuous part of the land upon which restrictions are to be imposed:

Provided that, if the Collector or Judge so directs, a notice may be sent by post in a letter addressed to the person named therein at his last known residence, address or place of business and service of it may be proved by the production of the addressee's receipt.

Penalties.

36. Whoever wilfully—

(a) obstructs any person in doing any of the acts authorized by section 4, section 6 or section 8, or

(b) destroys, damages, alters or otherwise interferes with the ground-level or any work done under section 6, or

(c) contravenes any of the provisions of section 7 or any condition prescribed thereunder, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both, and, in the case of a continuing offence, with an additional fine which may extend to five rupees for every day after the first in regard to which he is convicted of having persisted in the offence; and any expenses incurred in removing the effects of his offence may be recovered from him in the manner provided by the law for the time being in force for the recovery of fines.

37. If the Collector or officer authorized under section 6 is opposed or impeded in doing anything directed or permitted by this Act, he shall, if a Magistrate, enforce compliance, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras, ¹[and] Bombay ¹[* *]) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce compliance.

Completion of imposition of restrictions not compulsory, but compensation to be awarded when not completed.

38. (1) The Central Government shall be at liberty to withdraw from the imposition of any declared restrictions before any of the measures authorized by section 6 have been taken.

(2) Whenever the Central Government withdraws the imposition of any declared restrictions, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any

LEG. REF.

¹ In section 37, word 'and' inserted and the words 'and Rangoon' omitted by the A.O., 1937.

proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said restrictions.

(3) The provisions of Part III shall apply, so far as may be, to the determination of the compensation payable under this section.

39. (1) The provisions of this Act shall not be put in force for the purpose of demolishing or acquiring the right to demolish a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be demolished or that the right to demolish the whole of it shall be acquired:

Demolition of part of house or building and imposition of restrictions on part of land.

Provided that the owner may at any time before the Collector has made his award under section 12, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be demolished or that the right to demolish the whole of it shall be acquired:

Provided, also, that, if any question shall arise as to whether any building or other construction proposed to be demolished under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court, and such building or other construction shall not be demolished until after the question has been determined.

In deciding on such a reference the Court shall have regard to the question whether the building or other construction proposed to be demolished is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) If, in the case of any claim of the kind referred to in section 23, sub-section (1), clause (c), by a person interested, on account of ceasing to be able to use the land, upon the use and enjoyment of which restrictions are to be imposed, conjointly with his other land, the Central Government is of opinion that the claim is unreasonable or excessive, it may at any time before the Collector has made his award, order the imposition of restrictions upon the whole of the land of which the land upon the use and enjoyment of which it was first sought to impose restrictions forms a part.

(3) In the case provided for by sub-section (2), no fresh declaration or other proceeding under sections 3 to 10 shall be necessary; but the Collector shall without delay furnish a copy of the order of the Central Government to the person interested, and shall thereafter proceed to make his award under section 12.

(4) Notwithstanding anything contained in section 7, clause (a), any land, upon the use and enjoyment of which restrictions are imposed under this section may be included in the outer boundary, even though its distance from the crest of the outer parapet of the work exceeds two thousand yards.

40. No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

Exemption from stamp-duty and fees.

41. No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act without giving to such person a month's previous notice in writing of the intended proceeding and of the cause thereof, nor after tender of sufficient amends.

Notice in case of suits for anything done in pursuance of Act.

Code of Civil Procedure to apply to proceedings before Court.

42. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court under this Act.

43. Subject to the provisions of the Code of Civil Procedure applicable to Appeals in proceedings before Court. appeals from original decrees, an appeal shall lie to the High Court from the award or from any part of the award of the Court in any proceeding under this Act.

44. (1) The Central Government ¹[* * * *] may make rules for the guidance of officers in all matters connected with the enforcement of this Act.

(2) The power to make rules under sub-section (1) shall be subject to the condition of the rules being made after previous publication.

(3) All rules made under sub-section (1) shall be published in the Official Gazette, and shall thereupon have effect as if enacted in this Act.

¹LEG. REF.
Words 'and the Local Government with the previous sanction of the Governor-

General in Council' omitted by the A. O., 1937.

SUPPLEMENT.

THE BERAR LAWS ACT (IV OF 1941).

[17th March, 1941.]

An Act to extend certain Acts to Berar.

WHEREAS by orders made under the Indian (Foreign Jurisdiction) Order in Council, 1902, the provisions of certain Acts in force in British India have from time to time been applied to, and are now, by virtue of such application, in force in, Berar;

AND WHEREAS it is expedient that those and certain other Acts should be extended to, and be, by virtue of such extension, in force in, Berar:

It is hereby enacted as follows:—

Short title and commencement.

1. (1) This Act may be called THE BERAR LAWS ACT, 1941.

(2) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

2. (1) The Acts specified in the First Schedule and so much of any Act specified in the Second Schedule as relates to matters with respect to which the Central Legislature has power to make laws are hereby extended to, and shall be in force in, Berar; and in any enactment so extended any reference by whatever form of words to subjects of His Majesty shall be deemed to include a reference to Berari subjects of His Exalted Highness the Nizam of Hyderabad, and notwithstanding anything contained in clause (7) of section 3 of the General Clauses Act, 1897, any reference to British India shall be construed as a reference to British India and Berar.

(2) The Acts specified in the Third Schedule shall be amended in the manner set forth in the second column of that Schedule.

3. The application, if any, to Berar, made by order under the Indian (Foreign Jurisdiction) Order in Council, 1902, of the Acts specified in the First Schedule, of so much of any Act specified in the Second Schedule as relates to matters with respect to which the Central Legislature has power to make laws, and of the Indian Cotton Cess Act, 1923, shall cease to have effect:

Provided that all appointments, delegations, notifications, orders, bye-laws, rules and regulations, which have been made or issued under, or in pursuance of, any provision of any of the said Acts as applied to Berar by order under the said Order in Council, and which are in force at the commencement of this Act, shall be deemed to have been made or issued under or in pursuance of the corresponding provision of that Act as now extended to, and in force in, Berar.

Removal of doubt,

4. For the removal of doubt it is hereby declared that the Acts specified in the Fourth Schedule have ceased to have effect and are repealed in Berar.

THE FIRST SCHEDULE.

[See sections 2 (1) and 3.]

Acts Extended to Berar.

Year.	Number.	Short Title.
1850	XIX	.. The Apprentices Act, 1850.
1850	XXI	.. The Caste Disabilities Removal Act, 1850.
1855	XIII	.. The Indian Fatal Accidents Act, 1855.
1856	XI	.. The European Deserters Act, 1856.
1856	XV	.. The Hindu Widows' Re-marriage Act, 1856.
1860	XLV	.. The Indian Penal Code.
1864	III	.. The The Foreigners Act, 1864.
1865	III	.. The Carriers Act, 1865.
1866	XXI	.. The Native Converts' Marriage Dissolution Act, 1866.
1867	XXV	.. The Press and Registration of Books Act, 1867.
1869	IV	.. The Indian Divorce Act.
1872	I	.. The Indian Evidence Act, 1872.
1872	III	.. The Special Marriage Act, 1872.
1872	IX	.. The Indian Contract Act, 1872.
1872	XV	.. The Indian Christian Marriage Act, 1872.
1873	V	.. The Government Savings Banks Act, 1873.
1873	X	.. The Indian Oaths Act, 1873.
1874	IX	.. The European Vagrancy Act, 1874.
1875	IX	.. The Indian Majority Act, 1875.
1875	XVIII	.. The Indian Law Reports Act, 1875.
1876	IX	.. The Native Coinage Act, 1876.
1877	I	.. The Specific Relief Act, 1877.
1878	VIII	.. The Sea Customs Act, 1878.
1878	XI	.. The Indian Arms Act, 1878.
1879	XVIII	.. The Legal Practitioners Act, 1879.
1881	XXVI	.. The Negotiable Instruments Act, 1881.
1882	II	.. The Indian Trusts Act, 1882.
1882	XII	.. The Indian Salt Act, 1882.
1884	IV	.. The Indian Explosives Act, 1884.
1888	III	.. The Police Act, 1888.
1889	IV	.. The Indian Merchandise Marks Act, 1889.
1890	VIII	.. The Guardians and Wards Act, 1890.
1890	XI	.. The Prevention of Cruelty to Animals Act, 1890.
1891	XVIII	.. The Bankers' Books Evidence Act, 1891.
1898	V	.. The Code of Criminal Procedure, 1898.
1901	II	.. The Indian Tolls (Army) Act, 1901.
1903	VII	.. The Indian Works of Defence Act, 1903.
1903	XV	.. The Indian Extradition Act, 1903.
1904	VII.	.. The Ancient Monuments Preservation Act, 1904.
1905	IV	.. The Indian Railway Board Act, 1905.
1906	III	.. The Indian Coinage Act, 1906.
1908	V	.. The Code of Civil Procedure, 1908.
1908	VI	.. The Explosive Substances Act, 1908.
1908	IX	.. The Indian Limitation Act, 1908.
1908	XIV	.. The Indian Criminal Law Amendment Act, 1908.
1908	XVI	.. The Indian Registration Act, 1908.
1909	IV	.. The Whipping Act, 1909.
1910	IX	.. The Indian Electricity Act, 1910.
1911	II	.. The Indian Patents and Designs Act, 1911.
1911	VIII	.. The Indian Army Act, 1911.
1912	IV	.. The Indian Lunacy Act, 1912.
1913	II	.. The Official Trustees Act, 1913.
1913	III	.. The Administrators-Generals' Act, 1913.
1914	III	.. The Indian Copyright Act, 1914.
1916	VII	.. The Indian Medical Degrees Act, 1916.
1917	II	.. The Motor Spirit (Duties) Act, 1917.
1917	XVIII	.. The Post Office Cash Certificates Act, 1917.
1918	XXII	.. The Bronze Coin (Legal Tender) Act, 1918.
1919	XII	.. The Poisons Act, 1919.
1920	V	.. The Provincial Insolvency Act, 1920.

Year.	Number.	Short title.
1920	XIV	.. The Charitable and Religious Trusts Act, 1920.
1920	XV	.. The Indian Red Cross Society Act, 1920.
1920	XLVII	.. The Imperial Bank of India Act, 1920.
1920	XLVIII	.. The Indian Territorial Force Act, 1920.
1920	XLIX	.. The Auxiliary Force Act, 1920.
1921	XVIII	.. The maintenance Orders Enforcement Act, 1921.
1922	XI	.. The Indian Income-tax Act, 1922.
1922	XII	.. The Indian Finance Act, 1922.
1922	..	.. The Indian States (Protection against Disaffection) Act, 1922.
1923	IV	.. The Indian Mines Act, 1923.
1923	V	.. The Indian Boilers Act, 1923.
1923	VIII	.. The Workmen's Compensation Act, 1923.
1923	XXIII	.. The Legal Practitioners (Women) Act, 1923.
1924	VI	.. The Criminal Tribes Act, 1924.
1925	XXXIX	.. The Indian Succession Act, 1925.
1926	XI	.. The Promissory Notes (Stamp) Act, 1926.
1926	XVI	.. The Indian Trade Unions Act, 1926.
1926	XXI	.. The Legal Practitioners (Fees) Act, 1926.
1926	XXXVIII	.. The Indian Bar Councils Act, 1926.
1929	VII	.. The Trade Disputes Act, 1929.
1929	XIX	.. The Child Marriage Restraint Act, 1929.
1930	II	.. The Dangerous Drugs Act, 1930.
1930	III	.. The Indian Sale of Goods Act, 1930.
1930	XVIII	.. The Silver (Excise Duty) Act, 1930.
1930	XIX	.. The Indian Companies (Amendment) Act, 1930.
1930	XXIV	.. The Indian Lac Cess Act, 1930.
1931	..	.. The Indian Finance Act, 1931.
1931	..	.. The Indian Finance (Supplementary and Extending) Act, 1931.
1931	XVI	.. The Provisional Collection of Taxes Act, 1931.
1931	XXIII	.. The Indian Press (Emergency Powers) Act, 1931.
1932	IX	.. The Indian Partnership Act, 1932.
1932	XI	.. The Public Suits Validation Act, 1932.
1932	XII	.. The Foreign Relations Act, 1932.
1932	XIII	.. The Sugar Industry (Protection) Act, 1932.
1932	XXIII	.. The Criminal Law Amendment Act, 1932.
1933	II	.. The Children (Pledging of Labour) Act, 1933.
1933	VII	.. The Indian Finance Act, 1933.
1933	XVII	.. The Indian Wireless Telegraphy Act, 1933.
1933	XXVII	.. The Indian Medicinal Council Act, 1933.
1934	II	.. The Reserve Bank of India Act, 1934.
1934	VIII	.. The Khaddar (Name Protection) Act, 1934.
1934	IX	.. The Indian Finance Act, 1934.
1934	XI	.. The Indian States (Protection) Act, 1934.
1934	XIV	.. The Sugar (Excise Duty) Act, 1934.
1934	XVI	.. The Matches (Excise Duty) Act, 1934.
1934	XX	.. The Indian Carriage by Air Act, 1934.
1934	XXII	.. The Indian Aircraft Act, 1934.
1934	XXIII	.. The Mechanical Lighters (Excise Duty) Act, 1934.
1934	XXV	.. The Factories Act, 1934.
1934	XXXI	.. The Iron and Steel Duties Act, 1934.
1934	XXXII	.. The Indian Tariff Act, 1934.
1935	..	.. The Indian Finance Act, 1935.
1936	..	.. The Indian Finance Act, 1936.
1936	III	.. The Parsi Marriage and Divorce Act, 1936.
1936	IV	.. The Payment of Wages Act, 1936.
1936	XIV	.. The Geneva Convention Implementing Act, 1936.
1937	I	.. The Agricultural Produce (Grading and Marking) Act, 1937.
1937	VI	.. The Arbitration (Protocol and Convention) Act, 1937.
1937	..	.. The Indian Finance Act, 1937.

THE SECOND SCHEDULE.

[See sections 2 (1) and 3.]

Acts partially extended to Berar.

Year.	Number.	Short title.
1843	V	.. The Indian Slavery Act, 1843.
1850	XII	.. The Public Accountants' Default Act, 1850.
1850	XXXVII	.. The Public Servants (Inquiries) Act, 1850.
1855	XXIV	.. The Penal Servitude Act, 1855.
1870	VII	.. The Court-fees Act, 1870.
1871	XXIII	.. The Pensions Act, 1871.
1881	XI	.. The Municipal Taxation Act, 1881.
1882	IV	.. The Transfer of Property Act, 1882.
1885	XIII	.. The Indian Telegraph Act, 1885.
1886	VI	.. The Births, Deaths and Marriages Registration Act, 1886.
1886	XI	.. The Indian Tramways Act, 1886.
1890	I	.. The Revenue Recovery Act, 1890.
1890	VI	.. The Charitable Endowments Act, 1890.
1890	IX	.. The Indian Railways Act, 1890.
1895	XV	.. The Crown Grants Act, 1895.
1897	III	.. The Epidemic Diseases Act, 1897.
1897	X	.. The General Clauses Act, 1897.
1897	XIV	.. The Indian Short Titles Act, 1897.
1898	VI	.. The Indian Post Office Act, 1898.
1899	II	.. The Indian Stamp Act, 1899.
1899	IV	.. The Government Buildings Act, 1899.
1913	VII	.. The Indian Companies Act, 1913.
1914	IX	.. The Local Authorities Loans Act, 1914.
1916	XV	.. The Hindu Disposition of Property Act, 1916.
1917	V	.. The Destruction of Records Act, 1917.
1918	II	.. The Cinematograph Act, 1918.
1920	X	.. The Indian Securities Act, 1920.
1920	XXXIX	.. The Indian Elections Offences and Inquiries Act, 1920.
1923	III	.. The Cotton Transport Act, 1923.
1923	XIX	.. The Indian Official Secrets Act, 1923.
1924	XIII	.. The Indian (Specified Instruments) Stamps Act, 1924.
1925	IV	.. The Indian Soldiers (Litigation) Act, 1925.
1925	XII	.. The Cotton Ginning and Pressing Factories Act, 1925.
1925	XIX	.. The Provident Funds Act, 1925.
1927	XVI	.. The Indian Forest Act, 1927.
1928	XII	.. The Hindu Inheritance (Removal of Disabilities) Act, 1928.
1929	II	.. The Hindu Law of Inheritance (Amendment) Act, 1929.
1930	XXX	.. The Hindu Gains of Learning Act, 1930.
1936	V	.. The Decrees and Orders Validating Act, 1936.

THE THIRD SCHEDULE.

[See section 2 (2).]

Acts Amended.

Name of Act.	Amendments.
The Code of Civil Procedure, 1908 (Act V of 1908).	<p>In section 7 and in rule I of Order L in the First Schedule,—</p> <p>(a) after the figures "1887" the words and figures "or under the Berar Small Cause Courts Law, 1905" shall be inserted, and</p> <p>(b) for the words "under that Act" the words "under the said Act or Law" shall be substituted.</p>

Name of Act.	Amendments.
The Indian Limitation Act, 1908 (IX of 1908).	In Article 161 of the First Schedule, the word "Provincial", in both places where it occurs, shall be omitted; and after the words "Small Causes", where they occur for the first time, the brackets and words "(other than a Presidency Small Cause Court)" shall be inserted.

THE FOURTH SCHEDULE.

[See section 4.]

Acts which have ceased to have effect and are repealed in Berar.

Year.	Number.	Short title.
1841	XIX ..	The Succession (Property Protection) Act, 1841.
1847	XX ..	The Indian Copyright Act, 1847.
1860	IX ..	The Employers and Workmen (Disputes) Act, 1860.
1865	X ..	The Indian Succession Act, 1865.
1865	XXI ..	The Parsi Intestate Succession Act, 1865.
1881	V ..	The Probate and Administration Act, 1881.
1881	VI ..	The District Delegates Act, 1881.
1889	VII ..	The Succession Certificate Act, 1889.
1911	XII ..	The Indian Factories Act, 1911.
1912	V ..	The Provident Insurance Societies Act, 1912.
1912	VI ..	The Indian Life Assurance Companies Act, 1912.
1914	VIII ..	The Indian Motor Vehicles Act, 1914.
1919	X ..	The Excess Profits Duty Act, 1919.
1923	X ..	The Indian Paper Currency Act, 1923.
1926	XIX ..	The Indian Finance Act, 1926.
1927	V ..	The Indian Finance Act, 1927.
1928	XX ..	The Indian Insurance Companies Act, 1928.
1929	X ..	The Indian Census Act, 1929.
1933	XIII ..	The Safeguarding of Industries Act, 1933.
1935	The Criminal Law Amendment Act, 1935.
1936	I ..	The Italian Loans and Credits Prohibition Act, 1936.

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